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An oral will isn't really a will at all

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Ercelle Chillis' father didn't have a will. Before he died, he asked her to live on the land he worked so hard to purchase in 1926. He bought enough for each of his children to have one acre.

But, when Chillis moved back to the family tract of land in 1983 nearly 20 years after her father's passing, the land for which her father saved his money had become heirs' property — and a struggle ensued to clear a title to the plot her father told her he wanted her to have.

"I had a lawyer before I came (back to South Carolina), and he had me to believe that I didn't need a deed because all these people (in my family) had signed for me releasing their part in my acre," Chillis said. "Heirs' property is like that, everybody owns their little piece of your land."

Law, land and lots of heirs

Land becomes heirs' property if an individual dies without a will and no immediate family member probates the estate within 10 years.

Immediate heirs are given the 10-year window, but once that period passes, the law of intestacy kicks in, thereby imposing a will of sorts. Every living descendant is given a percentage of the estate.

EXECUTIVE SUMMARY

Heirs' property owners struggle with family legacies and legal challenges.

With much of the land dating back decades, multiple generations of heirs become communal owners of the property.

"When you have 70 people owning three acres, there's no way to divide it physically," said Josh Walden, attorney for the Center for Heirs' Property Preservation.

The center helps heirs living in Beaufort, Berkeley, Charleston, Colleton, Dorchester and Georgetown counties. In this region, approximately 41,000 acres of heirs property remain.

Once a property becomes heirs' property, there are two ways to sort out ownership: quiet title action or by determination of heirs action.

Quiet title action proceedings occur most often after heirs have owned a property for a significant amount of time, Walden said. In many cases, direct descendants of the original property owner are also deceased, and current owners can't testify to the desires of the original owner. The quiet title action can be brought by one or more heirs to gain a clear title to the land.

A determination of heirs proceeding occurs most often after the 10-year window barely expires and there are still immediate descendants living, Walden said.

"It accomplishes the same thing as a probate, but it is after the fact, and it is more of a headache," Walden said.

Sorting out the law, family history

In resolving heirs' property cases, every heir must be identified and agree on the outcome. The first step for individuals looking to clear a title to their land is to identify every member in the family tree and get them to sign paperwork, either asserting their ownership or giving up claim to the property.

Chillis was fortunate to have started her process well before moving back to the Lowcountry. With fewer heirs to contend with, she was able to gather signatures much easier than if she had waited. In one instance, she had to put \$1,500 in escrow for one heir that could not be located.

"If I were trying now, I wouldn't know how to start," she said.



Erselle Chillis walks with her daughter, Donna Payton, along the foundation of what will become Payton's new home. The foundation sits on a plot of land purchased in 1926 by Chillis' father. (Photos/Leslie Burden)

That's where the Center For Heirs' Property Preservation can come in. For low-income heirs' property owners, lawyers and staff help navigate the process of finding heirs, drafting wills and establishing clear title to the land.

The center helps heirs understand the complexities of the law. Any heir, no matter how distant, has a right to the land and can force a sale.

Many people living on heirs' property pay the taxes for the land and are misled into believing that paying those taxes establishes them as sole owners of the land.

"Any heir at any time can bring partition land sales," Walden said.

The only way to stop a sale would be to buy out the heir's portion of the land. The center helps clients locate heirs with a claim to the land and establish their right to the title.

"Very often, our clients come in and they've been paying the taxes for 20 or 30 years by themselves," Walden said. The reason many don't come forward to clear the title is because they are fearful of letting other heirs know about their rights to the land and fearful of letting non-family in on the process of resolving conflicts over the land.

But it's never just about the land,

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Walden said.

“This land means something more than just sticks and trees and grass,” he said. “It’s something that is a heritage; it’s something that a grandfather or a great-grandfather acquired and passed down.

“There’s usually an emotional component to these cases unlike anything I’ve seen,” Walden said. “I’ve never received more hugs from 90-year-old women as I do with my work here in the center.”

