

Ten Ways to Save Your Land

Ninth Edition © 2022



LAND LOSS
PREVENTION PROJECT

The Land Loss Prevention Project (LLPP) is a nonprofit, public interest law firm created by the North Carolina Association of Black Lawyers in 1983 in response to its deep concern about the steep decline in the number of small farmers and BIPOC landowners in North Carolina. Our mission is to provide technical support and legal assistance to financially distressed and limited resource farmers and homeowners throughout North Carolina. Community education, attorney/advocate assistance, training, community economic development, and policy advocacy to address legal and economic problems associated with the loss of land by farmers and homeowners are some of the techniques utilized by LLPP. We provide speakers and conduct workshops for community groups, professional associations, and churches at no cost to address the subject of land loss. We are located at 401 N. Mangum Street in Durham, North Carolina.

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About the W.K. Kellogg Foundation

The W.K. Kellogg Foundation (WKKF), founded in 1930 as an independent, private foundation by breakfast cereal pioneer, Will Keith Kellogg, is among the largest philanthropic foundations in the United States. Guided by the belief that all children should have an equal opportunity to thrive, WKKF works with communities to create favorable conditions for vulnerable children to realize their full potential in school, work, and life.

The Kellogg Foundation is based in Battle Creek, Michigan, and works throughout the United States and internationally, as well as with sovereign tribes. Special attention is paid to priority places where there are high concentrations of poverty and where children face significant barriers to success. WKKF priority places in the U.S. are in Michigan, Mississippi, New Mexico, and New Orleans; and internationally, are in Mexico and Haiti. For more information, visit www.wkkf.org.

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This Handbook is not intended to provide legal advice on a specific legal problem or substitute for the advice and work of an attorney. Landowners seeking legal advice about a land loss problem should contact an attorney or the Land Loss Prevention Project. This handbook is published by the Land Loss Prevention Project.



INTRODUCTION

Every year, North Carolina farmers and homeowners lose thousands of acres of land. Legal problems such as foreclosures, lack of estate planning, predatory lending, and adverse possession are often the main causes of land loss. The Land Loss Prevention Project wants to help people keep their property and has written this handbook to increase awareness of what can be done now to prevent problems in the future.

The handbook provides information on the most common ways land is lost and provides a general overview of key issues associated with trying to protect that land. Family farmers, landowners, and homeowners will find this handbook useful.

In this handbook, we will cover ten important topics related to land loss. There are legal terms that appear in bold throughout each section, and you can find the glossary of these terms at the end

of the handbook. If you are reading this document on a computer, you can press the “Ctrl” key and click on any of the bold words in order to view the definition of that word. You can also press the “Ctrl” key and click on any underlined words to open a resource website.

The information in this handbook is not a complete list of everything you may need to know to protect your land and is not intended as legal advice. If you need additional information or need a lawyer but cannot afford one, please contact the Land Loss Prevention Project at 1-800-672-5839.

5 STEPS TO PROTECT YOUR LAND

STEP 1: KNOW YOUR RIGHTS AS A LANDOWNER

- ✓ Review Your Deed
- ✓ Review Tax Records
- ✓ Review Any Agreements Related to the Land:
 - Easements
 - Contracts
 - Agreements with Other Co-Owners

STEP 2: UNDERSTAND THE COMMON PROBLEMS LANDOWNERS FACE

- ✓ Review Sections 1-10 of This Handbook
- ✓ Make Sure All the Taxes Have Been Paid
- ✓ Make Sure All Other Debts Are Being Paid
- ✓ Review all Papers, Letters, and Mailings Regarding the Property

STEP 3: TAKE ACTION TO AVOID THE COMMON PROBLEMS LANDOWNERS FACE

- ✓ Pay Property Taxes on Time
- ✓ Visit or Have Someone Visit the Property on a Regular Basis
- ✓ Create an Estate Plan
 - Will
 - Power of Attorney; Health Care Power of Attorney
 - Living Will

STEP 4: PLAN A FAMILY MEETING & MAKE A FAMILY PLAN

- ✓ Discuss How the Land is Owned
- ✓ Discuss How Decisions About the Land Are Being Made and Should Be Made
 - Consider the creation of a Trust or LLC
- ✓ Discuss the Details of the Plan
 - Decide Which Individual(s) Will Pay the Taxes
 - Decide Which Individual(s) Will Collect and Divide any Rents or Proceeds
 - Decide Which Individual(s) Will Maintain the Land
 - Decide How the Land Will be Used

STEP 5: SEEK PROFESSIONAL ADVICE

- ✓ Consult a Tax Professional
- ✓ Consult an Attorney
- ✓ Contact Local Agencies
 - N.C. A&T State University Cooperative Extension Program
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Greensboro, N.C. 27420
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1. DEEDS

Protect Your Right to Your Land with a Deed

As a landowner, you should have a deed to your property. A **deed** is a piece of paper which shows that you own your land.¹ The deed gives you **title** to your property, and title governs your legal right to your land.

Every time property is sold or given to another person, a new deed must be written and recorded. The deed should be written by a lawyer. In the deed, the person buying or being given the land is called the **grantee**, and the person selling or giving the land is called the **grantor**.

When someone is devised or willed property, however, although it is wise to have a deed prepared if possible, a deed is not always necessary. In North Carolina, a deed is not required to transfer property when the deceased dies, whether or not an estate is administered. When property is passed either through intestate succession (without a will) or through a valid will, the heirs or devisees receive title immediately, and the “proof” of title required is a copy of the will or estate file, if present, or the death certificate if the decedent dies intestate.²

A. FEATURES OF A DEED

Every valid, legal deed must include the name of the grantor, the name of the grantee, and a description of the land and its boundaries. The deed must also state that the property is being passed to a new owner.

In North Carolina, a conveyance of land needs to meet the following requirements: (1) it is in writing;³ (2) the grantor signed the deed and fully understands what he or she is doing with the property; (3) the deed is accepted and signed by the grantee or his/her agent;⁴ and (4) the description of the property in the deed is specific enough so that the property can be identified.⁵

If you are buying a piece of property and you sign a **contract** for sale before you sign a deed, you must make sure that any promises you are relying upon in the contract also appear in the deed. For instance, the contract might state that the seller guarantees you will not have any boundary problems. If this promise does not appear in the deed, then this promise will be lost once the deed is signed.⁶ You should also make sure that the description of the land you are buying is the same in the contract as it is in the deed.

B. TYPES OF DEEDS

A **warranty deed** ensures that the title the grantor is conveying to the grantee is valid. The grantor of the deed guarantees that he or she has the legal right to give or sell the property to you. This is the best kind of deed to have because the warranty protects you from anyone who might try to claim an ownership interest in your property during or after the time of sale. However, a warranty deed may have restrictions or conditions that limit what you, the owner, can do with your land. Some of these restrictions include: **mortgages, liens, covenants and rights of way**. These restrictions should be listed on the deed and can be passed down from one owner to another.

A **special warranty deed** is similar to a warranty deed, but it is more limited in its scope. When a grantor conveys a special warranty deed, that deed is only guaranteeing that the *grantor* did not encumber the property (for instance with a mortgage or a right-of-way). This kind of deed does not protect against any actions that prior owners may have taken.

A **quitclaim deed** also transfers title from one person to another. However, it provides none of the protections of a warranty deed. A quitclaim deed conveys the grantor's interest in the land described, whatever that interest may or may not be. For example, if the grantor does not actually own the land, then they will be conveying you nothing. In other

words, the grantor in a quitclaim deed is making no guarantee that he or she has any interest in the property at all. When taking title to real property, you should insist on a general warranty deed, if possible.

HOW GOOD IS YOUR TITLE?

Usually when land is bought and sold, a lawyer for the buyer will do a **title search**. This is a search to determine all of the past owners of the property and to find out if there are any conditions, limits, restrictions, or rules to owning the property.

When you are thinking about buying a particular piece of property, you should hire a lawyer to do a title search to make sure that you know exactly what you are getting when you buy your land. For example, you may discover through a title search that the boundaries of your land are not what you thought they were, that the state has the right to run a public sewer line through the land, that a neighbor has a right to use your driveway, or that there are unpaid taxes owed on the property, which would be passed to you as purchaser of the property. Tax liabilities can be particularly dangerous because if you do not pay the unpaid taxes, the government can seize and sell your property to pay the unpaid taxes.⁷

Not all titles are valid. If a lawyer did not prepare your deed when you got the title to your land, you should contact a

lawyer now to do a title search. If you do not have a deed to your property at all, you should contact a lawyer to determine how you can have a deed prepared for you. If there are any problems with a deed that you already have or with the chain of title once examined, a lawyer may be able to fix them.

DIFFERENT TYPES OF LAND OWNERSHIP

There are different types of land ownership. When conveying or purchasing land, it is important to understand the type of ownership interests you are conveying or receiving. For example, some people own their land only for as long as they live, which is called a "life estate" while other people own their land "forever," or in "fee simple."

An owner of land can never sell, will, or give more land than he or she owns. As a result, someone with a life estate is limited in what actions he or she may take related to the property because he or she only owns it for his or her lifetime. At the end of the life estate, the ownership interest either returns to the grantor or transfers to the people whom the grantor has chosen to receive full ownership at the end of the life tenancy. People who only own their land for life cannot will their land to others after they die because once they die the land is not theirs to give away.⁸ During their lifetime, any

ownership interest they transfer will only last for their lifetime.

However, people who own their land "forever" or in "fee simple" can will or sell their land to anyone they choose and can borrow against the property (for instance through a mortgage or a line of credit).

If you are married, any real property that you and your spouse acquire together during the marriage is owned **in the entirety**, unless the deed clearly states otherwise. For property owned in the entirety, if one of you dies while you are still married, the other will become the owner of the entire property. A married person cannot give away their "share" of the property at death. Even if one spouse says in their will that their share of the property is to go to someone else, at their death, the living spouse will still become the sole owner of the whole property. The same is true if a spouse tries to sell the whole property. A spouse cannot sell the whole property without their spouse's consent. If you get divorced, you and your ex-spouse will cease to be tenants by the entirety and will become **tenants in common**, meaning that you are co-owners of the land, and you each own an undivided 1/2 interest in the property.

TIPS ABOUT DEEDS

- ✓ Register your deed immediately at the office of the **Register of Deeds** in the county in which your property is located. A registered deed is the best proof that you own your land.⁹ Once a deed has been registered, it becomes part of the public record. This is helpful because if, for example, your copy of the deed is lost or stolen, it can easily be replaced if it was properly registered. In North Carolina, if two people each have a deed to the same property, the person who registered it first is considered the legal owner.¹⁰
- ✓ Keep your deed in a safe place to protect it from fire or theft. A safe deposit box at the post office or bank is the best place.
- ✓ If there is a dispute over who owns your land, a lawyer may be able to bring a **quiet title action** proving that you own it and precluding any future conflict.
- ✓ If there is to be an **easement** on your property, meaning the reservation of a certain area of the property for use by another (a driveway, a walking path, etc.), be sure that the area and the specific use are described clearly in the deed. This will ensure that your land will not be used by other people or in ways that you do not desire. Also, if you expect to have an easement on someone else's property (for example, if your property is landlocked and you need to travel across your neighbor's property to reach the road), make sure that this easement is registered as well. Once an easement is registered, it "runs with the land," meaning that it continues to exist each time the land is sold.¹¹
- ✓ Never give your deed to anyone to hold for a debt or for any other reason. If you owe money to someone, that person should collect on your debt in other ways. If you are uncertain about the legal title to your land, contact an attorney.
- ✓ Never write on your deed without the advice of an attorney. Otherwise, you may make changes that you did not mean to make. For instance, it is possible to confuse the boundaries of your land or even to pass on the property to someone else by mistake.

- ✓ Do not make informal arrangements with other landowners—for instance, that someone will be allowed to put a fence on part of your property or that you will be able to use a part of their land for grazing, etc. These arrangements can lead to big legal problems for you, especially later if you try to sell your land. Any such agreements should be in writing and may require additions to your deed or theirs. If you have a situation like this, consult an attorney.
- ✓ If you are an older person, you may want to consider whether or not you wish to give your land away while you are still alive instead of waiting until after your passing. One way to do this would be to prepare a deed. Depending on the circumstances, this may save your heirs money, time, and trouble later on. You can also be certain that your land is given to the person or people of your choice. However, you should think very carefully before you choose this option because giving your land away while you are alive could result in the loss of some government benefits and could have costly tax consequences. Be sure to talk to a tax advisor and a lawyer before you make this decision.
- ✓ Another way to deal with giving your land away while you are alive is to create a **trust** and name all the family members or people that you want to own the land as the **beneficiaries** of the trust. You may be able to name yourself as the **trustee** so that you can remain in possession of the land until you are no longer able to manage it. An attorney can help you create this kind of trust.



