

# Ten Ways to Save Your Land

**Eighth Edition © 2018**



An Organization Dedicated to the  
Preservation of the Family Farm

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 minority 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 will 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.

**Contributors (inclusive of First through Eighth Editions):** Cheryl E. Amana; Barbara Arnwine; Betty Bailey; Bernadine Ballance; Dawn Battiste; Stephon Bowens; Angela Bryant; Spurgeon Cameron; Gail Davis; Dania Davy; Lewis Dozier; Sandra Ellis; Dolores Faison; Susan Getty; Cynthia Grossman; David Harris, Jr.; Mary Henderson; Annette Hiatt; Doris Jenkins; Percy Luney; Larry Kay; Richard Klein; Susan Perry; John Pollock; Yvonne Pugh; Christina Rice;

Jimonique Simpson-Reaves; Sharon Skyers; Naomi Slifkin; Larry Smith; Mittie Smith; Brenda Sumner; and Michael Troutman.

**The production of this edition was funded by the W.K. Kellogg Foundation.**

**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 conditions for vulnerable children so they can 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 emphasis 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](http://www.wkkf.org).

**Additional, supportive funding was provided by the North Carolina State**

**Bar Plan for Interest on Lawyers' Trust Accounts (NC IOLTA).**

Primary funding for other editions of this Handbook was secured by grants from: the American Express Corporation; the Z. Smith Reynolds Foundation; and the Mary Reynolds Babcock Foundation.

**© 2018 Land Loss Prevention Project**

All rights reserved. No part of this book may be reproduced or utilized in any

form or by any means, electronic or mechanical, including, photocopying, recording, or by any information storage and retrieval system without permission in writing from the publisher/authors. **This Handbook is not intended to provide legal advice on a specific legal problem or substitute for the advice and work of an attorney.** All persons having a land loss problem should contact an attorney or the Land Loss Prevention Project. 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, contract scams, and adverse possession are often the main causes of land loss. 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 it. Family farmers, landowners, and homeowners will find this handbook useful.

In this handbook, we will cover ten important topics about 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 and any underlined words to open up 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 This Handbook
- ✓ Make Sure All the Taxes Have Been Paid
- ✓ Make Sure All Other Debts Are Being Paid
- ✓ Review all Papers, Letters, 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

### STEP 4: Plan A Family Meeting & Make a Family Plan

- ✓ Discuss How the Land is Owned
- ✓ Discuss How Decisions About the Land Should Be Made
  - Consider a Trust or L.L.C.
- ✓ Discuss the Details of the Plan
  - Decide Which Individual Will Pay the Taxes
  - Decide Which Individual Will Collect and Divide any Rents or Proceeds
  - Decide Which Individual 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 Agricultural Extension Program  
P.O. Box 21928  
Greensboro, N.C. 27420  
(336) 334-7956

## TABLE OF CONTENTS

<b>1. DEEDS</b>	<b>7</b>		
A. FEATURES OF A DEED	7		
B. TYPES OF DEEDS	7		
C. HOW GOOD IS YOUR TITLE?	8		
D. DIFFERENT TYPES OF LAND OWNERSHIP	8		
<b>2. TAXES</b>	<b>11</b>		
A. TAX LIENS	12		
B. FORECLOSURE ON TAX LIENS	12		
1. In Rem Foreclosure	12		
2. Foreclosure by Court Order	13		
C. THE FORECLOSURE SALE	14		
D. SPECIAL TAX BREAKS	14		
1. Senior Citizens / Disabled Citizens "Homestead Exclusion"	14		
2. Disabled Veteran and Surviving Spouse Exclusion	15		
3. Agriculture	15		
<b>3. WILLS</b>	<b>16</b>		
A. MAKING A WILL	16		
B. TYPES OF WILLS	17		
1. Attested Will	17		
2. Holographic Will	17		
3. Nuncupative Will	18		
C. IF YOU DIE WITHOUT A WILL	18		
<b>4. HEIR PROPERTY</b>	<b>19</b>		
A. RISKS WITH OWNING HEIR PROPERTY	19		
B. IF YOU ARE INVOLVED IN OWNERSHIP OF "HEIR PROPERTY"	20		
<b>5. PARTITIONS</b>	<b>21</b>		
A. FILING FOR A PARTITION	21		
B. DIVIDING LAND BY PARTITION	21		
C. PARTITION SALES	22		
D. PREVENTING A SALE OF THE LAND	23		
E. WAYS TO AVOID COURT ORDERED PARTITIONS	24		
1. When All the Cotenants Agree, Land Can Be Divided Without a Court-Ordered Partition	24		
		2. You Can Contract With Other Co-Owners Not to Partition the Land	24
		3. When All the Cotenants Agree, Land Can Be Sold Without a Court-Ordered Partition	24
		<b>6. ADVERSE POSSESSION - "SQUATTERS RIGHTS"</b>	<b>25</b>
		<b>7. MINERAL RIGHTS</b>	<b>27</b>
		A. LIMITS ON MINERAL RIGHTS	27
		B. LEASING MINERAL RIGHTS	27
		C. REMOVING MINERAL RIGHTS	28
		D. PARTITION OF MINERAL RIGHTS	28
		<b>8. FARM ISSUES</b>	<b>29</b>
		E. FEDERAL CROP INSURANCE CORPORATION	29
		F. FARM SERVICE AGENCY (FSA)	29
		1. Applying For A FSA Loan	30
		2. Late Payments on a Loan	31
		3. Restructuring a Loan	31
		4. When You Cannot Restructure	32
		C. FARM CREDIT SYSTEM	33
		D. SUSTAINABLE AGRICULTURE	34
		<b>9. EMINENT DOMAIN</b>	<b>35</b>
		<b>10. DEBTS, MORTGAGES AND BANKRUPTCY</b>	<b>36</b>
		A. CONTROLLING YOUR DEBTS	36
		B. MORTGAGES: ONE TYPE OF LOAN CONTRACT	37
		1. The Foreclosure Hearing	38
		2. THE FORECLOSURE SALE	39
		3. AFTER THE SALE	39
		4. When You Have Paid Off YOUR MORTGAGE	39
		C. BANKRUPTCY	40

