LAND LOSS PREVENTION PROJECT

TEN WAYS TO SAVE YOUR LAND

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Land Loss Prevention Project, Publisher

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 This Handbook is not intended to provide legal advice on a specific legal problem or substitute for the advice and work of an attorney. All persons having a land loss problem should contact an attorney of their choice. Published by the Land Loss Prevention Project.

TEN WAYS TO SAVE YOUR LAND

INTRODUCTION

Every year, North Carolina farmers and other landowners lose thousands of acres of land. Legal problems such as farm foreclosures, lack of estate planning, contract scams and adverse possession are often causes of land loss. Land Loss Prevention Project wants to help people keep their property and has written this handbook to assist landowners and farmers. This handbook provides information on the most common ways land is lost and gives advice on how to protect it. Small landowners and people working for them will find this handbook useful. People who own homes may also find some sections in this handbook helpful.

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. Also, 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; clicking on any underlined words will open up a resourceful website.

The information in this handbook is not a complete list of everything that you may need to know to help you protect your land. 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.

LAND LOSS PREVENTION PROJECT

The Land Loss Prevention Project (LLPP) is a nonprofit, public interest law firm created by the North Carolina Association of Black Lawyers in 1983 in response to its deep concern about the steep decline in the number of small farmers and minority landowners in North Carolina. Our mission is to provide technical support and legal assistance to financially distressed and limited resource family farmers and landowners. Direct legal assistance, 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 small farmers and rural landowners are some of the techniques utilized by the Project. 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 400 West Main Street in Durham, North Carolina, and we serve individuals and communities throughout the state.

TABLE OF CONTENTS

1. DEEDS

Protect Your Right to Your Land with a Deed

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

Every time property is sold, 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**. If you own land, make sure you have a deed for it.

A. FEATURES OF A DEED

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

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

If you are buying a piece of property and you sign a **contract** for sale before you sign a deed, the seller might make several promises in the contract. For instance, the seller might say in the contract that he or she guarantees you will not have any boundary problems. You must make sure that these promises also appear in the deed. If they do not, then those promises will be lost.[5] In other words, the deed, not the contract, defines which legal rights you have. 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. A lawyer can help you with these matters.

B. TYPES OF DEEDS

A **warranty deed** insures that the grantor is validly conveying title to the land. The grantor of the deed guarantees that he or she has the legal right to give or sell the property to you. This is the best kind of deed to have because the warranty says the grantor will protect you legally from anyone who might try to claim your property. A warranty deed may still have restrictions or conditions that may limit what you, the owner, can do with your land. These restrictions should be listed on the deed and can be passed down from one owner to another. Some of these restrictions include: **mortgages**, **liens, covenants** and **rights of way**.

A **quitclaim deed** or non-warranty deed also transfers title from one person to another. However, it provides none of the protections of a warranty deed. A quitclaim deed conveys the grantor's interest in the land described, whatever that interest may be. For example, if the grantor does not actually own the land at all, 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 at all 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 ensure the grantor is the current owner and 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 will want to 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 the 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 a debt is owed on the land. These debts may include those for unpaid taxes owed on the property by the former owners, which will be passed to you as purchaser of the property. Although these are not your debts, you will be required to pay them. If you do not pay the unpaid taxes, the government can take action against you as the new owner.[6]

Not all deeds 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.

TIPS ABOUT DEEDS

- Register or record 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 shows to the world that you own your land.[7] 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 purchased the same property, the person who registered his or her deed first is considered the legal owner.[8]

- 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 an **easement** on your property, which is areservation 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.[9]

- Never write on your deed without the advice of an attorney. Otherwise, you may make changes that you did not mean to make.

- If there is a dispute over who owns your land, a lawyer can help you bring a **quiet title action.** Your lawyer would first gather information and do a title search, and would then file a lawsuit asking the court for a ruling on who the correct owners are. .

- An owner of land can never sell, will or give more land than he or she owns. If a piece of land is owned by several people and one of them decides to sell, that person may only sell his or her share of the land and no more. (See part 4 about adverse possession and part 5 concerning partition).

- If you are married, any property that you and your spouse acquire 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 a husband says in his will that his share of the property goes to someone else, his wife will still become owner of the whole property at the time of his death. The same is true if a spouse tries to sell the whole property. A spouse cannot sell property owned in the entirety without the other 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.

- There are different types of land ownership. 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 “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.[10] However, people who own their land "forever" can will their land to anyone they choose (with the exception of property owned in the entirety by spouses).
- Do not make informal, unwritten 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. 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 your nieghbor’s. If you have a situation like this, consult an attorney.