2. TAXES

Pay Taxes - Prevent Tax Lien Sales and Foreclosures

All landowners must pay taxes on their land, but first they must list their property with the tax collector. To find out where to pay your property taxes, you should contact the tax collector's office for your county and for your city to see where the property should be listed. Listing is done every January either through the mail (if you filled out the listing form last year), in person at the tax office, or at various other offices. Landowners who report their property to the tax collector after January 31 are charged a fine.

In late summer, tax bills are sent to landowners. The amount of your tax bill is based on the value of your property, which is **appraised** every few years by the government. Your property taxes must be paid between September 1 and January 6 of every year.¹² Depending on where your land is, you pay your taxes to the county, city, or town tax collector. If you do not pay property taxes on time, the government will charge you **interest** which includes: 2% for January 6 to February 1 and $\frac{3}{4}\%$ for each additional month that your bill goes unpaid.¹³ For example, if a landowner's 2021 property tax bill is \$1,000, then he or she must pay the \$1,000 before January 6, 2022. If the landowner pays after January 6, 2022,

then he or she will owe \$1,020 (\$1,000 original debt plus \$20 in interest for January). If the landowner does not pay the bill until February, then he or she will owe \$1,027.50 (\$1,000 original debt plus \$20 in interest for January and \$7.50 in interest for February).

A. TAX LIENS

The government can put a **lien** on your property if the taxes go unpaid. By placing a lien on your land, the government is claiming an ownership right in your land. If the taxes owed are not paid, the government has the power to seize your land or garnish your wages.¹⁴

Beginning around March, the tax collector will advertise all **tax liens** in the local newspaper, the courthouse, and the city hall. The advertisement will list, in alphabetical order, the names of everyone who owes property taxes. Each name will be followed by the address of the property and the amount of unpaid taxes. The advertisement will also give notice that the unpaid taxes will be increased by interest and costs and that the county or city may sell the land to collect the taxes.

To get rid of a tax lien and reclaim your land, you can pay the taxes due, any interest that has accrued, and any advertising costs during the advertising period.¹⁵ Be sure to get a receipt from the tax collector for every payment you make. Pay your taxes only to the tax

collector at his or her office. Do not pay taxes to a lawyer or to any other person. You should not be required to pay legal fees unless a foreclosure action has already begun. However, if your property is already in foreclosure, the tax office may choose not to accept your payment. (See Section B below).

If you do not know how much you owe in taxes, you are entitled to request a tax certificate from the tax collector.¹⁶ This certificate will tell you the total amount of taxes owed on your property. Most North Carolina counties also allow you to view your most recent property tax bill as well as your payment history for prior years online through the tax office's website.

If you have any questions or are unsure whether there is a tax lien against your property, contact the Land Loss Prevention Project for help.

B. FORECLOSURE ON TAX LIENS

If your property taxes are not paid, the government will collect the taxes by selling your land. This is called **foreclosure**. The government can bring an action for foreclosure in one of two ways: "in rem" or by court order. If the government waits longer than ten years to bring an action for unpaid taxes, they lose their right to foreclose.¹⁷

1. IN REM FORECLOSURE

After thirty days from the date the tax lien is first advertised, the government

can file a certificate in your county courthouse showing the amount owed in taxes, costs, and interest.¹⁸ This certificate acts as a judgment, and the government can execute on that judgment after it has been on file in the courthouse for at least three months, but no longer than two years.¹⁹ Execution means that the government can have the land sold by the sheriff at public auction.

When the government uses this method, it must either personally serve you with a copy of the certificate, or it can send a registered or certified letter to you thirty days before the tax lien goes into foreclosure. The letter will be sent to your last known address. However, if the government is unable to find your address, it does not have to send the letter.²⁰

The sale of your land can be stopped. You, or any other person having an **interest in the land**, can ask the Clerk of Superior Court to cancel the foreclosure if the taxes, interest, and costs to the tax office have since been paid or if the tax lien was illegal.

Additionally, if the sale is held and the government buys your property, you may be able to convince the government to resell the land to you for the amount of all taxes, costs, interest, and penalties owed.

If you receive notice that the county or city tax collector has initiated, or is prepared to initiate, a foreclosure,

contact a lawyer to determine your rights.

2. FORECLOSURE BY COURT ORDER

A court-ordered tax foreclosure is more complicated and is used less often. It can start any time after a tax lien is put on the land.

In a court-ordered tax foreclosure, the tax collector must first post or serve a notice of the tax lien stating the following information: (1) the names of everyone who owes property taxes, followed by the address of the property and the amount of unpaid taxes; (2) notice that the unpaid taxes will be increased by interest and costs; and (3) notice that the county or city may sell the land to collect the taxes.²¹ The listed taxpayer and all other persons entitled to be made parties to the action are served with a summons (court papers) or may be served by publication (notice in the newspaper) if their addresses are unknown.²²

You or your attorney can challenge the court's decision to sell your property if there is a good reason. These reasons may include: payment of the lien has already been made to the tax collector; there was an unfair sale of the property; the sale was scheduled before the waiting (notice) period had passed; or all necessary parties were not given notice of the foreclosure. Sometimes a trial will be held to sort all of this out.

After the trial, the judge will make a decision or issue a judgment. If the judgment is in your favor, you get to keep the land (though possibly under certain conditions). If the judgment is against you, the property will be sold at a public auction to the highest bidder. You are able to participate in the auction if you have the money to bid for the property.

THE FORECLOSURE SALE

You can buy back the land at the auction if you are the highest bidder. In addition, even if the property is sold to someone else, you have ten days to make a higher upset bid by delivering a deposit in cash or by certified or cashier's check to the Clerk of Superior Court for an amount greater than or equal to five percent of the amount of the upset bid, but no less than \$750.²³

If the government buys your property at the auction, you may be able to convince it to sell the land back to you for the amount of all taxes, costs, interest, and penalties owed. You should be aware, however, that if your property is sold to someone else and that person registers a deed, you only have one year to challenge that sale.²⁴

If you do not buy back the land, the money collected from the sale is used to pay off the tax lien and all other taxes owed. If there is money left over after paying all of the unpaid taxes, the court will decide who should receive the

excess. If no decision is made, then the money will be held by the Clerk of Court until it is claimed. You can also claim this money.²⁵ However, if the money collected from the sale of your property is not enough to pay all of the unpaid taxes, you may still be liable for the remaining balance.

SPECIAL TAX BREAKS

3. SENIOR CITIZENS / DISABLED CITIZENS "HOMESTEAD EXCLUSION"

Senior citizens and disabled adults of any age may apply for a special tax rate on the property they own. To qualify, you must be a resident of North Carolina and must have earned roughly \$31,500 or less after income taxes.²⁶ Also, you must be at least sixty-five years old or must be totally and permanently disabled. Disabled individuals must provide proof of their disability, like a certificate from their doctor. If you are married, and you and your spouse own the property together, you can get this special rate as long as one of the two of you meets these qualifications.

The property covered by this special tax rate includes your home, the land you live on, and all household items used in your home. If you live in a mobile home, it is also covered. While your property tax bill is normally based on the value of all of your property, under this special rate you are not charged taxes on the property value of the first \$25,000 or 50% of the appraisal value of the residence, whichever is greater.²⁷ So for example, if

a person's home and land are valued at \$20,000, then under this special rate, he or she will not be required to pay any property tax. If a person's home and land are valued at \$30,000, then he or she must pay taxes on only \$5,000 worth of the property's value (\$30,000 - \$25,000 = \$5,000).

To apply for the lower property tax rate, go to the tax office in your county or to the Department of Revenue if your property is appraised by that department. Each county may have its own deadline by which you file under this provision and may be later than the tax filing deadline (January 31).²⁸ You must reapply every year by this same deadline in order to keep the special tax rate.

4. DISABLED VETERAN AND SURVIVING SPOUSE EXCLUSION

Disabled veterans and/or their surviving spouse, who has not remarried, may qualify for a lower property tax rate. A disabled veteran is defined as "a veteran of any branch of the Armed Forces of the United States whose character of service at separation was honorable or under honorable conditions" and who has a service-connected, permanent, and total disability or who received benefits for specially adapted housing under 38 U.S.C. 2101".²⁹

To receive this special rate, a disabled veteran or their spouse must apply to the county where they live or to the

Department of Revenue if their property is appraised by that department. Each county may have its own deadline by which you file under this provision and may be later than the tax filing deadline (January 31).³⁰ If you qualify, then you can exclude up to the first \$45,000 of the appraised value of your permanent residence for the overall appraised value for your home.³¹

5. AGRICULTURE

To help farmers, there are also special, lower tax rates on many farm products.³² Crops that are to be sold qualify for this rate. Crops grown for feed, poultry, or livestock do not qualify for the lower tax rates. Individuals who own property involved in agricultural, horticultural, and forestry management may qualify for a voluntary program that allows land to be assessed at its present use value.³³ This can be helpful because it allows for farmers to pay taxes on the farming value rather than the market value of the land.

Because participation in the Present-Use Value Program is voluntary, property is not automatically enrolled, and the property does not remain enrolled as the property changes hands. When there is a change in ownership, for instance due to the passing of the original landowner, the new owner has 60 days to re-enroll in the Present-Use Value Program before the property will be released from the program and taxed again at market value.³⁴ It is important that any new owner, whether a family member or

third-party buyer, be aware of the window of time that they have to ensure that the land remains protected by the program.

Tax deferral does not mean tax forgiveness, so should a landowner take advantage of using the present-use value to assess taxes on the property, the money not paid in taxes will come due for the previous three years if the property is no longer being used for agricultural, horticultural, or forestry management.³⁵ To apply for participation in these programs and to see if you are eligible, you should contact the county where you live or the Department of Revenue if your property is appraised by that department. You may also want to consult with an attorney or tax professional if you have questions about these tax rates.

3. WILLS

Make a Will – Avoid the Pitfalls of Heir Property

Preparing a **will** is a way for you to give the things you own to the people you choose after your death.³⁶ Anyone who owns anything, or anyone who may inherit anything, needs to write a will in order to protect their assets and to ensure that those assets are given to the family and friends who matter most to the owner. You are never too young or too old to begin thinking about your goals for the distribution of your property, so it is best to make a will as soon as is practicable. Fortunately, wills may be changed as many times as you would like throughout your lifetime, so there is no need to wait to begin planning if you have real or personal property that you wish to protect and preserve for your loved ones. It is especially important for landowners to have a will so that they can provide for the future care, use, and maintenance of the property as it passes to the next generation. When someone dies without a will, the property can sometimes be split between so many heirs over a few generations that it becomes impossible or impractical to manage together. Not providing for who will inherit your property in a will also can create discord among your surviving family members if they are unable to agree on future decision-making regarding the property. This can place the property at greater risk of being lost;

a surprisingly large amount of land loss happens because landowners die without wills!

A. MAKING A WILL

You must be at least eighteen years old and of sound mind (for example, not legally incompetent) to make a will. To be certain that your will is legal and to prevent problems after you die, it is recommended that you hire an attorney to work with you to draft your will. Although you may talk about your will with a trusted person, such as an undertaker, minister, or insurance agent, only a lawyer is trained and licensed to prepare a legal will.

In North Carolina, most wills require at least two witnesses. A legal **witness** is someone over the age of eighteen who is of sound mind and who will not receive anything as a beneficiary of the will that is being witnessed. So, for example, a wife cannot be a witness to her husband's will, but the lawyer who prepares the will can be a witness.³⁷

You should list someone in your will to handle the administration of your estate after your death. This person is often referred to as an **executor** (sometimes, **executrix**). It is best to ask for this person's permission to be listed before naming them in the will because managing an estate can be a lot of work and may take a good deal of the executor's or executrix's time over

months or even years, depending on the size of the estate. This person, who can be a friend or a relative, must be over eighteen years old and should be a resident of North Carolina.³⁸

After your death, the executor will need to take the will to the Clerk of Superior Court in the county that you resided in during your life to make sure that it is legal. This procedure is known as **probate**. Then, he or she must pay your taxes and debts from the money and property that you left behind. Lastly, following your wishes as you wrote them in the will, this person must give out your land and belongings.

One thing that an attorney can assist you with when drafting your will is thinking through some of the situations that may arise that could complicate the distribution of your estate if not handled properly. One example of a situation that you should plan for is to whom you would like your property to go should your original beneficiary die before you do.

If your will says that a person should get a piece of land and that person is dead at the time of your death, that clause in your will will have no effect.³⁹ If you, for instance, wanted the land to go to your child's heirs if your child is not alive at your death, you must state in your will something like, "To X, or his heirs in the event that he predeceases me." You may wish to consider contacting an attorney to discuss the creation of an estate plan

or to have a current will reviewed to ensure that it meets North Carolina's legal requirements.