# 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.<sup>1</sup> The deed gives you **title** to your property and title governs your legal right to your land.

Every time property is sold, willed, or given to another person, a new deed must be written and registered. This should be done by a lawyer. In the deed, the person buying or inheriting the land is called the **grantee** and the person selling, willing, or giving the land is called the **grantor**.

### A. Features of a Deed

Every valid, legal deed must include the name of the grantor, the name of the grantee, a description of the land and its boundaries. The deed must also state that the property is being passed to a new owner. For example, "I hereby convey my land to Mr. X to have and to hold...."

In North Carolina, a conveyance of land needs to meet the following requirements: (1) it is in writing (like a deed);<sup>2</sup> (2) the grantor signed the deed and fully understands what he/she is doing with the property; (3) the deed is accepted and signed by the grantee or

his/her agent;<sup>3</sup> and (4) the description of the property in the deed is specific enough so that the property can be identified.<sup>4</sup>

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.<sup>5</sup> 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** insures that the title to your land is a valid conveyance by the grantor. The grantor of the deed guarantees that s/he 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 your property. 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 right of ways**. These restrictions should be listed on the deed and can be passed down from one owner to another.

A **quitclaim deed** also transfers a 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 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 has any interest in the property at all. When taking title to real property, you should insist on a general warranty deed, if possible.

### C. 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 of all the past owners of the property to find out if there were any conditions, limits, restrictions or rules to owning it.

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, or that there are unpaid taxes owed on the property, which will be passed to you as purchaser of the property. If you do not pay the unpaid taxes, the government

can seize and sell your property to pay the unpaid taxes<sup>6</sup>

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 on your property at all, contact a lawyer to determine how you can get a deed. If there are any problems, a lawyer may be able to fix them.

### D. 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 as long as they live, called a "life estate;" while other people own their land "forever," called a "fee simple." People who only own their land for life cannot will their land to others after they die because the land is no longer theirs to give away.<sup>7</sup> However, people who own their land "forever" or in "fee simple" can will their land to anyone they choose. An owner of land can never sell, will, or give more land than he or she owns.

If you are married, any property that you or your spouse acquires during the marriage is owned **in the entirety**, unless the deed clearly states



otherwise. This means that 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 they say in their will that their share of the property goes to someone else, their spouse will still become owner of the whole property at the time of death.

The same is true if a spouse tries to sell the whole property. A spouse cannot sell the property without their spouse’s consent. If you get divorced, you and your ex-spouse will become **tenants in common**, meaning that you are co-owners of the land and each own an undivided 1/2 interest in the property.

## TIPS ABOUT DEEDS

- ✓ Register your deed immediately at the office of **Register of Deeds** in the county where your property is located. Since it is in a public file, a registered deed proves that you own your land.<sup>8</sup> If your copy of the deed is lost or stolen, it can easily be replaced if it was 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.<sup>9</sup>
- ✓ Keep your deed in a safe place in order 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 ending all arguments over it.