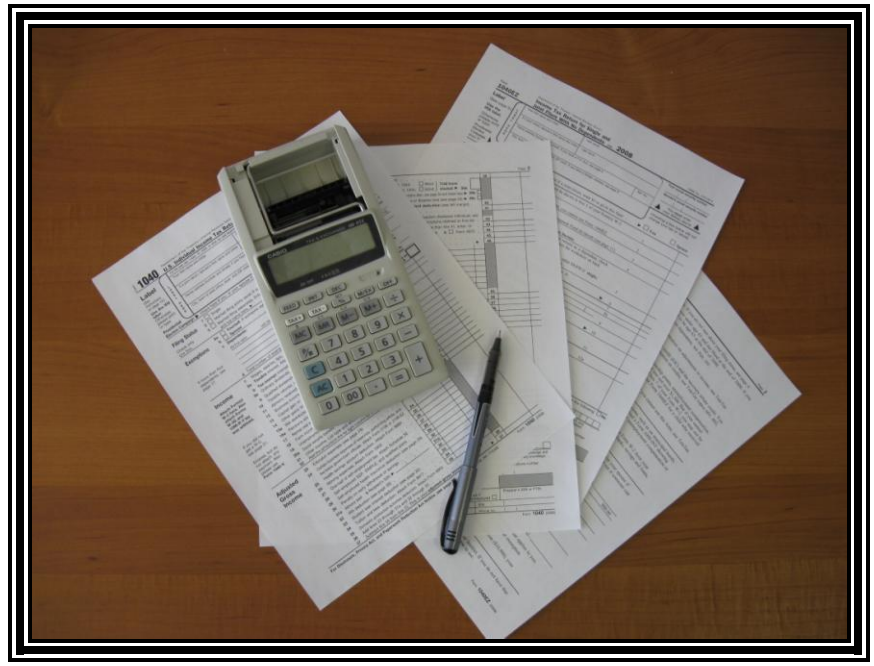
2. TAXES

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.[11] 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** in the following amounts: 2% for January 6 to February 1 and ¾% for each additional month that your bill goes unpaid.[12] For example, if your 2011 property tax bill is $1,000, then you must pay the $1,000 before January 6, 2012. If you pay after January 6, 2012, 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).



All of the problems described below can be avoided by paying your taxes on time! If you have any questions or are unsure whether there is a tax lien against your property, contact a lawyer for help. Also, avoid any surprises by carefully checking your mail. Most often, if your land is being foreclosed upon, you will receive a notice in your mail. Always read your mail daily. If you receive a notice regarding your property, contact a lawyer to determine your rights.

A. TAX LIENS

For each month that your taxes go unpaid, your tax bill gets higher. At the same time, the government can put a **lien** on your property. By placing a lien on your land, the government is claiming a type of ownership interest in your land. If the taxes owed are not paid, the government also has the power to seize your property and garnish your wages.[13]

Beginning around March, the tax collector will advertise all **tax liens** in the local newspaper, the courthouse and the city hall. The advertisement will list, in alphabetical order, the names of everyone who owes property taxes. Each name will be followed by the address of the property and the amount of unpaid taxes. The advertisement will also give notice that the unpaid taxes will be increased by interest and costs and that the county or city may sell the land to collect the taxes.[14]

To get rid of a tax lien and reclaim your land, you can pay the taxes, interest and advertising cost at any time during the advertising period.[15] Be sure to get a receipt from the tax collector for every payment you make. Pay your taxes only to the tax collector at his or her office. Do not pay taxes to a lawyer or to any other person. 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.[16] This certificate will tell you the total amount of taxes owed on your property.

B. FORECLOSURE ON TAX LIENS

If your property taxes are not paid, the government can collect the tax by foreclosing its lien and selling your land. This is called **foreclosure**. It can be done 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.[17] This certificate acts as a judgment and the government can execute that judgment after it has been on file in the courthouse for at least three months, but no longer than two years.[18] Execution means that the government can have the land sold by the sheriff at public auction.

When the government uses this method, it must provide you with a notice of tax lien foreclosure. At least 30 days before the foreclosure, the government must send the notice registered or certified mail to you. The notice will be sent to your last known address. If the government is unable to find your correct address, it can attempt to notify you in other ways such as publishing a notice in the newspaper and can still go through with the foreclosure.[19]

A tax foreclosure can be stopped prior to the sale. You or any other person having an **interest in the land** can ask the clerk of superior court to cancel the foreclosure if the taxes and costs have been paid or the tax lien was illegal.

If the sale goes forward, it will be by public auction and you can bid on the property at the sale if you have the funds to do so. 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.