B. TYPES OF WILLS

There are three kinds of wills: attested wills, holographic wills, and nuncupative wills. We recommend that you make an attested will because it is the safest and most reliable type of will.

1. ATTESTED WILL

This is a typewritten will—the kind that you would expect a lawyer to draft. To make the will valid, you must sign the will in front of at least two witnesses, and they must sign it in front of you.⁴⁰ The witnesses should not be people who benefit under the will. If possible, all the signatures should be notarized; this will lessen the chance that the will may be contested after you die. If a lawyer draws up your will, your signatures can be notarized at the law office. Otherwise, you can find a notary public at a bank or at a delivery service office (for instance, UPS, FedEx, or your local postal store).

Preparing an attested will and urging your loved ones to do the same can avoid many of the concerns associated with the other two types of wills.

2. HOLOGRAPHIC WILL

This is a will written completely in your own handwriting. Although it does not need to be witnessed, it must be completely handwritten, dated, and

signed by you. To make the will valid, this kind of will must be kept with your other valuable papers and belongings in a safe deposit box, in another safe place, or with a person or corporation that you have asked to safeguard it.⁴¹ It must be found in this place after your death. We do not recommend this type of will because there is a higher likelihood of avoidable drafting mistakes (for instance, a misuse of a legal term or incorrectly numbered pages), issues with verifying and validating your handwriting, or disagreement over whether the will was found among your other "valuable papers." An attested will can prevent these problems entirely.

3. NUNCUPATIVE WILL

A dying person can make a nuncupative will by speaking his or her wishes to at least two witnesses.⁴² However, for this type of will to be valid, you must be dying of a "last sickness or in imminent peril" and you must actually die as a result.⁴³ It is important to note that land and homes cannot be willed this way. The Statute of Frauds requires that conveyances of land be written in order to avoid potential challenges, so it is always best to have your wishes documented in written form.

This kind of will is not very reliable and is often contested because people will question the competency of the dying person or the honesty of the person(s) hearing the dying wishes.

C. IF YOU DIE WITHOUT A WILL

By writing a will, you give directions to others about how you want the things you own to be distributed among your loved ones. However, if you die without a will (this is called dying **intestate**), your property may become jointly owned by your descendants, who are determined according to a formula created by the state of North Carolina. For someone who is survived by a spouse and no children, this may come with few issues; but for someone survived by many children and grandchildren, the size of the ownership pool may make it very difficult for your friends and family to enjoy the property after your passing.

TIPS ABOUT WILLS

- ✓ Keep your will with other valuable papers in a safe place, protected from fire, theft, and floods, or in a safe-deposit box. To be safe, you may also wish to copy your will and keep it in several places. Or, for no charge, you may file it with the Clerk of Superior Court.⁴⁴ That way, you can access it if you need to, but other people cannot (unless you give the Clerk special permission).
- ✓ There are many pre-printed form wills available on the market now that allow people to make wills without the help of an attorney. Pre-printed form wills can present many problems. While they seem like an inexpensive and simple way to make a will, it is easy to make a mistake or fill the form out in the wrong way, ultimately making your will invalid.
- ✓ Never scratch out or write on your will. This may make it invalid. If you want to change your will, you should write a new one or, for an attested will, write and attach a **codicil**. A codicil is a typewritten addition to the will that states the changes that you wish to make. It must be witnessed and signed.
- ✓ You may change your will as often as you want!
- ✓ If you make a new will, be sure to destroy the old one. Put the new will in the same safekeeping place where you kept the previous will. Remember, it is best to have a lawyer write your new will.

4. HEIR PROPERTY

Communicate with Heirs to Avoid Loss of Land

If you, as a landowner, die intestate and your **heirs** also die intestate, the land can end up belonging to many people at the same time. This land is then called "**heir property**." The landowner's property will be inherited according to the laws of intestate succession.

North Carolina's intestate succession laws generally provide that when a landowner passes away, the surviving spouse shares an undivided interest in the property with the deceased spouse's surviving children.⁴⁵ For example, if someone passes away leaving one child, the surviving spouse inherits one-half an undivided interest, and the child inherits the remaining one-half undivided interest in the late parent's real property.

On the other hand, if someone passes away leaving more than one child, the surviving spouse inherits one-third an undivided interest, and the children share the remaining two-thirds undivided interest in the late parent's real property. As you can imagine, given this legal method of inheriting interests, the number of legal heirs can grow quickly in the matter of a few generations.

Heir property is a form of ownership that is legally identified as a tenancy-in-

common. Each tenant-in-common, or cotenant, owns an undivided interest in the property.

That means that each cotenant is entitled to and burdened by complete possession and use of the property. In other words, no cotenant can exclude another cotenant from any part or portion of the property.

A. RISKS WITH OWNING HEIR PROPERTY

When several people own land together, as is the case with heir property, many problems can arise. Decisions can be difficult to make because everyone has a different opinion and because some co-owners may take more of an interest in the land than others. Some may want to sell the property; some may wish to use it for rental income; and others may want to live on or farm the land. Some may always pay their share of the property taxes while others pay nothing at all.

As will be discussed further throughout this handbook, this form of ownership can be risky. Because each co-owner has an equal right to the property, the actions of one co-owner can adversely affect the other owners. If one owner tries to sell his or her rights to the land, sometimes all the land ends up being sold. If the owners decide to divide the land amongst themselves, whether voluntarily or legally through a partition action, there can be problems determining how to parcel out the property in a way that leaves each co-

owner with land that is of relatively equal value and usability. (See section 5 for more information on partitions).

If your property is partially owned by other people, you may also have trouble getting loans for use on your property because there is no one clear owner. This can also put the property in danger of being sold.

B. HOW TO PREPARE TO APPLY FOR EMERGENCY ASSISTANCE AFTER A NATURAL DISASTER

This insecurity in title can also make it more difficult, or impossible for some families, to apply for and receive disaster relief aid, which is why it is important to gather important documents now that will assist you in the event of a natural disaster later.

The Federal Emergency Management Agency (FEMA) is the primary federal agency tasked with assisting those impacted by natural disasters. One of the primary ways that FEMA provides aid is through its Individuals and Households Program (IHP), which supplies qualifying applicants with financial help to assist with necessary expenses that the landowner(s) may otherwise not be able to cover.⁴⁶ Programs like this one, while helpful, can prove difficult to access for heir property owners—primarily because FEMA requires proof of ownership and/or occupancy before providing relief.

Federal regulations define an occupant as a resident of a housing unit. They define an owner-occupant as (1) The legal owner; (2) A person who does not hold formal title and pays no rent but is responsible for the payment of taxes or maintenance; or (3) A person who has lifetime occupancy rights with formal title vested in another.⁴⁷ Documents that you may attempt to gather now to prepare yourself in the event of a natural disaster include: **a deed, lease, contract for sale, mortgage payment booklet or other documents, and a property tax bill or receipt.**

Other federal agencies, like the Small Business Administration (SBA) and the U.S. Department of Agriculture (USDA) also offer assistance through low-interest loans for qualifying applicants that require repairs or replacements after a natural disaster. These agencies also require proof of ownership and/or occupancy. While the SBA's requirements are similar to FEMA's, the USDA may have additional requirements for farm applicants, which could include attainment of a farm number. While usually requiring a copy of a deed or lease to establish a farm number, the USDA now allows alternate documentation for farmers operating on heir property.⁴⁸

C. IF YOU ARE INVOLVED IN OWNERSHIP OF "HEIR PROPERTY"

As an owner of heir property, you should work with the other owners to look after your land. In addition to sharing its general care, you must make arrangements to pay the property taxes on time and equally divide up any profits made from the land. You may wish to hold meetings once or twice a year to discuss your use and maintenance of the land.

Try to work out any disagreements before they turn into family feuds. Also, encourage the other heirs to make wills to prevent even more people from becoming owners of the land, making it even more difficult to work together. Be sure to keep current contact information for all the heirs.

If the other heirs are not interested in the land, you may be able to buy them out. A lawyer can help them "deed" their share to you. Also, a lawyer can help the heirs create a tenancy-in-common agreement covering topics such as who collects and pays taxes, who can live on or make decisions about the property, and whether cotenants who want to sell their share must first offer it to the other cotenants.

D. PROTECT HEIR PROPERTY BY CONSOLIDATING TITLE

One way to prevent the loss of heir property is to consolidate title. In essence, this means lessening the number of co-owners in order to centralize ownership and management. Sometimes, families may choose to work together to form an entity, like a **trust** or **Limited Liability Company (LLC)**, to protect the property and make rules for who may be involved in ownership going forward and how ownership will be governed.

When a family chooses to create an entity of this kind, each heir to the property agrees to transfer their individual ownership interest into the entity so that the trust or LLC becomes the owner of the property, and the heirs are either **beneficiaries** of the trust or **members** of the LLC.

To effectively consolidate title, it is important that all the heirs agree to forming the entity so that there are no outstanding co-owners who may put the property at risk by selling their interest to a third party or by requesting a partition of the property. (See Section 5 for more information on partitions).

An LLC can be a good option for families that wish to have a more democratic management structure for future care and use of the property. When you form an LLC, with the assistance of an attorney, your attorney will help you to

draft an **Operating Agreement**. An operating agreement is a document that you and the other LLC members would use to create the rules for who may become a member; how decisions will be made; how any proceeds will be distributed; and who will be responsible for the daily management of the property (among a host of other things that would be tailored to fit the needs of your family).

To form an LLC, the family must file what are called the Articles of Organization with the North Carolina Secretary of State's Office, Business Registration Division.⁴⁹ The cost to file the Articles is \$125. After formation, all co-owners would transfer their interests, by deed, to the ownership of the LLC. It is important to note that the LLC will have ongoing reporting requirements, including the responsibility of filing an Annual Report each year. The cost to file the Annual Report is \$200.

A trust is similar to an LLC in that it can assist families with consolidating ownership, but the method for formation and the structure of the entity are quite different.

One benefit of a trust is that formation is very simple and does not require filing any paperwork with the state. The co-owners of the property can transfer their interests, by deed, to a person or persons that they choose as the trustee(s).⁵⁰ It is then the trustee(s)' job to make decisions regarding the property that are in the

best interest of the beneficiaries. A trustee can be one of the beneficiaries or can be an impartial person, such as a bank officer. As is likely apparent, a trust does not provide the same opportunity for democratic management because decision-making is centralized in the trustee(s).

STEPS TO HELP IDENTIFY HEIR PROPERTY OWNERS

- ✓ Create a detailed family tree, starting with the first owner of the property.
- ✓ Try and obtain contact information for all the known owners and ask them for information about the other heirs.
- ✓ Go to the Register of Deeds Office in the county the land is in to track the ownership history of the land.
- ✓ Go to the county Clerk of Court to review any judgment or **probate** records regarding the land.

This structure can come with challenges when a beneficiary trustee has a stake in how the property is used or when an impartial trustee does not understand the importance of the legacy of the property or the family dynamics that will impact the property's use.

An attorney can assist you with determining which entity may be a good fit for your family's property. If you are a co-owner of heir property interested in learning more about forming a trust or LLC, and you cannot afford an attorney, contact the Land Loss Prevention Project.



5. PARTITIONS

Court-Ordered Partitions Can Cause Land Loss

When several people own one piece of land together (often because of inheriting the land), each of the owners is called a **cotenant**. If any one of the cotenants wants to divide off his or her share of the property, that person may ask the court for an actual, physical **partition** or for a partition sale. A partition is the division of land among its co-owners by a court.

A cotenant may want to divide up the land to live on, build, lease, farm, or sell it. However, if the land cannot be split equitably among the co-owners, the court will order a partition sale of the entire property. This land may be sold for much less than what it is worth, and usually the buyer is not one of the cotenants. Court-ordered partitions are a major cause of land loss among small landowners.

A. FILING FOR A PARTITION

To get a partition, a cotenant must go to the courthouse of the county where the land is located and file a request (or **petition**) with the Clerk of Superior Court.⁵¹ In the petition, the cotenant can ask that the land be divided into equal shares or that all the land be sold so the money can be divided between the co-owners.

All the other cotenants must receive a notice that this person has asked for a partition so that they have a chance to respond. If some of the cotenants cannot be found or their names are not known, a notice must also be printed in at least one newspaper. If the unknown cotenants still do not appear, the court may appoint a person to represent them.

B. DIVIDING LAND BY PARTITION

If the Clerk of Court orders an actual, physical division of the land, he or she will appoint three people to be commissioners. They must have no personal interest in the land. Their job is to decide how to divide the land among the cotenants, and they must take an oath promising to be fair to each of the owners in their evaluation.⁵² They will divide the land equally based on how much of the land each person is entitled to, since some of the owners may have inherited more than others.