- ✓ If there is to be an **easement** on your property, 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.<sup>10</sup>
- ✓ Never give your deed to anyone to hold for a debt or for any other

reason because another person could change the title of your deed. 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 they 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 wish to consider whether or not you wish to give your land away while you are still alive instead of waiting until after you die to pass it on. One way to do this would be to

prepare a deed to give your land away. 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 decide to choose this option because giving your land away while you are alive could cause you to lose some government benefits. You may also have to consider lifetime gift taxes with this option. Talk to a tax advisor and a lawyer before you make a 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 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 Your Taxes - Prevent Tax Lien Sales and Foreclosures*

All landowners must pay taxes on their land, but first they must list, or report, their property with the tax collector. In order to find out where to pay your taxes, you should contact the tax collector's office for your county and for your city to see where your 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 list after January 31 are charged a fine.

In late summer, tax bills are sent out 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 taxes must be paid between September 1 and January 6 of every year.<sup>11</sup> Depending on where your land is, you pay your taxes to the county, city, or town tax collector.

If you do not pay your property tax on time, the government will charge you **interest** which include: 2% for January 6 to February 1 and  $\frac{3}{4}\%$  for each additional month that your bill goes unpaid.<sup>12</sup> For example, if your 2018 property tax bill is \$1,000, then you must pay the \$1,000 before January 6, 2019. If you pay after January 6, 2019, then you will owe \$1,020 (\$1,000

original debt plus \$20 in interest for January). If you do not pay your bill until February, then you 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 your 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.<sup>13</sup>

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 owe 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, interest and advertising cost at any time during the advertising period.<sup>14</sup> 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 do not have to pay attorney's fees. However, if your property is already in foreclosure, the tax office may not 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.<sup>15</sup> This certificate will tell you the total amount of taxes owed on your property. 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 tax by selling your land. This is called **foreclosure**. If the government waits longer than ten years to bring an action for unpaid taxes, they lose their right to foreclose.<sup>16</sup> The government can bring an action for foreclosure in one of two ways: in rem or by court order. The in rem method is more common.

### 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.<sup>17</sup> 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.<sup>18</sup> 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 or it can send a registered or certified letter to you thirty days before the tax lien becomes a 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.<sup>19</sup>

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 tax has since been paid or the tax lien was illegal. You can also get the sale canceled if you can pay all the taxes owed plus the costs the tax office incurred up to this point.

Additionally, if the sale is held and the government buys your property, you may be able to convince it to resell the land to you for the amount of all taxes, costs, interest and penalties owed. If you receive a notice regarding your property, 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 anytime 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.<sup>20</sup> 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.<sup>21</sup>

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 this out.

After the trial, the judge will make a decision or judgment. If the judgment is in your favor, you get to keep your 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.



## C. The Foreclosure Sale

You can buy back your 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.<sup>22</sup> Either way, you may be able to hold on to your land. If the government buys your property, 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 know, however, that if your property is sold to someone else and they register a deed, you only have one year to challenge that sale.<sup>23</sup>

If you do not buy back your 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 the unpaid taxes, the court will decide who should get it. If no decision is made, then the money will be held by the court clerk until someone claims it. You can also claim this money.<sup>24</sup> However, if the money collected from the sale of your property is not enough to pay all the unpaid taxes, you may still be liable for the remaining balance.

## D. SPECIAL TAX BREAKS

### 1. 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 \$29,600 or less after income taxes.<sup>25</sup> Also, you must be at least sixty-five years old or must be 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.<sup>26</sup> So for example, if your home and land are valued at \$20,000, then under this special rate you will not have to pay any property tax. Or, if your home and land are valued at \$30,000, then you must pay taxes on only \$5,000 worth of property (\$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).<sup>27</sup> You

must reapply every year by this same deadline in order to keep the special tax rate.

## **2. 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 whose character of service at separation was honorable or under honorable conditions and who has a total and permanent service-connected disability or who received benefits for specially adapted housing under 38 U.S.C. 2101”.<sup>28</sup>

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).<sup>29</sup> 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.<sup>30</sup>

## **3. Agriculture**

To help farmers, there are also special, lower tax rates on many farm products.<sup>31</sup> 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.<sup>32</sup> 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*

A **will** is a way for you to give the things you own to the people you choose after your death.<sup>33</sup> Anyone who owns anything or anyone who may inherit anything needs to write a will. Young or old, rich or poor, you should not put off making one. Landowners especially need a will. In fact, most 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 make a legal will.

In North Carolina, most wills require at least two witnesses. A legal **witness** is someone over age 18 who is of sound mind and who does not receive anything in the will. 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.<sup>34</sup>

You should list someone in your will to handle it after your death. This person

is called an **executor** if a man or an **executrix** if a woman. It is best to ask for his or her permission to be listed beforehand because managing a will can be a lot of work. This person, who can be a friend or a relative, must be over 18 years old and should be a resident of North Carolina.<sup>35</sup>

After your death, the executor/trix will need to take the will to the clerk of superior court in the county 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 you should know is that 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 has no effect.<sup>36</sup> If you want the land to go to that person's heirs if they are not alive, you must state in your will something like, "To X, or his heirs in the event that he predeceases me."