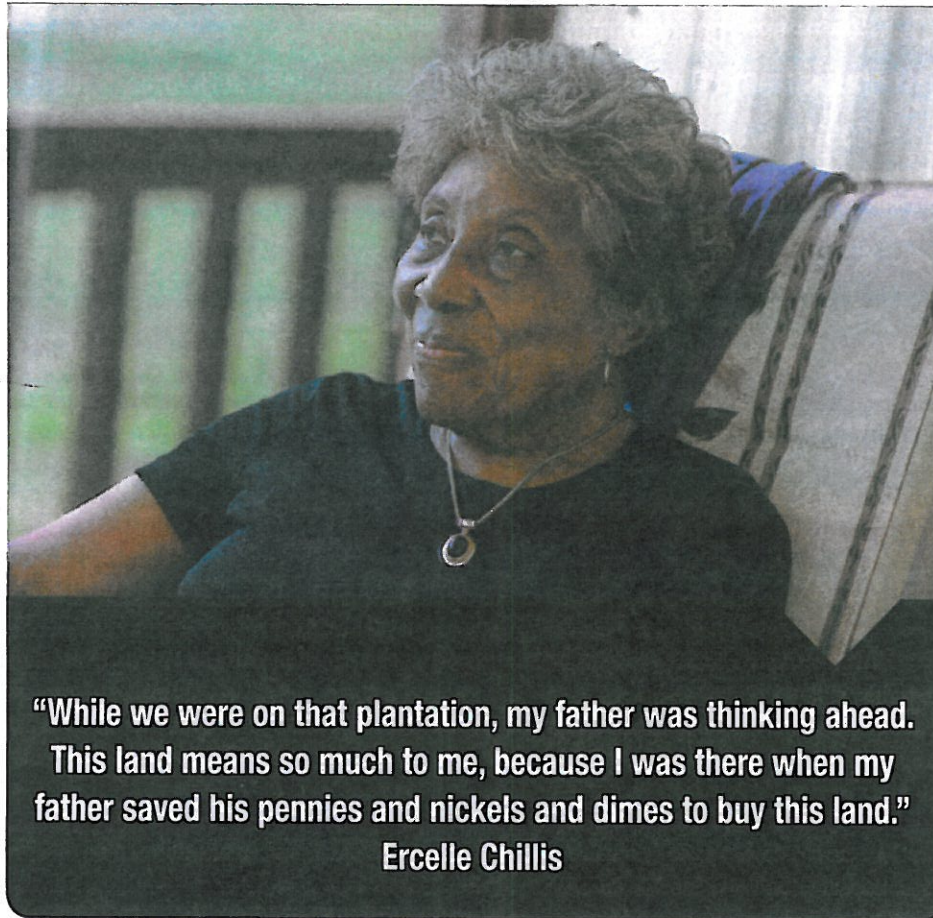
Building trust

At 69, Richard Mazyck said his decision to finally trust somebody allowed him and his siblings to obtain clear title to land that had been in their family for generations.

“A lot of people don’t trust anybody because they figure you’re getting railroaded,” Mazyck said. “I said ‘Well, you’ve got to trust somebody,’ so I put my trust in (the center) and let them do the work.”

Mazyck said lawyers in the past have told him he had a deed when the property wasn’t really his. Working with communities and families and earning trust is often one of the more difficult tasks.

“There is a trust issue,” Walden said. “There is a racial component, and a



“While we were on that plantation, my father was thinking ahead. This land means so much to me, because I was there when my father saved his pennies and nickels and dimes to buy this land.”
Ercelle Chillis

socioeconomic component. The access to justice may not have been there to the degree it is today.”

Many communities with heirs’ property were taught the best way to

protect their property is to pass it on orally, and not let outsiders in.

Even among the family, trust must still be given to the heir who will receive the title. In Mazyck’s case, his siblings

had to trust him to receive — and deed out — the full tract of land.

“I had some misunderstandings because everything had to be turned over to my name,” Mazyck said. “That’s where the problem came in, because they figured that if they put everything in my name, I wasn’t going to give them their land.”

But he did. Once the title to the entire tract of land was cleared, Mazyck had the individual plots his family was living on re-deeded to them.

A father’s wish, a family’s future

Ercelle Chillis was a teenager when her father bought a seven-acre plot of land off Folly Road for his family in 1926.

Now, at 97 years old, she cleared the title to the one-acre plot her father wanted her to have, and immediately divided it — and transferred title — to her own children.

Her family had been living on the land since it was purchased, but when her father died in 1964, no heir took ownership of the land.

Chillis was afraid the land would be lost as a result of taxes not being paid by family members or developers coming in to buy the property.

“I knew how hard my father worked

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"I've never received more hugs from 90-year-old women as I do with my work here in the Center"
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"To have a clear title is just like having money in the bank."
Richard Mazyck



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to acquire this land," she said. "I couldn't just sit back and let it go after he worked so hard for it."

Her father was an independent farmer and sold his crops from a pushcart. Chillis said she and her five siblings were born on a plantation near Folly Road and lived in a home her father built on the property.

"While we were on that plantation, my father was thinking ahead," Chillis said. "This land means so much to me, because I was there when my father saved his pennies and nickels and dimes to buy this land. I was there when he struggled, pushed that cart in the street. I was there and I watched him; I know how hard he worked for it."

Chillis moved away to New Jersey shortly after her father purchased the property, but when she returned to visit about a month before her father's death, he asked her to live on the land he'd bought.

When she moved back from New Jersey, her nephews were living on the land and she decided to claim what her father wanted her to have.

"I let them know that I just wanted a small piece of my father's land so I could live a better life than I had lived in New Jersey," she said. "At that time, I was the only one of my father's children that was alive."

Chillis went to the center to help navigate the legal process of getting clear title to her acre of land. After about five years, Chillis received the title to her land. She immediately transferred that title to her daughters.

"I know land is important," Chillis said. "I don't have anything to leave my children but this land."

Donna Payton, Chillis' younger daughter, is building a home

on her portion of the land, and plans to have her mother live with her.

Payton said having title to her grandfather's land is important, because of the history of it.

"We could be here on this place where my ancestors lived," she said.

A weight lifted, options restored

Clearing title to heirs' property land gives owners options. With a clear title, they can access financing for remodeling, use the land for agriculture, lease the land or build a new home.

Payton delayed building a permanent home for herself and her mother until after the title was cleared because she could not get financing, and she was afraid she could lose her investment.

"To make an investment of hundreds of thousands of dollars on land that didn't belong to you, knowing that if something happened you could lose it, didn't make sense," Payton said. "So (clearing the title) was a necessity."

Mazyck said clearing his title gives him a sense of comfort beyond an immediate residence.

"To have a clear title is just like having money in the bank," Mazyck said. "I mean, you can do anything you want to do with it. You could sell it, you could borrow money on it. There are so many things you can do with a title that is in your name. It's like cash money."

Even aside from economic benefits to having clear title, Mazyck said having a title gives him a sense of security that he did not have before.

"When you're living here and you don't have a title, it seems like you are just paying rent," he said. "Now, I know nobody can sell (my land) unless I sell it because it's in my name. It's a great relief." ■