Sometimes after the land is split up, the divided pieces are worth different amounts even though each piece of land is the same size. When this happens, the commissioners may make the owner of the more valuable property pay some money to the owner of the less valuable land to make the division a fair split. The charge to the owner of the more valuable property is called an **owelty**.

The commissioners have up to ninety days to carry out their work. During this time, they must also file a report

explaining their method for determining the size of the pieces that will go to each co-owner.⁵³ A map of the land, prepared by a surveyor and showing the divided shares, is generally filed along with the report. If the commissioners have difficulty getting their job done on time, the Clerk of Court, at his or her discretion, may give them sixty (60) additional days.

Any cotenant that disagrees with the way the land has been divided may protest by filing an **exception** to the commissioners' report. This person has ten days, from when the report was filed, to go to the Clerk of Court to submit a challenge. If no exceptions are filed, the report will be approved, or confirmed, and sent to the Register of Deeds in the county where the land is located. After that, the division of the land will be settled. Once this is done, all the cotenants must chip in to pay the cost of having the land divided. The total cost includes fees for the surveyor, appraiser, attorneys, commissioners, and the expense of new maps and deeds.

Once the division has been completed and the report has been filed, a party can apply for an Order for Possession if a prior cotenant will not vacate the piece of property that has been apportioned to someone else throughout the partition process. This Order directs and allows sheriffs to remove prior cotenants from the property and to place the new owner in possession.⁵⁴

C. PARTITION SALES

Under North Carolina law, the court will try first to divide the partitioned land among its owners, but if it is unable to split the land equitably and fairly among the co-owners, the court may instead order a partition sale of all or part of the property. If you learn that a co-owner has requested a partition, be sure to get a lawyer as soon as possible to understand and exercise your rights.

North Carolina law allows for a partition sale when there is a **preponderance of evidence** (or more simply put, it is more likely than not) that a division of land cannot be done without substantially injuring any of the interested parties.⁵⁵ It is up to the cotenant requesting the partition sale to prove this to the court. The court considers: (1) whether if the property is divided, the value of each owner's land would be materially less than the amount of money each owner would get if all the property were sold; (2) whether dividing the land would materially impair the rights of any of the cotenants.; and (3) whether charging owelty would fix any substantial injury caused by a physical division.⁵⁶

If the court does decide to sell the partitioned land, all the other cotenants must be notified at least twenty days prior to the sale.⁵⁷ If the land is sold for a very low price, the court can decide to throw out that sale and order a new one. Once the land is sold, the commissioner(s) must file a report with

the Clerk who will then confirm the sale. In a partition by sale, the Court is not required to appoint more than one commissioner.⁵⁸ The cost of the sale, including the fees for the lawyers and commissioner(s), will be taken out of the money made from the sale. Then, the money left over will be divided up between the cotenants. If the Court has not determined the division of proceeds by the time that the commissioner's final report is filed, it is required that the matter be set for a hearing.⁵⁹

While they owned it, all the cotenants should have paid their share of the cost of property taxes, upkeep, and improvements on the land. But if one cotenant paid more of these expenses than the others, they have the right to collect for these costs when the sale money is divided. This means that they have a right to contribution from the other co-owners for carrying costs (property taxes, homeowner's insurance) and improvement costs (the lesser of the actual cost of improvements and the value of the improvements added).⁶⁰

Even after the land is sold, you may still be able to save it by asking the court to cancel the sale within fifteen days from the date of the Clerk's confirmation. You must be able to prove one of three things: (1) You were never notified that the cotenant was asking for a partition; (2) You were not told about the partition sale; or (3) The land was sold for too little, which is causing financial trouble for you and the other owners.⁶¹

PROTECT YOUR RIGHTS AGAINST A PARTITION ACTION

- ✓ If you receive a notice that you are involved in a court-ordered partition action, you should get a lawyer. If you cannot afford an attorney, you may wish to contact the Land Loss Prevention Project to see if they can assist.
- ✓ If you feel that any of the commissioners will be unfair to you, you should tell the Clerk. Then, with your lawyer, give the Clerk a list of people you think will be fair and honest.
- ✓ You may be able to stop the partition if you can prove to the Clerk that the person who asked for the partition is not one of the owners of the land.
- ✓ You can also file an exception to the commissioners' report. Even after the commissioners' report is confirmed, if you find mistakes in it or find evidence of **fraud** or **collusion**, you may be able to get the partition changed or thrown out.

D. PREVENTING A SALE OF THE LAND

Once you know that your property is subject to a partition action, you should take action. If you want to keep the property from being sold, you should try to convince the court that the land should be divided between the owners instead. To do this, you will need the help of a lawyer, a land surveyor, and a land appraiser.

You want to show that each owner will be better off with their own share of the land than with their split of the money after the property is sold to the highest bidder. Your lawyer and other professionals, such as a surveyor and appraiser, can help you show the court that the property can be split up fairly among the cotenants.

If the Clerk of Court decides to sell the land anyway, you can **appeal** to the superior court judge for a new **hearing** on all the issues. You must file a notice of appeal within ten days from the day the Clerk made the decision to sell the property. Do this at the county courthouse where your land is located.

E. WAYS TO AVOID COURT ORDERED PARTITIONS

6. WHEN ALL THE COTENANTS AGREE, LAND CAN BE DIVIDED WITHOUT A COURT-ORDERED PARTITION

If all the cotenants want to divide up the land, then a court-ordered partition is not necessary. However, all the owners must agree on the way that the land is divided, and a deed must be written for each new piece of land. To make sure that everything is legally valid, hire a land surveyor and lawyer to handle this for you.

7. YOU CAN CONTRACT WITH OTHER CO-OWNERS NOT TO PARTITION THE LAND

You can make a contract, or an agreement, with other co-owners not to partition the land. This means that you promise each other not to ask the court for a partition of the land. This can be part of a tenancy-in-common agreement. This should be done shortly after you receive the land. If you make a good contract and later decide to ask for a partition, a court will look to your contract to see what you promised.

8. WHEN ALL THE COTENANTS AGREE, LAND CAN BE SOLD WITHOUT A COURT-ORDERED PARTITION

You do not need a court-ordered partition sale to sell land that is owned by many different people. If all the cotenants agree, the land can be sold in the same manner as any property can be sold. Selling the property with agreement from all co-owners may bring a higher price for the land than selling by a court-ordered partition sale, and each owner may be able to make more money from the sale. Also, the cost of selling the

land will be lower because the co-owners will not require assistance from commissioners.

F. THE AMERICAN RESCUE PLAN ACT OF 2021 AND ITS IMPACT ON RELIEF FOR FARMERS

The American Rescue Plan Act of 2021⁶² incorporated the Emergency Relief for Farmers of Color Act to assist socially disadvantaged farmers, ranchers, and forest landowners with combatting the negative economic impact of COVID-19.

The \$1.9 trillion COVID-19 relief and stimulus package included \$4 billion in direct relief to socially disadvantaged USDA borrowers in Section 1005, stating that the Secretary of the USDA “shall provide a payment in an amount up to 120 percent of the outstanding indebtedness of each socially disadvantaged farmer or rancher as of January 1, 2021.” The USDA defines “socially disadvantaged” to include Black/African American, American Indian, Alaskan Native, Hispanic/Latino, Asian American, or Pacific Islander.⁶³

Under Section 1005, the 120 percent payment is meant to cover the full cost of the loan, including 100 percent of the loan balance as of January 1, 2021, and an additional 20 percent portion to cover tax liabilities and other fees associated with payment of the debt. Both delinquent and current loans are eligible. These loan payments apply to Farm Service Agency (FSA) Direct and Guaranteed Farm

Loans and Farm Storage Facility Loans (FSFL) to any socially disadvantaged producer who has a qualifying loan with FSA.⁶⁴

Section 1006 of the Act provides an additional \$1 billion to make changes and to support activities at USDA to improve outreach, access, and equity.

As of the time of publication, FSA is still accepting applications for aid, but payouts have been stalled while litigation regarding the payments is ongoing. You may wish to visit the links provided in the endnotes to find more information on the status of the payouts or the status of the pending litigation.⁶⁵

6. ADVERSE POSSESSION - "SQUATTERS RIGHTS"

Watch Out for Anyone Trying to Claim Your Land

Occasionally, other people can obtain legal title to your land or a piece of your land simply by living on it or using all or part of it for a certain amount of time even though they have not inherited it or bought it from you. This is called **adverse possession** or "**squatter's rights**."⁶⁶ These people, known as squatters, can become the owners of the land by proving several things to the court.

In North Carolina, squatters must be able to prove:

1. They have lived on or used the land for twenty (20) years in a row. If the squatters can show a deed or something like a deed which seems to prove that the land was granted to them, and also show that the boundaries of the property they are using are well known, they may be able to get the legal title to that area of land in seven (7) years instead of twenty (20).⁶⁷
2. They used the land openly as their own so that anyone including the owner could have notice.
3. They do not have permission from the true owners to use the land.

4. They had exclusive use of the land they are claiming.
5. Their use of the land was continuous enough that they appeared to be the owners to others.

Even if you share the land with someone as a cotenant, there is danger of what the law refers to as "ouster," which is the wrongful exclusion of someone from real property. Evidence of ouster may include "No Trespassing" signs, gates, or changed locks. Purposeful exclusion through these measures is referred to as actual ouster. However, even if these outward symbols are not present, a cotenant might be able to bring an adverse possession claim against you if they have been using the land and you have not.⁶⁸ If your cotenant has taken steps to deny you access to the land, there may be a claim for what is called "constructive ouster" if there is something inherent about the property or cotenant relationships that make it untenable for the cotenants to live together on the property. This can include a finding that the cotenant has adversely possessed the property for long enough to claim as their own. If someone tries to take your land by adverse possession, contact a lawyer immediately.

PROTECT YOUR RIGHTS AGAINST ADVERSE POSSESSION

- ✓ If you rent out your land, write down an agreement with your renters. A written **contract** or **lease** protects you from renters who later may try to claim that they own your land. When the time of the lease is up, be sure that the renter is off the land or write out a new agreement to extend the lease term.
- ✓ If you keep your land vacant, check it every year or two for squatters. Should you find people living on, farming, or using your land without your permission, you can force them to leave. These people can be charged with **trespassing** if they have been on the land for less than three years,⁶⁹ or your lawyer can bring a "**quiet title**" **action**, which is a legal action to prove that you own the land.
- ✓ You can, and often should, put up signs on your property informing all that you are the owner. In addition, you can and should take down any signs on your land that were posted by people who have no legal right to the land.
- ✓ If someone tries to take your land by adverse possession, contact a lawyer immediately.

7. MINERAL RIGHTS

Do Not Give Away Part of Your Land by Accident

Most people who own land also own the land below the surface. Landowners own any minerals or natural resources found on the land, either on or below the ground. Some examples of valuable minerals and resources are: soil, clay, coal, stone, gravel, sand, phosphate, rock, metallic ore, oil, and gas.

Although you own your land, you may decide to sell or lease (meaning rent) the **mineral rights** to your land.⁷⁰ This means that you are selling or leasing the right for another person to dig up and take the minerals and natural resources from your land. This other person has the right to use whatever equipment is needed to dig into the earth, take out the minerals, and cart them away. In addition, this person may be allowed to own all that he or she digs up.

Unfortunately, some landowners accidentally sell all their land (ground level and below the ground) when they mean only to sell the mineral rights. This usually happens because the landowner signs a deed to the entire property mistakenly believing that the deed only covers the sale and conveyance of mineral rights. If you decide to sell or lease the mineral rights to your land, be sure to have the help of an attorney. Do not sign any papers until your lawyer

has first read them and discussed them with you.

A. LIMITS ON MINERAL RIGHTS

You may sell or lease all or only part of the mineral rights to your land. These rights can be limited in several ways: (1) by the type of mineral -- if you choose, you can allow only one kind of mineral to be mined; (2) by depth -- you can decide how deep the digging should go; (3) by time -- you can decide that the digging must be done within a certain length of time; (4) by share of the minerals -- you can demand to have a share of what is dug up; and (5) by location -- you can restrict the mineral rights to only one part of your land.

Mineral rights should always be sold or leased with a signed, written document. On the document, you should list any restrictions on the sale or lease and the price of the sale or the amount of the lease (how much you, the landowner, will be paid for renting the mineral rights to your land).

B. LEASING MINERAL RIGHTS

When mineral rights are leased, the landowner still owns the land, both above and below the ground. He or she is only allowing another person to dig into the land and take the minerals. In exchange, this other person, the **lessee**, pays the landowner, the **lessor**, for the right to dig and also pays for all the costs of the digging or mining.