## 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 a lawyer would write. To make it legal, you must sign the will in front of at least two witnesses and they must sign it in front of you.<sup>37</sup> The witnesses preferably 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 in the yellow pages of the phone book.

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 it legal, 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.<sup>38</sup> It must be found in this place after your death. We do not recommend this type of will because issues may arise as to whether or not the handwriting on the will is actually your own or whether the will was actually found among "valuable

papers." An attested will avoids all of these problems.

### 3. Nuncupative Will

A dying person can make a nuncupative will by speaking his or her wishes to at least two witnesses.<sup>39</sup> However, in order 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.<sup>40</sup> 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 better to have your wishes 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 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 handed out. However, if you die without a will (this is called dying **intestate**), your property may end up with someone other than who you wanted to have it. Also, the government must make these decisions for you. If you die without a will in North Carolina, there is a complicated legal method for deciding who gets your belongings.

## 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 copy your will and keep it in several places. Or, for no charge, you may file it with the clerk of superior court.<sup>41</sup> You can get to it there 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. Pre-printed form wills can present many problems. While they seem like an inexpensive and easy way to make a will, it is easy to make a mistake or fill them out in the wrong way, making your will not legal.
- ✓ Never scratch or write on your will. This may make it illegal. 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. It must be witnessed and signed. You may change your will as often as you want. Or you may write a whole new will.
- ✓ If you make a new will, be sure to destroy the old one. Put the new will in the same safekeeping place as before. 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.<sup>42</sup> 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.

Heirs' property is a form of ownership that is legally identified as a tenancy-in-common. Each tenant-in-common owns an undivided interest in the property.

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

### **A. RISKS WITH OWNING HEIR PROPERTY**

When several people own land together, as in heir property, there can be many problems. Decisions can be difficult to make because everybody has a different opinion and some owners may take more of an interest in the land than others. Some may want to sell it while others may want to live on it or farm it. Some may always pay their share of the property taxes while others never pay.

If one owner tries to sell his or her rights to the land, sometimes all of the land ends up being sold. Also, when owners decide to divide the land amongst themselves, there can be problems figuring out the value of each piece of land. (See section 5 on partitions).

If your property is partially owned by other people, you may have trouble getting loans from banks and other credit businesses for use on your

property because there is no clear owner. This might force you to sell it.

## **B. 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 off the land. You may need to have meetings once or twice a year about your land, unless you can come up with a better system.

Try to work out any disagreements before they become family feuds. Also, encourage the other heirs to make wills to prevent even more people from becoming owners of the land. Be sure to keep current addresses of 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 make legal arrangements so that any heirs who live on the land can be the ones to make the decisions about it.

### **Steps To Help Identify Heirs Property Owners**

- ✓ Create a detailed family tree, starting with the first owner of the property.
- ✓ Try and obtain contact information for all of the known owners and them for information about the other heirs.
- ✓ Go to the Register of Deeds Office in the County the land is located 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.



## 5. PARTITIONS

### *Court-Ordered Partitions Can Cause Land Loss*

When several people own one piece of land together (often as a result 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 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 it, build, lease, farm, or sell it. However, if the land cannot be split among the co-owners, the court will order a partition and many court-ordered partitions lead to a sale of the whole piece of land. This land may be sold for much less than what it is worth. 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 the superior court.<sup>43</sup> In the petition, the cotenant can ask that the land be divided into equal shares or that all of the land be sold so the money can be divided between the owners.

All of 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

The clerk of court 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.<sup>44</sup> They will divide the land equally based on how much each person is entitled to, since some of the owners may have inherited more of the land 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. This is to make it a fair split. The charge 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 telling how they went about their business and how they divided the land.<sup>45</sup> A map of the land, prepared by a surveyor and showing the divided shares, is generally filed with the report. If the commissioners have problems getting their job done on time, the clerk of court may give them sixty 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. 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 of 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.

## C. PARTITION SALES

Under North Carolina law, the court will try first to divide the partitioned land among its owners. However, the court may instead order a partition sale of all or part of the property. Be sure to get a lawyer as soon as you learn that your land is going to be partitioned in order to understand and exercise your rights.

North Carolina law allows for a partition sale when there is a **preponderance of evidence** proving that a division of land cannot be done without substantially injuring any of the interested parties.<sup>46</sup> It is up to the cotenant wanting the partition sale to prove this to the court. He or she must show: (1) that 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; and (2) that dividing the land would step on the rights of any of the cotenants.<sup>47</sup>

If the court does decide to sell the partitioned land, all of the other cotenants must be notified at least twenty days prior to the sale.<sup>48</sup> 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 commissioners must file a report with the clerk who will then confirm the sale. The cost of the sale, including the fees for the lawyers and commissioners, will be taken out of the

money made from the sale. Then, the money left over will be divided up between the cotenants.

