



Protect **YOUR** Property: Heir Property in Louisiana

How homeowners can build
wealth and protect their assets

Revised 2013

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Homeowners living on property passed down from family sometimes can't take advantage of their property rights.

After the 2005 hurricanes and subsequent disasters, some Louisiana residents were unable to receive federal and state aid for property damage. They owned their homes. They even paid property taxes. But legal documents didn't list them as owners. So, they lacked "clear title." Their homes were passed down through generations by family agreement, but not through the legal system. They owned "heir property" and couldn't receive Road Home government aid or finance repairs.

Do I have heir property?

Heir property comes about when necessary legal work isn't done after a property owner dies. If you do nothing, the right to live on the property goes to an "heir."

Heirs are:

- Related to the deceased property owner by blood or marriage, or named in a will and
- Alive when the property owner dies.

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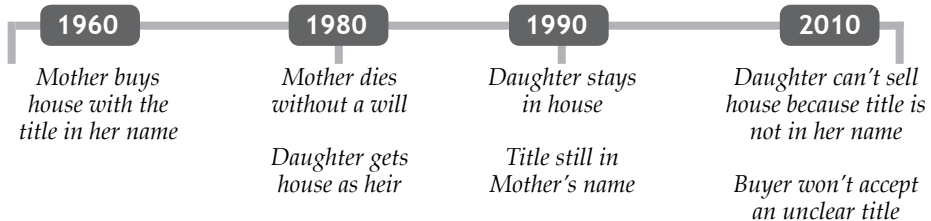
The heir legally owns the property. But, the property's title does not automatically pass to the heir. Without legal paperwork, the title is unclear and "unmarketable." Even if the property owner had a valid will, the heir still must take the original will to court in order to get clear title.

Why should I care about clear title?

If you do not have clear title, you might not be able to:

- Sell your property.
- Make repairs to the property.
- Borrow money against the property.
- Cash an insurance check.
- Deal with a bank on a foreclosure.
- Qualify for government aid to fix your house.
- Get a homestead exemption for taxes.
- Get notice of actions by the City or Parish if they try to take your home or fine you.
- Have a court rule on "claims of heir" in a lawsuit against those falsely claiming to be heirs of the original owner.

For example, assume that Anna and her children lived in a home with Anna's mother, who owned the property. Anna's mother died without a valid will. Everyone in the family agreed that Anna owned the house. So, Anna never opened a succession in court to get clear title. Some years later, Anna decided to sell the house and move into a larger home closer to her kids' school. But when Anna tried to sell the house, she couldn't find a buyer because she didn't have clear title on the house. The title was still in her mother's name. Without clear title, she would have to accept a much lower price on the home, which wouldn't be enough to help her buy the larger house needed for her and her children.



How can I get clear title on my property?

Getting clear title used to be expensive and time consuming. But now, because the Louisiana Legislature passed Act No. 81

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in 2009, and Act 323 in 2011, there's a cheaper and faster way for many people to get clear title.

The new laws let heir property owners file an "Heirship Affidavit." This can get them clear title to their property, if the estate is valued at less than \$75,000. Using an Heirship Affidavit can reduce legal fees and filing costs.

Most recently, the Louisiana Legislature passed Act 618, which allows property owners to use the heirship affidavit for estates of any value where the property owner died over 25 years ago.

What is an "Heirship Affidavit"?

An Heirship Affidavit is a statement under oath by 2 or more heirs (including the surviving spouse, if any) as to certain facts. The affidavit can only be used if the property owner died without a valid will. Out-of-state owners who have a will can use the affidavit in limited circumstances. Also, the affidavit can only be filed after 90 days from the property owner's death.

Generally, an Heirship Affidavit requires:

- Date of death of the deceased, and his or her home address at the time of death.
- Marital status of the deceased, and the name and address of

the surviving spouse, if any.

- Names and last known addresses of the heirs, and their relationship to the deceased.
- Legal description of the property.

What else can I do to protect my property?

- *Make sure property taxes are paid.* Visit your parish tax office to make sure your property taxes are paid up and that the office has the correct name and address of the person responsible for the taxes. Some offices have this information on their web pages.
- *Have a valid will.* Draft a valid will to ensure that your property will be legally passed down according to your wishes.
- *Make a family tree.* Create a family tree to help all family members know who their relatives are.

What can I do next to get clear title on my heir property?

If you think you may have heir property valued at \$75,000 or less, or if the decedent died over 25 years ago, call an attorney.

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Explain that you want to file an Heirship Affidavit. The attorney can walk you through the process, decide whether you qualify and describe information that you may need to get clear title.

Useful documents to bring to your first visit with an attorney are:

- Deeds
- Tax receipts
- Death certificates
- Obituaries
- Any other information on family members

If you need help finding an attorney, please call the *Louisiana Civil Justice Center* hotline.

1-800-310-7029





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