An agreement must be made ahead of time about how the landowner will be paid. He or she may be paid in rent or may be paid in one of a couple of other ways. For example, the landowner can ask for a portion of the minerals after they have been mined from the land without the obligation to pay for any of the costs of mining. Or, he or she can receive a share of the money made from selling the mined minerals.

C. REMOVING MINERAL RIGHTS

When someone else owns all the mineral rights to your land, you own only the **surface rights** to it. If you own just the surface rights, and the owner of the mineral rights has done nothing with the land, you may be able to get a lawyer to help you claim these other rights, making you the full owner of the property. This is called removing a **cloud of title**.⁷¹ It can be done in only some North Carolina counties and only under certain conditions. These conditions are that the owner of the mineral rights has not, for ten years, listed this below-ground land for property taxes and that these rights have been conveyed through an unbroken chain of title for at least fifty years.

D. PARTITION OF MINERAL RIGHTS

Mineral rights to a piece of property can be owned by more than one person. And just like land that is owned by several people, mineral rights can be partitioned if one owner wants to divide or sell his or

her share of the rights.⁷² (See section 5 on partitions for more information).

Partitions of surface rights or of mineral rights are distinct in that they do not impact the other. This means that if the owner of the surface rights brings a partition action against other cotenant owners of the surface rights, there is no impact on ownership of the mineral rights, and vice versa. Cotenants of each (either of surface rights or mineral rights) are not required to join the cotenants of the other in an action for partition.⁷³

8. FARM ISSUES

Take Advantage of Programs Specially Designed to Assist Farmers

A. FEDERAL CROP INSURANCE CORPORATION

The Risk Management Agency (RMA) under the USDA operates the Federal Crop Insurance Corporation (FCIC). The FCIC's mission is to provide crop insurance to American providers in order to preserve and strengthen the economic stability of America's farmers.⁷⁴ The federal crop insurance policies are usually either yield-based or revenue-based, with the majority protecting against crop revenue loss.⁷⁵ The FCIC strives to make the indemnities equal total premiums, including premium subsidies.⁷⁶ In addition, the USDA decides on the availability of crop insurance depending on the RMA's evaluations of risk management solutions for certain crops in certain counties.⁷⁷ As a farmer, you may request that RMA expand this program to your county if a policy is not available.⁷⁸ While this program is not mandatory to participate in, farmers must waive their eligibility for any disaster benefits during a crop year if they did not purchase crop insurance.⁷⁹ Contact your current crop insurance carrier for more information on this program.

B. FARM SERVICE AGENCY (FSA)

The **Farm Service Agency** (FSA) administers many USDA programs including lending money to small farmers and to others who cannot get loans from banks. FSA helps to support local and national agriculture by providing loans that can aid with farm operation; emergency assistance; food assistance; and the implementation of conservation practices.⁸⁰ Before 1994, this type of lending service was handled by the **Farmers Home Administration** (FmHA). The FSA offers many kinds of loans -- loans to help people buy farms and loans to help farmers keep farming. For example, for farmers who do not make much money, there is the Limited Resources Loan, which charges a low interest rate. Many small farmers who would qualify for this loan may not even know about it, which is why it is important to reach out to your local FSA office to see what services they may be able to offer you.

Like many government offices, the FSA can be hard to work with sometimes. If you are having trouble, remember that you have several important rights when you work with the FSA. First, you have a right to appeal any decision that is made by the FSA. You also have a right to fair consideration for FSA's funding opportunities. The FSA may not discriminate on the basis of race, sex, religion, national origin, handicap or color. This is illegal. Talk with a lawyer if

you think the FSA is discriminating against you.

The table, “Tips on Working with the FSA,” may provide you with some help as you prepare for your first (or next) experience with the FSA.

9. APPLYING FOR AN FSA LOAN

Although the FSA helps a lot of small farmers, getting a loan from this office can sometimes be difficult, and not everyone is qualified to receive a FSA loan. To apply, you must go to the Farm Service Agency office in your county and fill out an application. Then, the county committee of the FSA has sixty (60) days to decide if you qualify to be considered for a FSA loan.⁸¹ To qualify for a FSA loan, you must meet the following requirements:

1. You must have “legal capacity” to be held responsible for the loan debt.⁸²
2. You must be a U.S. citizen.⁸³
3. You must be “creditworthy,”⁸⁴ which has to do with your credit history in particular over the last three years.⁸⁵
4. You cannot get credit elsewhere.⁸⁶
5. If applying for an operating loan, you have not been “delinquent” on any federal debt, meaning you are not more than ninety (90) days late with any payments.⁸⁷
6. You do not have a current judgment against you by the United States in a federal court (except for U.S. Tax Court).⁸⁸

DURING THE MEETING OR DISCUSSION WITH THE FSA

- ✓ Keep good records of all meetings and conversations with the FSA.
 - ✓ Write down the time and place of each meeting or conversation and what was said during the meeting.
 - ✓ Bring other people with you to the meetings about your FSA loans.
 - ✓ Put all agreements in writing and get them signed by both you and a person from the FSA.
 - ✓ Work with neighbors and other farmers to define needs and help FSA improve its rules.
7. You have not been disqualified because of a Federal Crop Insurance violation.⁸⁹
 8. You have “managerial ability” to operate the farm in order to repay the loan. Managerial ability requires education, on-the-job training, or farming experience.⁹⁰
 9. You must obtain “borrower training.”⁹¹

10. You operate a “family farm” (meaning mostly that you are recognized as a farm, make enough money to support your family and pay debts, and manage and run the farm yourself).⁹²
11. You have not received debt forgiveness from FSA in the past (with some narrow exceptions).⁹³
12. You have assets you can use as collateral for the debt.⁹⁴ This could be land, farm equipment, crops, cattle, and could in some cases be whatever it is you buy with the loan. This collateral must at least be worth the amount of the loan and, in some cases, might need to be worth up to 150% of the loan.⁹⁵

The FSA is required by law to help you complete your application. They should also answer any of the questions you have about the application or the process. Furthermore, FSA cannot tell you not to apply because they think you will not qualify for a loan. In the end, if the committee decides that you do qualify, your loan application must next be approved by the county supervisor. The “approval” phase focuses on whether the FSA thinks you will be able to repay the loan and whether you have enough collateral to secure the debt.

If you do not get any help when applying for the loan, are told to not bother filing an application, never receive a response to your application (or it takes longer than sixty (60) days), are denied a loan when you know that other farmers in

exactly your situation have received one, or are given less than you applied for, then you may have rights that were violated. Contact an attorney to see what rights you may have.

10. LATE PAYMENTS ON A LOAN

Once you have a FSA loan, it is important that you keep up with your payments. Otherwise, you could lose your land to the United States government through foreclosure. However, if you are unable to make a payment, you are not alone. Many farmers have had the experience of being **delinquent** (meaning late) on FSA loan payments. As farmers know, many variables can affect a year’s yield, and the money that comes in from that yield. Prices for farm products that you’re selling may be low; the cost of farming may be high; or extreme weather may have impacted your ability to grow and sell. If you are delinquent, there may be options to assist you with curing the delinquency, which will be explored further in this section.

If you are ninety (90) days late in your payments, you will receive a notice from FSA. This notice will explain what steps you must now take to try to prevent the government from initiating a foreclosure. This is called "Notice of Availability of Loan Servicing to Borrowers Who Are 90 Days Past Due." The purpose of these loan service programs, also called "loan servicing options" or "debt restructuring," is to

make it possible for you to pay back your loan and keep your land.⁹⁶

11. RESTRUCTURING A LOAN

There are many different options for helping you repay your loan. For example, one option is to get the due dates of your payments changed so that you have more time between payments, which is called **rescheduling**. Another option is to pay back the loan in smaller payments (although, keep in mind that this would increase the number of payments that you make overall). If times are very hard for you now, but you think things will get better, you may be able to put off making any payments on your loan for up to five years which is called a **deferral**. If you have more than one loan, you may be able to put your old and new loans together into one payment that is easier to handle which is called **consolidation**. Or, your lender might be willing to reduce the amount you owe (especially if it is a government agency like the Farm Services Administration) which is called a **write-down**.

Before any changes can be made in your loan agreement, you must get permission from the FSA. This can be complicated and usually takes about one year. First, you must fill out a very long application form enclosed with the notice that you receive about the loan service program. The form must be sent to the FSA office within sixty days (two months) of when you received it.⁹⁷ Then,

people from the FSA office will review your application.

FSA agents will probably talk with you several times over the course of many months about how much money you have and about your farming practices. After that, they will decide whether or not to allow you to **restructure** your loan, that is, to make changes to your loan. The FSA only has sixty (60) days to do so.⁹⁸

Remember, if you miss the 60-day deadline or do nothing, you will lose your chance for loan restructuring! Also, if you do not provide all the information that the FSA requests, your request will be considered incomplete. If that happens, you will not be eligible for help. FSA no longer has to inform you that an application is incomplete until after the 60-day deadline has passed. Be sure to ask FSA whether they consider your application complete before the 60-day deadline is over. Ask FSA for assistance with the forms to ensure that each form is completely filled out.

12. WHEN YOU CANNOT RESTRUCTURE

If the FSA decides not to allow you to make changes in your loan agreement or if you missed the application deadline, there are other things you can do to try to save all or part of your land from foreclosure.

1. You can **appeal** the decision. When FSA notifies you that you are not able to restructure your loan, they

must also inform you of your right to appeal. You should read the instructions for the appeal carefully and contact an attorney if possible to assist you with your appeal.

2. You can have your **collateral** released from the FSA debt by paying FSA a lump sum equal to the fair market value of the collateral.
3. You may be able to hold on to your land by filing for bankruptcy protection. (See Section 10 for more information about bankruptcy).
4. You may seek homestead protection, which allows you to retain your home and up to ten acres of land; or
5. You may seek a leaseback/buyback option.

The 2018 Farm Bill⁹⁹, signed into law on December 20, 2018, may offer another option to prevent foreclosure for farmers who feel that the assistance that they received from the FSA, or an error made by the FSA, impacted their receipt of USDA funding or led to the loan becoming delinquent due to the agency's error. The new language allows borrowers to petition the Secretary of Agriculture for equitable relief¹⁰⁰ in lieu of the loan going into default and putting the property at risk of foreclosure.

To do any of these things -- make changes in your loan agreement, file for an appeal, etc. -- you will need to fill out very long, complicated forms and applications. The Land Loss Prevention Project can help you get assistance to fill

these out correctly and on time. We can advise you about what kind of changes in your loan agreement you may wish to apply for. And we can also give you information on preservation loan servicing, buying back your land, applying for equitable relief, and filing for bankruptcy. Our services are free to qualifying farmers.

C. FARM CREDIT SYSTEM

The Farm Credit System is another way for farmers and landowners to obtain loans. Farm Credit lenders are not government agencies. They are privately owned institutions that must follow government regulations. Their purpose is to meet the credit needs of American farmers.

If you are a borrower from one of the Farm Credit institutions, you have certain rights that you may exercise. You can have access to certain documents and other related information regarding your land, like a copy of the appraisal of your farm. Also, Farm Credit can provide information for you about various available loan options.

You may be able to prevent foreclosure when your loan payment is overdue. If your loan is delinquent or if you are repaying your loan on an irregular basis, you may be able to restructure your loan. If that is the case, you must prepare a plan that shows two different things:

1. That you cannot pay the loan according to the original agreement.
2. That if you restructured your loan, you would be able to pay the debt on time.

You should receive written notice of loan restructuring policies when you are delinquent. When Farm Credit gives you notice, it should include a copy of the district restructuring policy. It should also include any other material that you need to complete an application. When you receive notice, immediately gather your financial records and get help.

Remember, your cash flow information and alternatives will be the most important information used in the restructuring process. Farm Advocates and the Land Loss Prevention Project have information that may help in developing a cash flow plan.

You should also consider meeting with the loan officer before you submit your restructuring proposal. The meeting may assist you in putting the final touches on your application. Always write down anything that is said at these meetings and keep good records of all requests for information and responses to ensure that there are no misunderstandings in the future.

D. GOOD NEWS FOR CO-OWNERS OF HEIR PROPERTY IN THE 2018 FARM BILL

The 2018 Farm Bill provided welcome news for those who wish to farm on heir-owned property and have previously been ineligible for USDA programming.

In states that have passed the Uniform Partition of Heirs Property Act (UPHPA), farm owners and operators who are currently farming on heir property are now eligible to receive a farm number and access to USDA resources when there is an authority to represent more than fifty percent of the property interests. The UPHPA aims to help families with protecting heir property through things like: expressing preference for physically dividing property rather than selling the property if a co-owner requests a partition; allowing cotenants the first right to purchase the interest of someone requesting a partition; and requiring that, if a property is placed for sale, it is listed on the open market.¹⁰¹ In states that have not passed the UPHPA, the Farm Bill requires that the USDA identify and accept other similar, alternate forms of documentation of ownership and/or control of the land.