While they owned it, all of 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, he or she has the right to collect for these costs when the sale money is being divided up.

Even after the land is sold, you may be able to save it. You have fifteen days after the clerk's confirmation to ask the court to cancel the sale. You need to 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 money which is causing money problems for you and the other owners.<sup>49</sup>

## D. PREVENTING A SALE OF THE LAND

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

## 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. Contact the Land Loss Prevention Project if you cannot afford an attorney.
- ✓ 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 of court 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.



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. First, your lawyer must prove to the court that the property can be split up equally and fairly among all the cotenants. Then, your lawyer should present a map showing exactly how the land can be divided. The map should be drawn by a land surveyor. Next, find a land appraiser whose opinion is that the land is more valuable as several smaller pieces than it is as one large property.

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. Do this at the county courthouse where your land is located.

## **E. WAYS TO AVOID COURT ORDERED PARTITIONS**

### **1. 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 of 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 legal, hire a

land surveyor and lawyer to handle this for you.

### **2. You Can Contract With Other Co-Owners Not to Partition the Land**

You can make a contract, or an agreement, with another co-owner not to partition the land. This means that you promise each other not to ask the court for a partition of the land. 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.

### **3. 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 just like other property. This kind of sale does not involve any government people. It may bring a higher price for the land and each owner may be able to make more money. Also, the cost of selling the land will be lower because no commissioners will have to be paid.

## 6. ADVERSE POSSESSION - "SQUATTERS RIGHTS"

### *Watch Out for Anyone Trying to Claim Your Land*

Occasionally, other people can get 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**."<sup>50</sup> These people, known as squatters, can become the owners of the land by proving several things to the court. However, they must first let you know that they are taking action to claim your land.

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).<sup>51</sup>
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, that cotenant might be able to bring an adverse possession claim against you if they have been using the land and you have not.<sup>52</sup> If your cotenant has taken steps to deny you access to the land, he or she may have a claim for "constructive ouster." 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** 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.
- ✓ If you keep your land vacant, check it every year or two for squatters. Should you find people living, 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<sup>53</sup> or your lawyer can bring a "**quiet title**" **action**, which is a legal action to prove that you own your land.
- ✓ You can put up signs on your property saying 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 of the 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.<sup>54</sup> 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, many landowners accidentally sell all of their land (ground level and below the ground) when they mean only to sell the mineral rights to it. This usually happens because they sign a paper thinking it is just for mineral rights when actually it is a deed for all of their property. 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 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 up or mining.

An agreement must be made ahead of time about how the landowner will be paid. He or she may be paid in cash (like a renter pays rent) or may be paid in one of a couple of other ways. For example, the landowner can ask for some of the minerals after it has been mined from the land without having to pay for any of the costs of mining. Or, he or she can get 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**.<sup>55</sup> 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.<sup>56</sup> (See section 5 on partitions for more about this).



## 8. FARM ISSUES

### *Take Advantage of Programs Specially Designed to Assist Farmers*

#### E. 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.<sup>57</sup> The federal crop insurance policies are usually either yield-based or revenue-based, with the majority protecting against crop revenue loss.<sup>58</sup> The FCIC strives to make the indemnities equal total premiums, including premium subsidies.<sup>59</sup> 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.<sup>60</sup> As a farmer, you may request that RMA expand this program to your county if a policy is not available.<sup>61</sup> While this program is not mandatory to participate in, farmers have to waive their eligibility for any disaster benefits during a crop year if they did not purchase crop insurance.<sup>62</sup> Contact your current crop insurance carrier for more information on this program.

#### F. FARM SERVICE AGENCY (FSA)

FSA has loans that can help your farm in business. The **Farm Service Agency** (FSA) is a government office, which lends money to small farmers and to others who cannot get loans from banks. Before 1994, this type of lending service was handled by the **Farmers Home Administration** (FmHA). The FSA offers many different 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.

Like many government offices, the FSA can be hard to work with sometimes. If you are having trouble with the FSA, remember you have several important rights when you work with the FSA. You have a right to appeal any decision made by the FSA. 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 following table "Tips on Working with the FSA" may give you some help so you can have a better experience with the FSA in the future.

## TIPS ON WORKING 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.
- ✓ 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.