The 2018 Farm Bill also authorized the FSA to loan funds to entities like nonprofits or cooperatives (“qualified intermediaries”) to relend to families working to clear the title to heir property.¹⁰² As is likely evident from this

handbook's section on heir ownership, clearing title to land when there are many owners can be a long, difficult, and expensive process. The Farm Bill seeks to assist families with the funding of that process to prevent the continued loss of land, especially by socially disadvantaged farmers and ranchers.¹⁰³

E. SUSTAINABLE AGRICULTURE AND CONSERVATION PROGRAMS

Sustainable agriculture programs are programs designed for farmers so that they can increase their production while saving resources and improving the environment. For example, crop growth may be enhanced along with soil fertility with erosion being reduced.

In addition to offering assistance to farmers of heir property and those who have not received equitable or fair treatment by USDA programs and agencies, the 2018 Farm Bill also protects two important programs that can help farmers to implement conservation practices on their properties.

The Conservation Stewardship Program (CSP)¹⁰⁴ and the Environmental Quality Incentives Programs (EQIP)¹⁰⁵ work to provide financial and technical assistance to farmers who want to improve the health of their soil and water or who want to work toward more sustainable practices on their property. The 2018 Farm Bill retained CSP's focus on providing conservation assistance

and EQIP's focus on offering cost-share payments to encourage farmers to engage in sustainable farming.

Many nonprofit organizations and extension agents can provide you with information on sustainable methods of farming. The Land Loss Prevention Project can help connect farmers with resources and programs within N.C.



9. EMINENT DOMAIN

Know Your Rights Regarding Eminent Domain and Condemnation

Under certain conditions, federal, state and local governments, and private utility companies have the power to force landowners to sell all or part of their land. This power is called **eminent domain**.¹⁰⁶ It is used when private property is needed for public projects. For example, the government will use eminent domain to get the land it needs to widen a road or to build a new highway.

When we say someone's land has been "**condemned**," it means something different than when a building is condemned due to its dangerous condition. Condemned land is simply land that property owners are forced to sell to the government. Landowners must receive notice of the intent to take their property and "**just compensation**" for the condemned land. Condemned land must be bought by the government for a fair price (fair market value). This amount, which is known as "just compensation" should be at least equal to the price of the land if it were sold to any other buyer.

If your land is being condemned and you believe that the government is not paying you what your land is worth, you should get a lawyer to prove this in court. Find a lawyer who is experienced in

"eminent domain" or "land condemnation" cases. The lawyer should not charge you attorney fees unless you win your case. This fee arrangement is referred to as "working on contingency." Anyone else who has any kind of share in your land, like co-owners or people with a lease to it, may also have a right to some payment or compensation from the government. They will probably need a lawyer to protect their rights as well.

If the government is planning to or has condemned your land and you believe their decision is unfair, you should also see a lawyer as soon as possible. A lawyer may be able to persuade the government to change its decision or alter its plan for development. For example, you and your lawyer may be able to get the government to change the path of a new road if you can prove that the proposed path would unfairly impact your land. In addition, you may be able to get the government to cancel a building project if you can prove that it will not benefit most of the public.

10. DEBTS, MORTGAGES AND BANKRUPTCY

Do Not Lose Your Land to Debt; Bankruptcy May Be a Better Option

A. CONTROLLING YOUR DEBTS

Many landowners lose their land when they are unable to pay back loans. Often, when several payments have been missed, the **creditor** (the person or the bank who loaned the money) will sell the owner's land to collect the amount owed on the loan. If you borrow money, you can take steps to keep this from happening to you.

Usually when you borrow money or buy something over time (credit), you are asked to sign a contract. The first step is to make sure you understand your loan contract before you sign it because the terms of every loan are different. You should get a lawyer to read it over and explain it to you. Written into the contract are rules and conditions about how you are to pay back the loan, the amount of the interest rate, what can happen if you are late with your payments, and the penalty for **defaulting** (when you do not repay all of the loan).

By signing the loan agreement, you promise to follow the rules of the contract. There may be things written into it that you were not expecting or that you think are unfair. These things should be fixed before you sign the contract.

Often, the contract will list something you own (your house, land, or another kind of property) as **collateral** for your debt. This means that if you are unable to pay back the money you have borrowed, the creditor has the right to foreclose on or repossess the property listed in the contract. Unless your lawyer tells you differently and you feel it is appropriate, do not use your land as collateral.

Another thing you need to look out for is the number of missed payments it takes before the person who loaned the money can claim your collateral. In some contracts, a creditor can start to claim your collateral after only one missed payment! Also, pay close attention to when your payments are due and make sure that there is no "acceleration" clause in the contract. Acceleration allows creditors to move up the due dates on your payments, which allows them to be paid back faster. If this happens, you could be late with a payment even when you thought you were paying it on time.

If you do not pay your debt as it becomes due, your creditor will most likely file a lawsuit against you for the money that you owe. Assuming the creditor proves that you owe a debt to him, a judgment will be entered against you. This judgment is in the form of a **lien** against your property. Once a judgment has been entered, the creditor must notify you of your right to claim some of your property as exempt from execution on account of the judgment.

When you receive a notice of your right to claim exemptions, you have twenty (20) days to fill it out and return it to the court. It is very important that you fill out this form. All property not exempt is subject to sale by the sheriff. Money from the sale goes to the creditor until the debt is paid, and any money left over is given to you. If you are being sued over a debt, get a lawyer to represent you. There may be a way for you to keep your property, or you may be eligible to file for bankruptcy. (See Part C of this section).

Many people get loans to make repairs or improvements on their homes such as new roofs or aluminum siding. Often, this type of loan is a **security loan**. In a security loan, the house or the land (whichever is being repaired or improved) is put up as collateral for the loan. This means that if the person who borrowed the money cannot pay it all back, the person who loaned the money can sue for the right to sell the borrower's home or land.

If you already have a debt and are having trouble making the payments, you may wish to explore if an extension on the loan would be helpful. Your creditor may be able to give you more time between payments or may be able to make each of your payments smaller if you agree to make more payments overall. It is important to understand the consequences both now and in the future should you choose to pursue a change in your loan terms. For instance, should

you take advantage of reduced payments or a period of forbearance, make sure that you know what happens when the forbearance ends or the new payment term ends. Some lenders, for example, may add a "balloon payment" to the end of the term, which is a large one-time payment that will come due when the loan has matured. If you accept an arrangement like this, make sure that you will be able to make such a payment by the time it becomes due. If your loan agreement is changed in any way, make sure that you get the change in writing and that the agreement is signed by both you and the person lending you the money.

B. MORTGAGES: ONE TYPE OF LOAN CONTRACT

Landowners and homeowners often **mortgage** their property to borrow large amounts of money. Mortgages (documented through **deeds of trust**) can be very useful because they can be paid back over a long period of time, sometimes as long as forty (40) years. They are usually offered by banks and are recorded at the Register of Deeds in the county where the property is located.

A mortgage is a kind of secured loan in which the real property is the collateral. Therefore, if you fall behind on your mortgage payments, you could lose your real property to the bank or mortgage holder. Then, most likely, the mortgage

holder will sell your property to collect the rest of the money that you owed.

If you are having trouble making your mortgage payments, you should contact the bank or mortgage servicing company as soon as possible. Your lender (or creditor) may be able to change the mortgage agreement so that the payments are easier for you to handle. Again, however, be sure that you understand the changes that have been made to the loan and the impact that the changes will have on your monthly ability to pay as well as your ability to make any additional payments throughout or at the end of the loan term. All changes made to your mortgage agreement should be put in writing and signed by both you and your banker.

1. THE FORECLOSURE HEARING

If you miss payments on your mortgage, the mortgage holder may begin to foreclose on your property. The mortgage holder or servicer must generally wait until you are 120 days delinquent on payments before making the first official notice or filing for foreclosure.¹⁰⁷ This action starts with a court hearing. However, prior to the hearing, there are several notices that you must be sent from the mortgage holder or servicer.

At least forty-five (45) days before starting a foreclosure, the mortgage holder or servicer must send you a notice that includes the following information: (1) the past due amount and any other

charges that must be paid to bring the loan current; (2) a statement regarding available options to avoid foreclosure; (3) contact information for the mortgage lender, servicer, or an agent who is authorized to work with you to avoid foreclosure, and (4) contact information for a HUD-approved housing counseling agency and the State Home Foreclosure Prevention Project of the Housing Finance Agency.¹⁰⁸

Within thirty (30) days of the foreclosure hearing, the mortgage holder or servicer must send you a notice of default, which includes a detailed statement of the amount due along with the amount of daily interest charged.¹⁰⁹ At least ten days before the date of the hearing, you should receive a written "notice of hearing," giving the time and place of the foreclosure hearing.¹¹⁰ Among other things, the notice will tell you how you can still pay back your mortgage debt and hold on to your property. Also, it will inform you of your right to speak at the hearing. Some notices may contain information about both the hearing and the sale of your property.

If you receive such a notice about your mortgage, you need to contact a lawyer immediately for assistance. Also, save the notice and any other papers or information related to your mortgage. They may contain information that is useful to your lawyer.

In North Carolina, most residential foreclosures are nonjudicial, meaning

that the mortgage holder can foreclose without going to court first to get an order from a judge, and the foreclosure proceeding itself is heard before the Clerk of Superior Court in the county in which the property is located. The purpose of the hearing is to decide if the bank should be allowed to foreclose on your property.

The Clerk, who will make the decision, will consider the following elements¹¹¹: (1) whether you received proper notice of the foreclosure hearing; (2) whether your mortgage holder has the right to foreclose based on the terms of the Deed of Trust; (3) whether there is a valid debt based on the Note; (4) whether there was a default; (5) whether the pre-foreclosure notice was given at least forty-five (45) days prior to filing the notice of hearing; and (6) whether the sale is barred by a law that prohibits foreclosure during or within ninety (90) days after a debtor's period of military service.

The Clerk has the discretion to decide to postpone the hearing for up to sixty (60) days.¹¹² However, if the Clerk does not postpone the hearing and determines that all of the elements are satisfied, he or she will approve the foreclosure sale.

Through a lawyer, you can appeal to the judge of the superior court within ten (10) days of the Clerk's decision. During the appeal, there can be no foreclosure sale but you must post a bond. This means that you must give the court a

certain amount of money to hold until a final decision has been made.

2. THE FORECLOSURE SALE

A foreclosure sale on mortgages is identical to a foreclosure sale for tax default. (See Section 2 Taxes, Part C for how this is handled).

3. AFTER THE SALE

Money made from the sale of the property is used to pay back the mortgage debt. If there is any money left over, it is given to you, as the past owner of the property. However, if the sale did not bring in enough money to pay off the entire mortgage, the bank (your creditor) may sue you for the rest of the money owed. This is called seeking a **deficiency judgment**. In North Carolina, a deficiency judgment is not allowed if the mortgage secured your principal residence; the mortgage was not traditional; or a rate spread home loan; or if the foreclosure was nonjudicial and the mortgage was a purchase money mortgage.¹¹³ If such a suit is brought against you, you should get a lawyer.

4. WHEN YOU HAVE PAID OFF YOUR MORTGAGE

When you pay back your entire mortgage loan, you should receive from the bank your mortgage agreement with the word "canceled" written on it. It should be sent to you within sixty (60) days, or approximately two months, from when your last payment was due. With this proof, the Register of Deeds

will also mark "canceled" or "satisfied" on their copy of your mortgage. If you would like, you can get a copy of this for your records.

Make sure that once you have repaid the entire loan, your mortgage is marked "canceled" or "satisfied" by both the bank and the register of deeds. You may need this proof in case someone tries to collect additional payments from you. If, for some reason, you have trouble getting the canceled mortgage document from the bank, you should see a lawyer.

C. BANKRUPTCY

If you think your debts have gotten out of hand, you should see a lawyer. He or she can advise you of all the legal ways to deal with your problem. If you are very deep in debt, your lawyer may suggest that you file for bankruptcy.

Bankruptcy can give you a fresh start or at least give you a chance to get control of your outstanding debts. You will need an attorney to help you with the forms because they are complicated and require close attention. Once you have filed the requisite forms, then the court will take over. At that point, your creditors (the people you owe money to) can no longer try to collect what you owe them.

There are different kinds of bankruptcy, and the bankruptcy laws change often. You and your lawyer can select the right

type for you to file. Businesses, including some family farms, file for bankruptcy under Chapter 11, and farmers can file under Chapter 12. Individual people, including some farmers, file for personal bankruptcy under Chapter 7 or Chapter 13.