### 1. Applying For a 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 an 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 an FSA loan.<sup>63</sup> 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.<sup>64</sup>
2. You must be a U.S. citizen.<sup>65</sup>
3. You are “creditworthy,”<sup>66</sup> which has to do with your credit history in particular over the last three years.<sup>67</sup>
4. You cannot get credit elsewhere.<sup>68</sup>
5. If applying for an operating loan, you have not been “delinquent” on any federal debt, meaning you are not more than 90 days late with any payments.<sup>69</sup>
6. You do not have a current judgment against you by the United States in a federal court (except for U.S. Tax Court).<sup>70</sup>
7. You have not been disqualified because of a Federal Crop Insurance violation.<sup>71</sup>
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.<sup>72</sup>
9. You must obtain “borrower training.”<sup>73</sup>
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).<sup>74</sup>
11. You have not received debt forgiveness from FSA in the past (with some narrow exceptions).<sup>75</sup>

12. You have assets you can use as collateral for the debt.<sup>76</sup> 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 have to be worth up to 150% of the loan.<sup>77</sup>

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 60 days), are denied a loan when you know that other farmers in exactly your situation have received them or are given less than you applied for, then you may have rights that were violated. Contact an attorney to see what rights you might have.

## 2. Late Payments on a Loan

Once you have an FSA loan, it is important that you keep up with your

payments. Otherwise, you could lose your land to the United States Government. However, if you are unable to make a payment, you are not alone. For the last several years, thousands of farmers in North Carolina have been **delinquent** (meaning late) on their FSA loans. If you are delinquent, it may not be because you are a bad farmer. You may be having money problems because prices for farm products have been low, the cost of farming has been high, or weather conditions have been bad.

If you are ninety 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 keep from having the government take your land through foreclosure. It 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.<sup>78</sup>

## 3. 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 then you must make more payments overall). Or, 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**. Or, 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 about the loan service program. The form must be sent to the FSA office within sixty days (two months) of when you received it.<sup>79</sup> Then, people from the FSA office will review your application.

They will probably talk with you several times over the course of many months about how much money you have and about your farming. After that, they will decide whether or not to allow you to **restructure** your loan, that is, to make changes in your loan. The FSA only has sixty days to do so.<sup>80</sup>

Remember, if you miss the sixty day deadline or do nothing, you will lose your chance for loan restructuring! Also, if you do not complete all the information that the FSA asked for, 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.

#### 4. 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.

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 also advise you about what kind of changes in your loan agreement you may wish to apply for. And we can give you information on preservation loan servicing, buying back your land and 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 loan options available.

You may be able 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 insure that there are no misunderstandings in the future.

#### **D. SUSTAINABLE AGRICULTURE**

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.

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**.<sup>81</sup> 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 completely different than when a building is condemned. Condemned land is 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. He or she should not charge you any money 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. A lawyer may be able to make the government change its decision. 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 lent 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. 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. However, the terms of every loan are different. You should understand your contract before you sign it. 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, you promise to give your creditor 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 lent the money can claim your collateral. In some contracts, a creditor can start claiming 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 be paid back faster. It allows them to move up the dates your payments are due. 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, get a lawyer to represent you. There may be a way for you to keep your property or you may need to file bankruptcy. (See Part C of this section).

Many people get loans to make repairs or improvements of 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 lent 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, see if you can get an extension on the loan. 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 over all. 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 (sometimes called **deeds of trust**) can be very useful because they can be paid back over a long period of time, sometimes as long as forty years. They are usually made at banks and are registered at the register of deeds in the county where the property is located.

A mortgage is a kind of secured loan in which the property is the collateral. Therefore, if you fall behind on your mortgage payments, you could lose your 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. Be sure that all changes made in your mortgage agreement are 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.<sup>82</sup> 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.<sup>83</sup>

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.<sup>84</sup> 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.<sup>85</sup> 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. Instead of going to court, you would attend a foreclosure hearing in front of 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 elements<sup>86</sup>: (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 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 90 days after a debtor's period of military service.

The clerk has the discretion to decide to postpone the hearing for up to 60 days.<sup>87</sup> 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 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 kind of suit is

called a **deficiency judgment**. In North Carolina, a deficiency judgment is not allowed if the mortgage secured your principal residence; the mortgage was not traditional (i.e. Pick a Payment) or a rate spread home loan; or if the foreclosure was nonjudicial and the mortgage was a purchase money mortgage.<sup>88</sup> 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 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 it can give you a chance to get control of your debts. You will need an attorney to help you with the forms because they are complicated. 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 or 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 sell most of what you own to pay back the people you owe money to. Then, your creditors must clear you of your debts even if they are not paid back the full amount that you owed them. Chapter 13

bankruptcy, also called the wage earner plan, is different. Under Chapter 13, you can keep all of your property, but you must pay back your debts in a set number of years.

Bankruptcy does not have to wipe you out. However, it will not take care of all your bills. For example, some tax bills, alimony and child support payments cannot be cleared by bankruptcy. Also, bankruptcy will show on your credit record for many years, making it harder for you to get a loan during that time. However, some lenders will be more inclined to make loans to individuals, especially farmers, who are involved in a bankruptcy because payment of the new debt is often approved by the bankruptcy court under the debtor's approved plan.