Chapter 7 is also called straight bankruptcy or liquidation. Under Chapter 7, you must give up non-exempt property to pay back unsecured creditors. Then, you receive a discharge from the bankruptcy court and your creditors must clear you of your debts even if they are not paid back the full amount that you owed them. Chapter 11, 12, and 13 bankruptcy is different. Under these chapters, you can keep all your property, but you must pay back your secured debts in a set number of years if you want to keep the collateral.

Bankruptcy will not take care of, or discharge, all your bills. For example, some tax bills, alimony, and child support payments cannot be cleared by bankruptcy. Also, bankruptcy will appear on your credit record for many years. However, if you are considering bankruptcy, you may already have problems with debt that has affected your credit report, and bankruptcy can give you a fresh start.

There are no one-size-fits-all rules for bankruptcy. Your lawyer will be able to tell you if filing for bankruptcy in your specific situation will allow you to protect your land. In general, if you have

secured debt that you have fallen behind on, such as a home mortgage or farm loan, a Chapter 11, 12, or 13 bankruptcy can allow you to make up your delinquency over time and prevent the loss of your property.

BANKRUPTCY EXEMPTIONS

When you file for bankruptcy, you are allowed some exemptions.¹¹⁴ **Exemptions** are certain kinds or amounts of your property that you get to keep even though you owe money to creditors or have gone **bankrupt**. If there is value left in your property above the exemption amounts, it is possible it would need to be sold, but you would get to keep some of the money from the sale.

Exemptions can be complicated. A lawyer should help you fill out the forms so that you can ensure no mistakes are made that could result in you forfeiting your exemptions. Also, the lawyer can tell you what exemptions you will be allowed to take since the exemptions available can be different for different people.

For instance, in North Carolina, there is a “homestead exemption” that allows you to protect up to \$35,000 in equity of any real or personal property used as a residence. This exemption increases to \$60,000 if you are 65 or older, the property is held as tenants by the entirety or joint tenants with right of survivorship, and the debtor's spouse has died.¹¹⁵ Keep in mind, the value you

are allowed to keep is on the “equity” you have built up in the property. For example, if you own a home worth \$60,000 and you owe the bank \$55,000 on that house, you only actually own \$5,000 worth of the house. Only the “paid for” amount is considered in determining the exemptions. Therefore, in this example, you would own \$5,000 of your house and would be able to fully exempt this amount. You would be able to keep the house as long as you can make payments on your loan through a Chapter 11, 12, or 13 plan.

If you are considering bankruptcy, consult an attorney to find out if it would help you keep your property.

CONCLUSION

There is much more that could be written about land. We have only included some of the most important items in our "Ten Ways to Save Your Land" handbook. Please keep in mind that it is very important for you to stay aware of what is going on with your property. Always open your mail and never ignore any legal papers or notices you receive in your mail.

If you have a farming business and want farming advice, you can contact:

N.C. A&T State University
Cooperative Agricultural Extension Program
P.O. Box 21928
Greensboro, N.C. 27420
(336) 334-7956

You can also contact your local Agricultural Extension Agent.

Remember, this handbook contains general information only. If you have a legal problem, then you should contact a lawyer. We strongly recommend the use of lawyers because the rights regarding land are all based on the law, and mistakes are often difficult to correct. You may think that hiring a lawyer to help you will be too expensive, but the loss of your land may cost you much more. If you want more information or need a lawyer, please contact the Land Loss Prevention Project. If you do not have money to retain a lawyer, then you may be able to get a lawyer for free. **Contact:**

Land Loss Prevention Project
P.O. Box 179
Durham, NC 27702
1-800-672-5839

LET'S SAVE THE LAND!

Disclaimer

The Land Loss Prevention Project (LLPP) provides this information as a service to the public. Information contained herein is not intended as and should not be construed as legal advice. The accessing of the provided information should not be taken as establishing any contractual or attorney-client relationship between the LLPP and the reader or user of the information. No one receiving this information should act or refrain from acting on the basis of any content without seeking the appropriate legal or other professional advice on the particular facts and circumstances at issue from an attorney licensed in the recipient's state.

GLOSSARY

Adverse Possession: When someone gets legal title to your land simply by living on it or using it for a long time even though they have not inherited it or bought it from you. This is also called "squatter's rights."

Appeal: To ask that a decision or judgment be reviewed in hopes that a different decision will be made—usually an appeal is made to someone with more power than the person who made the first decision.

Appraise: To find the value or worth of a house or land. An appraisal is the amount of money that the house or land is worth in the general market.

Bankrupt: The situation which happens when you cannot pay your debts. To be legally bankrupt, you must file bankruptcy forms; then the court will handle your debts.

Beneficiary: The person who will benefit from the proceeds of a will, trust, or insurance policy.

Cloud on Title: A situation when more than one person is laying claim to the same piece of property.

Codicil: A typewritten addition to a will that states changes in the will. A codicil must be witnessed and signed.

Collateral: Property you promise to give to the person who lends you money if you are unable to pay back what you borrow.

Collusion: A secret agreement made by people to cheat or hurt someone else.

Condemnation: When property owners are forced to sell their land to the government. We can also say that their land has been "condemned."

Consolidated Farm Services Agency (CFSA): The government agency, formerly known as FmHA, which lends money to small farmers and to others who cannot get loans from banks.

Consolidation: When different loans are combined together to make the payments easier to manage.

Contract: An agreement made between people. The safest contracts are put in writing and signed by everyone who is part of the agreement.

Cotenant: When several people own one piece of land together, each of the owners is called a cotenant. They are also called co-owners.

Covenant: A promise made by one person to another person. For example, a property owner may promise his neighbors not to run a hog farm on his property. Sometimes covenants also exist to dictate the rules of a planned community or neighborhood.

Creditor: A person or bank who lends money to a person or business.

Debt Restructuring: To change a loan agreement, usually to change the way the loan must be repaid.

Deed: A paper which shows that you own land.

Deed of Trust: A pledge of real property to secure a loan.

Default (on a loan): When you do not and cannot repay all of your loan.

Deferral (of a loan): When loan payments are put off for a certain amount of time as a way of helping out the debtor.

Deficiency Judgment: A situation where a lender sells off a piece of land that was mortgaged but is unable to sell the land for enough to repay the debt. A deficiency judgment is the amount of money that is still owed by the borrower.

Delinquent (on a loan): To be late or behind in making your payments on a loan or a mortgage.

Dependents: People who count on you to pay for their food, clothing, and housing (children, elderly parents, wife, or husband).

Easement: The reservation of a certain area of property for use by another (a driveway, walking path, etc.)

Eminent Domain: The right of the government to force landowners to sell all or part of their land for a public project. The land must be sold for a fair price.

Exception: An exception is a way for you to note your disagreement with a decision made by a judge or commissioner. You can file an exception through your lawyer.

Executor or Executrix: A person named in someone's will to carry out the orders of the will.

Exemptions: Certain kinds or amounts of property that you are allowed to keep when you have gone bankrupt.

Farmers Home Administration (FmHA) (now the Consolidated Farm Services Agency (FSA)): The former name of a government office which lends money to small farmers and to others who cannot get loans from banks.

Foreclosure: When you have lost all rights to your property and the government or some other who loaned money seizes your land because you could not pay a debt. The property is usually sold to pay back what you owed.

Fraud: Cheating someone on purpose by hiding, changing, or twisting the truth.

Grantee: The person buying or inheriting land (usually written on a deed).

Grantor: The person selling, willing, or giving the land (usually written on a deed).

Hearing: A meeting, with evidence and witnesses, where officials study all sides of an issue to make a decision. It is like a court trial but less formal.

Heir: A person who will inherit or receive property from another person after that other person dies. Someone becomes an heir only after the death of the other person, which means that a person is not entitled to anything that an heir may receive by law until after the family member has died.

Heir Property: Property that is owned by many different owners, often because it has been passed along without the use of a will.

Interest: A kind of penalty or fine charged when a tax bill or other kind of bill is paid late. Also, it refers to the additional cost charged by a lender for the privilege of borrowing money.

Interest in Land: When a person has an interest in a piece of land, it means that either the person owns all or part of the land or has something to do with the land in another way. For example, a tenant or lessee typically has a *possessory* interest in land, which means that they may possess or use the property, but they do not have any ownership rights.

Intestate: When a person dies without a legal will or without any will at all.

In the Entirety: This is how property is owned by married couples in North Carolina. If one spouse dies, the other instantly owns the property.

Just Compensation: An amount of money paid to a landowner when their land is taken by the government. This amount should be the fair market value of the land.

Lease: An agreement between a lessee (i.e., tenant) and lessor (i.e., landlord) that determines the terms for the tenant's use of the property and the payment for that use.

Lessee: A person who leases or rents from another person (i.e., tenant).

Lessor: A person who leases or rents to another person (i.e., landlord).

Lien (on your property): A claim on the property you own for payment of a debt you owe but have not paid.

Limited Liability Company: A business structure whereby the owners are not personally responsible for the debts of the company. This can be used to help heir property owners consolidate title to real property.

Materialman's, Laborer's or Mechanic's Liens: Liens which attach to the land for which the service or materials were supplied.

Members: The owners of a Limited Liability Company. Members do not own the LLC's property but rather own interests in the company. Members may or may not be involved in the management of the property.

Mineral Rights: The right to dig up and take minerals or natural resources from under the ground on a piece of land, even when someone else owns the land.

Mortgage: A loan made to you for the purchase of your house or a loan for which your house or land is the collateral.

Mortgagor: The person or bank who lends the money in a mortgage.

Mortgagee: The person who borrows money with a mortgage.

Operating Agreement: A document used by Limited Liability Companies to outline how financial and management decisions will be made.

Owerty: An amount of money paid by one cotenant to another during a partition action due to the fact that the land is not divided equally.

Partition: When land is divided into parts among those who share ownership in it.

Petition: To ask the court or the government to take a certain kind of action on a problem or issue.

Preponderance of Evidence: When something is more likely than not (in other words, a 51% probability).

Probate: When the court makes sure that a will is real and legal.

Special Warranty Deed: A kind of deed that passes ownership of a piece of land or a house from one person to another. A special warranty deed only guarantees that the seller did not encumber the land. It does not protect against actions taken by the prior owners.

Quiet Title Action: A legal action to prove that you own your land.

Quitclaim Deed: A kind of deed that passes ownership of a piece of land or a house from one person to another. A quitclaim deed does not guarantee that the title is clear.

Register of Deeds: A county office where you keep a copy of your deed and where other people's deeds are recorded and stored.

Rescheduling a Loan: Changing the timing of when you make payments.

Restructure a Loan: When you make changes in a loan agreement. For example, when you make changes in how the loan is to be paid back.

Right of Way: When a landowner gives another person the right to travel on his or her property. For example, if Peter gives Jane a right of way to run her driveway through a corner of his land, he is letting her use part of his land for her driveway.

Security loan for repairs or improvements: A loan for a repair or improvement on your house or land in which the house or the land is the collateral for the loan.

Squatter's Rights: When someone becomes the legal owner of land simply by living on it or using it for a very long time even though they have not inherited or bought it. This is also called adverse possession.

Surface Rights: When you own the land that you can walk on but do not own the earth that is under the ground.

Tax Lien: This is a legal claim placed on your property by the government for the unpaid taxes owed on your property. If the taxes are not paid after a lien is placed on the property, the government can seize your property.

Title: The legal right to your land. You can also have a title to other things. For example, title to your car gives you the legal right to your car.

Title Search: A check into all the past owners of a property and the past agreements made about it. This is usually done when land or a house is bought and sold.

Tenants in Common: One way that two or more non-married people can own property together. Each co-owner owns an undivided interest in the whole property. In other

words, each co-owner can use the entire property.

Trespassing: To be on someone's property without their permission.

Trust: Legal device that creates a responsible relationship which allows the property to be managed (by a trustee) for the benefit of another person (beneficiary).

Trustee: The person or institution responsible for managing the proceeds of a trust.

Warranty Deed: A kind of deed that passes the ownership of a piece of land or a house from one person to another. It guarantees that the title is good and legal and that the seller will protect the buyer's ownership against any person or persons that make a claim for title to the property.

Will: A paper that explains how you want your property to be given away after your death.

Witness: A person who sees something happen. For example, if Mary is present and watching as Lucy Brown signs a document, Mary is a witness to the signing.

Write-down: When a lender agrees to reduce the total amount of debt owed by the borrower, usually because the borrower is having financial difficulties.

NOTES

¹ See generally 1 James A. Webster, Jr. et al., *Webster's Real Estate Law in North Carolina* 381-448 (5th ed. 2006 & Supp. 2010); see generally N.C. Gen. Stat. § 39 (Conveyances).

² N.C. Gen. Stat. § 28A-15-2.

³ N.C. Gen. Stat. § 22-2 (2011).

⁴ N.C. Gen. Stat. § 39-6.5 (the need for a seal was eliminated in 1999 by N.C. Gen. Stat. § 39-6.5, which states that “[t]he seal of a signatory shall not be necessary to effect a valid conveyance of an interest in real property”).

⁵ See *Overton v. Boyce*, 289 N.C. 291, 221 S.E.2d 347 (1976).

⁶ See *Gerdes v. Shew*, 4 N.C. App. 144, 166 S.E.2d 519 (1969); see also *Biggers v. Evangelist*, 71 N.C. App. 35, 321 S.E.2d 524 (1984).

⁷ N.C. Gen. Stat. §§ 105-367, 105-368 (describing the procedures for levy of taxes and attachment, respectively).

⁸ The common law rule known as “Shelley’s Case,” which used to allow holders of life estates to sell the property in fee simple in some circumstances, was abolished in North Carolina by N.C. Gen. Stat. § 41-6.3.

⁹ See generally N.C. Gen. Stat. § 47.18 (Conveyances, contracts to convey, options and leases of land); see also Webster, *supra* at 806.

¹⁰ N.C. Gen. Stat. § 47-18(a).

¹¹ See *Terres Bend Homeowners Ass’n v. Overcash*, 185 N.C.App. 45, 647 S.E.2d 465 (2007); see also *Raintree Corp. v. Rowe*, 38 N.C. App. 664, 248 S.E.2d 904 (1978); *Bowling v. Burton*, 101 N.C. 176, 7 S.E. 701 (1888); *Norfleet v. Cromwell*, 64 N.C. 1, 1870 WL 1648 (1870).

¹² N.C. Gen. Stat. § 105-360(a) (sets forth due date of taxes, the interest charges, and delinquency).

¹³ N.C. Gen. Stat. §§ 105-360(a)(1), (a)(2).

¹⁴ N.C. Gen. Stat. § 105-355; see also N.C. Gen. Stat. §§ 105-367, 105-368 (describing the process of levy on real property and attachment to income streams of the property owner in the case of tax default).

¹⁵ N.C. Gen. Stat. § 105-369(e).

¹⁶ N.C. Gen. Stat. § 105-361(a).

¹⁷ N.C. Gen. Stat. § 105-378.

¹⁸ N.C. Gen. Stat. § 105-369(b1)-(c); see also Session Laws 1999-439, s. 2, effective January 1, 2001, changed the period for filing with the municipal court from six months to thirty days.

¹⁹ N.C. Gen. Stat. § 105-375(i) (outlines the local government right of in-rem foreclosure); see also Session Laws 2001-139, s. 9, effective July 1, 2001, changed the waiting period to execute the judgment from six months to three months.

²⁰ N.C. Gen. Stat. § 105-375(c).

²¹ N.C. Gen. Stat. § 105-369 (describing the advertisement of tax liens on real property for failure to pay taxes).

²² N.C. Gen. Stat. § 105-374(c).

²³ N.C. Gen. Stat. § 1-339.25.

²⁴ N.C. Gen. Stat. § 105-377.

²⁵ N.C. Gen. Stat. § 105-374(q) (application of sale proceeds).

²⁶ N.C. Gen. Stat. §§ 105-277.1(a), (c) (note that there is a complicated formula for determining income eligibility which is specified in 105-277.1(a2); beginning July 1, 2008, the income eligibility limit is \$25,000 to be increased by \$100 each year beginning July 1, 2009).

²⁷ N.C. Gen. Stat. § 105-277.1 (Valuation for Elderly).

²⁸ N.C. Gen. Stat. § 105-277.1.

²⁹ N.C. Gen. Stat. § 105-277.1C.

³⁰ N.C. Gen. Stat. § 105-277.1C.

³¹ N.C. Gen. Stat. § 105-277.1C.

³² N.C. Gen. Stat. § 105-277.01.

³³ N.C. Gen. Stat. § 105-277.2.

³⁴ See N.C. Dep’t. of Revenue, *Present-Use Value Program Guide* 5 (2019), https://files.nc.gov/ncdor/documents/files/2019_puv_program_guide.pdf.

³⁵ See *id.* at 124.

³⁶ See generally N.C. Gen. Stat. § 31 (a spouse may dissent from a Will under certain circumstances); see also N.C. Gen. Stat. § 30 (surviving spouses); see also N.C. Gen. Stat. § 29 (Intestate Succession Law).

³⁷ N.C. Gen. Stat. § 31-10.

³⁸ A non-resident of North Carolina may be an executor/trix but must have a resident process agent. The process agent is the person who receives legal documents from the court.

³⁹ See *Twitty v. Martin*, 90 N.C. 643, 1884 WL 1890 (1884); *Scales v. Scales*, 6 Jones Eq. 163, 1860 WL 2035 (1860); see also *Neal v. Nelson*, 117 N.C. 393, 23 S.E. 428 (1895).

⁴⁰ N.C. Gen. Stat. § 31-3.3 (attested wills may also be self-proved if the testator complies with N.C. Gen. Stat. § 31-11.6 and the court will view a self-proved will as if it had been signed in court).

⁴¹ N.C. Gen. Stat. § 31-3.4.

⁴² N.C. Gen. Stat. § 31-3.5.

⁴³ N.C. Gen. Stat. § 31-3.5.

⁴⁴ N.C. Gen. Stat. § 31-11.

⁴⁵ See generally N.C. Gen. Stat. § 29. Formulas are only correct with no income limits when applied to intestate real estate.

⁴⁶ 42 U.S.C. § 5174.

⁴⁷ 44 C.F.R. § 206.111.

⁴⁸ 7 U.S.C. § 2266b.

⁴⁹ N.C. Gen. Stat. § 57D-2-20.

⁵⁰ N.C. Gen. Stat. § 36C-4-401.

⁵¹ N.C. Gen. Stat. § 46A-28.

⁵² N.C. Gen. Stat. §§ 46A-50(a) to 46A-51(a) (Partition Commissioners).

⁵³ N.C. Gen. Stat. § 46A-55(a).

⁵⁴ N.C. Gen. Stat. § 46A-59.

⁵⁵ N.C. Gen. Stat. § 46A-75.

⁵⁶ N.C. Gen. Stat. § 46A-75 (Partition Sales).

⁵⁷ N.C. Gen. Stat. § 46A-76.

⁵⁸ N.C. Gen. Stat. § 46A-76(b).

⁵⁹ N.C. Gen. Stat. § 46A-85(d).

⁶⁰ N.C. Gen. Stat. § 46A-27(a).

⁶¹ N.C. Gen. Stat. § 46A-83 (Setting aside a partition sale).

⁶² H.R.1319 – 117th Congress (2021-2022): American Rescue Plan Act of 2021, H.R.1319, 117th Cong. (2021), <https://www.congress.gov/bill/117th-congress/house-bill/1319>.

⁶³ *Id.*

⁶⁴ *Id.*

⁶⁵ For more information, visit <https://www.farmers.gov/loans/american-rescue-plan/litigation-update> and <https://www.farmers.gov/americanrescueplan>.

⁶⁶ N.C. Gen. Stat. §§ 1-35 to 1-45 (Adverse Possession).

⁶⁷ See N.C. Gen. Stat. § 1-38(a) (if there are both distinct boundary markers of the type and height specified in 1-38(b)(1) and a recorded map reflecting these boundaries, such things will constitute prima facie evidence of known and visible lines and boundaries. It is also worth noting that in North Carolina, a person adversely possessing land under color of title but occupying less area than their title describes will become owner of the entire area described in the deed, not merely the area they have physically occupied (provided the remaining area is not occupied); see also N.C. Gen. Stat. § 1-40 (twenty years adverse possession).

⁶⁸ An adverse possessor typically needs to prove that there has been an actual ouster of one cotenant by another; however, North Carolina courts have accepted the doctrine of “constructive ouster,” meaning that if one cotenant has used the land for 20 years and the other has not entered the land or made any demands for rents or profits, then that may be enough for a constructive ouster. See *Ellis v. Poe*, 73 N.C. App. 448, 326 S.E.2d 80 (1985); *Collier v. Welker*, 19 N.C. App. 617, 199 S.E.2d 691 (1973).

⁶⁹ N.C. Gen. Stat. §1-52(3) (“When the trespass is a continuing one, the action shall be commenced within three years from the original trespass, and not thereafter”).

⁷⁰ See N.C. Gen. Stat. § 1-42, § 42-25; see generally N.C. Gen. Stat. § 74.

⁷¹ N.C. Gen. Stat. §§ 1-42.1 to 1-42.9 (Mineral Rights - Cloud of Title).

⁷² N.C. Gen. Stat. § 46A-24 (In-kind); N.C. Gen. Stat. § 46A-81 (By Sale, Partition of Minerals).

⁷³ N.C. Gen. Stat. § 46A-24.

⁷⁴ Risk Management Agency, *About Risk Management Agency Factsheet*, United States Department of Agriculture, <https://www.rma.usda.gov/en/Fact-Sheets/National-Fact-Sheets/About-the-Risk-Management-Agency> (last revised August 2016).

⁷⁵ Dennis A. Shields, *Federal Crop Insurance: Background*, Congressional Research Service Report, 3 (last modified August 13, 2015), <https://fas.org/sgp/crs/misc/R40532.pdf>.

⁷⁶ *Id.*

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ Risk Management Agency, *About RMA: A History of the Crop Insurance Program*, United States Department of Agriculture, <https://www.rma.usda.gov/About-RMA/History-of-RMA> (last visited Mar. 31, 2021).

⁸⁰ See generally Farm Service Agency, *Farm Service Agency Programs Fact Sheet*, United States Department of Agriculture (2016), https://www.fsa.usda.gov/Assets/USDA-FSA-Public/usdafiles/FactSheets/2016/farm_service_agency_programs.pdf.

⁸¹ 7 C.F.R. § 764.53(c) (2018).

⁸² 7 C.F.R. § 764.101(b).

⁸³ 7 C.F.R. § 764.101(c).

⁸⁴ 7 C.F.R. § 764.101(d).

⁸⁵ 7 C.F.R. § 764.101(d).

⁸⁶ 7 C.F.R. § 764.101(e).

⁸⁷ 7 C.F.R. § 764.101(f) (the definition of “delinquent” derives from 31 C.F.R. § 285.13(d)).

⁸⁸ 7 C.F.R. § 764.101(g).

⁸⁹ 7 C.F.R. § 764.101(h) (Federal Crop Insurance Violation is defined in 7 C.F.R. § 718).

⁹⁰ 7 C.F.R. § 764.101(i).

⁹¹ 7 C.F.R. § 764.101(j) (Borrower training is described in 7 C.F.R. §§ 764.451 to 764.452).

⁹² 7 C.F.R. § 764.101(k).

⁹³ 7 C.F.R. § 764.101(d)(2).

⁹⁴ 7 C.F.R. § 764.103(b).

⁹⁵ See 7 C.F.R. § 764.103(c).

⁹⁶ 7 C.F.R. §§ 766.101 to 766.115.

⁹⁷ 7 C.F.R. § 766.101(d)(3).

⁹⁸ 7 C.F.R. § 766.106.

⁹⁹ Agriculture Improvement Act of 2018, S. 3042, 115th Cong. (2018).

¹⁰⁰ *Id.* § 5305.

¹⁰¹ See S.B. 363, 2021 Leg. Sess. (N.C. 2021). The UHPA has not yet been enacted in North Carolina, but it was introduced in Senate Bill 363, which was filed on March 25, 2021.

¹⁰² 7 U.S.C. § 1936.

¹⁰³ For more information, visit <https://www.farmers.gov/heirs/releasing>.

¹⁰⁴ Agriculture Improvement Act of 2018 § 2308.

¹⁰⁵ *Id.* § 2305.

¹⁰⁶ N.C. Gen. Stat. § 40A (Eminent Domain).

¹⁰⁷ 12 C.F.R. §§ 1024 to 1026.

¹⁰⁸ N.C. Gen. Stat. § 45-102.

¹⁰⁹ N.C. Gen. Stat. § 45-21.16[c][5a].

¹¹⁰ N.C. Gen. Stat. § 45-21.16.

¹¹¹ N.C. Gen. Stat. § 45-21.16(d).

¹¹² N.C. Gen. Stat. § 45-21.16C.

¹¹³ N.C. Gen. Stat. § 45-21.38.

¹¹⁴ Exemptions are guaranteed by the North Carolina Constitution and by Statute: Homestead Exemption, Const. N.C., Article X, § 2; Personal Property, Const. N.C., Article X, §1; Exemptions - In General, N.C. Gen. Stat. §§ 1C-1601 to 1C-1604.

¹¹⁵ N.C. Gen. Stat. § 1C-1601(a)(1)).