There are many false ideas about bankruptcy. Do not, for example, be fooled by people who tell you that bankrupt landowners are always allowed to keep their land. Different people may have different results. Your lawyer will be able to tell you if bankruptcy for you means losing your land.

### Bankruptcy Exemptions

When you file for bankruptcy, you are allowed some exemptions.<sup>89</sup> **Exemptions** are certain kinds or amounts of your property that you get to keep even though you have gone **bankrupt**. In other words, exempt

property may not have to be sold to pay your debts. However, when the exempt property does have to be sold, you get to keep a certain amount of the money made from the sale.

Shortly after you have filed for bankruptcy, you will receive a notice from the court about property exemptions. The notice will include some forms that you must fill out and return within twenty (20) days. By returning the forms, you have filed for exemptions. If you do not return the forms or do not get in touch with the clerk of court, you could lose your chance to have any property exempted.

Exemptions can be complicated. A lawyer should help you fill out the forms. They are very long and mistakes could cause you to lose your exemptions. Also, the lawyer can tell you what exemptions you will be allowed to take since the exemptions 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.<sup>90</sup> 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 may be able to keep the house.

Some things are never exempt from bankruptcy and must always be sold or given back. For example:

- Anything that you bought less than ninety days (three months) before the court declared you bankrupt is not exempt.
- If your house or land has a **materialman's, laborer's or mechanic's lien** on it, it is not exempt from bankruptcy.
- If your house or land has a mortgage on it, it is not exempt from bankruptcy and must be given back to the bank.

If you are considering bankruptcy, consult an attorney to find out if you will be able to 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 obtains 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 will 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 the 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 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. It 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.

**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 something.

**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.

**Delinquent (on a loan):** To be late or behind in paying 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 our 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 man or a woman 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 lent 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 about something.

**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 in order 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.

**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 connected to a loan or mortgage.

**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.

**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.

**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.

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

**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.

**Owelty:** 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.

**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. Its title is not guaranteed to be legal.

**Register of Deeds:** A county office where you can 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 it or bought it. This is also called adverse possession.

**Surface Rights:** When you own the land that you can walk around 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.

**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 you witness Mary Brown's signature, you have watched her sign her name on some document.

**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

<sup>1</sup> 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).

<sup>2</sup> N.C. Gen. Stat. § 22-2 (2011).

<sup>3</sup> 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").

<sup>4</sup> See *Overton v. Boyce*, 289 N.C. 291, 221 S.E.2d 347 (1976).

<sup>5</sup> 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).

<sup>6</sup> N.C. Gen. Stat. §§ 105-367, 105-368 (describing the procedures for levy of taxes and attachment, respectively).

<sup>7</sup> 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.

<sup>8</sup> See generally N.C. Gen. Stat. § 47.18 (Conveyances, contracts to convey, options and leases of land); see also Webster, *supra* at 806.

<sup>9</sup> N.C. Gen. Stat. § 47.18(a).

<sup>10</sup> 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).

<sup>11</sup> N.C. Gen. Stat. § 105-360(a) (sets forth due date of taxes, the interest charges, and delinquency).

<sup>12</sup> N.C. Gen. Stat. §§ 105-360(a)(1), (a)(2).

<sup>13</sup> 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).

<sup>14</sup> N.C. Gen. Stat. § 105-369(e).

<sup>15</sup> N.C. Gen. Stat. § 105-361(a).

<sup>16</sup> N.C. Gen. Stat. § 105-378.

<sup>17</sup> 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.

<sup>18</sup> 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.

<sup>19</sup> N.C. Gen. Stat. § 105-375(c).

<sup>20</sup> N.C. Gen. Stat. § 105-369 (describing the advertisement of tax liens on real property for failure to pay taxes).

<sup>21</sup> N.C. Gen. Stat. § 105-374(c).

<sup>22</sup> N.C. Gen. Stat. § 1-339.25.

<sup>23</sup> N.C. Gen. Stat. § 105-377.

<sup>24</sup> N.C. Gen. Stat. § 105-374(q) (application of sale proceeds).

<sup>25</sup> 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).

<sup>26</sup> N.C. Gen. Stat. § 105-277.1 (Valuation for Elderly).

<sup>27</sup> N.C. Gen. Stat. § 105-277.1.

<sup>28</sup> N.C. Gen. Stat. § 105-277.1C.

<sup>29</sup> N.C. Gen. Stat. § 105-277.1C.

<sup>30</sup> N.C. Gen. Stat. § 105-277.1C.

<sup>31</sup> N.C. Gen. Stat. § 105-277.01.

<sup>32</sup> N.C. Gen. Stat. § 105-277.2.

<sup>33</sup> 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).

<sup>34</sup> N.C. Gen. Stat. § 31-10.

<sup>35</sup> 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.

<sup>36</sup> 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).

<sup>37</sup> 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).

<sup>38</sup> N.C. Gen. Stat. § 31-3.4.

<sup>39</sup> N.C. Gen. Stat. § 31-3.5.

<sup>40</sup> N.C. Gen. Stat. § 31-3.5.

<sup>41</sup> N.C. Gen. Stat. § 31-11.

<sup>42</sup> N.C. Gen. Stat. § 21-14. Formulas are only correct with no income limits when applied to intestate real estate.

<sup>43</sup> N.C. Gen. Stat. § 46-3.

<sup>44</sup> N.C. Gen. Stat. §§ 46-7 to 46-10 (Partition Commissioners).

<sup>45</sup> N.C. Gen. Stat. § 46-17.

<sup>46</sup> N.C. Gen. Stat. § 46-22.

<sup>47</sup> N.C. Gen. Stat. § 46-22 (Partition Sales).

<sup>48</sup> N.C. Gen. Stat. § 46-28.

<sup>49</sup> N.C. Gen. Stat. § 46-28.1 (Setting aside a partition sale).

<sup>50</sup> N.C. Gen. Stat. §§ 1-35 to 1-45 (Adverse Possession).

<sup>51</sup> 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).

<sup>52</sup> 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).

<sup>53</sup> 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”).

<sup>54</sup> See 7 C.F.R. § 764.101(d), (e); see also N.C. Gen. Stat. § 1-42, § 42-25; see generally N.C. Gen. Stat. § 74.

<sup>55</sup> N.C. Gen. Stat. §§ 1-42.1 to 1-42.9 (Mineral Rights - Cloud of Title).

<sup>56</sup> N.C. Gen. Stat. § 46-4 (In-kind); N.C. Gen. Stat. § 46-26 (By Sale, Partition of Minerals).

<sup>57</sup> Risk Management Agency, *About Risk Management Agency Factsheet*, United States Department of Agriculture, <http://www.rma.usda.gov/pubs/rme/aboutrma.pdf> (last revised August 2016).

<sup>58</sup> 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>.

<sup>59</sup> *Id.*

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> Risk Management Agency, *About RMA: A History of the Crop Insurance Program*, United States Department of Agriculture, <http://www.rma.usda.gov/aboutrma/what/history.html> (last visited Aug. 11, 2018).

<sup>63</sup> 7 C.F.R. § 764.53(c) (2018).

<sup>64</sup> 7 C.F.R. § 764.101(b).

<sup>65</sup> 7 C.F.R. § 764.101(c).

<sup>66</sup> 7 C.F.R. § 764.101(d).

<sup>67</sup> 7 C.F.R. § 764.101(d).

---

<sup>68</sup> 7 C.F.R. § 764.101(e).

<sup>69</sup> 7 C.F.R. § 764.101(f) (the definition of “delinquent” derives from 31 C.F.R. § 285.13(d)).

<sup>70</sup> 7 C.F.R. § 764.101(g).

<sup>71</sup> 7 C.F.R. § 764.101(h) (Federal Crop Insurance Violation is defined in 7 C.F.R. § 718).

<sup>72</sup> 7 C.F.R. § 764.101(i).

<sup>73</sup> 7 C.F.R. § 764.101(j) (Borrower training is described in 7 C.F.R. §§ 764.451 to 764.452).

<sup>74</sup> 7 C.F.R. § 764.101(k).

<sup>75</sup> 7 C.F.R. § 764.101(d)(2).

<sup>76</sup> 7 C.F.R. § 764.103(b).

<sup>77</sup> See 7 C.F.R. § 764.103(c).

<sup>78</sup> 7 C.F.R. §§ 766.101 to 766.115.

<sup>79</sup> 7 C.F.R. § 766.101(d)(3).

<sup>80</sup> 7 C.F.R. § 766.106.

<sup>81</sup> N.C. Gen. Stat. § 40A (Eminent Domain).

<sup>82</sup> 12 C.F.R. §§ 1024 to 1026.

<sup>83</sup> N.C. Gen. Stat. § 45-102.

<sup>84</sup> N.C. Gen. Stat. § 45-21.16[c][5a].

<sup>85</sup> N.C. Gen. Stat. § 45-21.16.

<sup>86</sup> N.C. Gen. Stat. § 45-21.16(d).

<sup>87</sup> N.C. Gen. Stat. § 45-21.16C.

<sup>88</sup> N.C. Gen. Stat. § 45-21.38.

<sup>89</sup> 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.

<sup>90</sup> N.C. Gen. Stat. § 1C-1601(a)(1)).