2. Foreclosure by Court Order

A court ordered tax foreclosure is more complicated and is used less often. It can start any time after a tax lien is put on the land.The listed taxpayer and all other persons entitled to be made parties to the action are served with a summons and complaint (papers that begin a court action) or may be served by publication (notice in the newspaper) if their addresses are unknown.[20]

You or your attorney can file an answer to the complaint filed by the tax office. In your answer, you can raise defenses which may include that: 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 hearings or a trial will be held to sort all this out. If the court ultimately orders a sale, 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. After the sale, there is a 10-day upset bid period when anyone can place a higher bid.[21] 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. Once the sale takes place and the deed is recorded with the register of deeds, there is a one-year time limit for challenging the sale. [22]

If the county or municipality waits longer than ten years to bring an action for unpaid taxes, they lose their right to foreclose.[23]

The money collected from the sale is used to pay off the tax lien and all other fees owed. If there is money left over, the court will decide who is entitled to it.[24] However, if the money collected from the sale of your property is not enough to pay all the unpaid taxes and fees, you may still be liable for the remaining balance. The government can go after other property you own or your wages.[25]

D. SPECIAL TAX BREAKS

1. Senior Citizens / Disabled Citizens

Some senior citizens and disabled individuals may qualify for lower property (home and land) tax rates. They must be at least sixty-five years old or permanently disabled, residents of North Carolina, and earn roughly $25,000 or less after income taxes.[26] Disabled individuals must provide proof of their disability, like a certificate from their doctor. To receive this special rate, apply by June 1 to the county where you live or to the Department of Revenue if your property is appraised by that department.).[27] (See section 9 on tips for the elderly.)

2. Agriculture

To help farmers, there are also special, lower tax rates on many farm products.[28] 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. You should consult with an attorney if you have questions about these tax rates.

3. WILLS

Make a Will - Avoid the Pitfalls of Heir Property

A **will** is a written document that allows you to give the things you own to the people you choose after your death.[29] Anyone who owns anything should have a will, and landowners especially need a will. All too often, land loss happens because landowners die without wills.

A. MAKING A WILL

You must be at least eighteen years old and of sound mind (meaning not mentally ill or otherwise mentally incompetent) to make a will. To be certain that your will is legal and to prevent problems with your will after you die, you should hire a lawyer to write your will. A will written by a lawyer is not usually expensive, and you can ask lawyers about their fees ahead of time. 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 should not be a witness to her husband's will, but the lawyer who prepares the will can be a witness.[30]

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 beforehand because executing 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.[31]

After your death, the executor or executrix will need to take the will to the clerk of superior court 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 distribute 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.[32] If you want the land to go to that person's heirs if they are not alive, you should say so in your will—for example, "To X, or to 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.

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.[33] If possible, all the signatures should be notarized; this will make things easier after you die. If a lawyer draws up your will, your signatures can probably 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.

2. Holographic Will

This is a will written completely in your own handwriting. Although it does not need to be witnessed, it must be 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.[34] 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 will by speaking his or her wishes to at least two witnesses.[35] However, land and homes should not 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 people hearing the dying wishes. We at the Land Loss Prevention Project strongly urge you to contact a lawyer to prepare an attested will and to urge your loved ones to do the same before this situation arises.

C. Keep Your Will In A Safe Place

Keep your will with other valuable papers in a safe place, protected from fire, theft and floods, or in a safe-deposit box. Or, for no charge, you may file it with the clerk of superior court. [36] You have access to your will at the clerk's office, but other people do not (unless you give the clerk special permission).

D. Pre-Printed Form Wills

There are many pre-printed form wills available on the market now. We do not recommend that you use these pre-printed form wills. 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.

E. Changing Your Will

Never cross out parts of 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. As with your original will, it is best to work with a lawyer to make any changes to or rewrite your will.

F. If You Make A New Will

If you make a new will, be sure to destroy the old will and any copies. Put the new will in the same safekeeping place as before. Remember, it is best to have a lawyer write your new will.

G. 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**), the government must make these decisions for you. If you die without a will in North Carolina, there is a complicated method for deciding who gets your belongings.

If you, as a landowner, die without a will, your property may end up with someone other than who you wanted to have it. If you 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**."

H. HEIR PROPERTY

Land ownership works best when one or two people own the land. Then it is clear who the owners are; who has the right to live on the land, farm it, sell the timber, take out a mortgage, or sell the land to someone else; and who has the responsibility to take care of it and pay taxes on it.

When several people own land together as heir property, there can be many problems. If land has been passed down without a will, especially for more than one generation, it is often difficult to determine who all the heirs are, and each one's ownership percentage. As mentioned above, when a landowner dies without a will, North Carolina law determines who that person's heirs are. To have a complete picture of who the heirs are, you should find out and keep records of family tree information including names, dates of death, and spouse information. With this information, a lawyer can help you determine the owners of heir property under North Carolina law.

Each heir has the rights and responsibilities of an owner, but often, all the heirs do not share fairly in using the land or in taking care of it or in making tax payments. Decisions may be difficult to make if everybody has a different opinion, and some owners may take more of an interest in the land than others. Some may want to sell the land 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 sells or gives away his or her rights to the land, sometimes all of the land ends up being sold if the new owner chooses to bring a partition action, discussed below. Also, when owners decide to divide the land amongst themselves, there can be problems figuring out how to divide the land fairly and who gets which piece. (See section 5 on partitions.)

If your property is heir property partially owned by other people, you may have trouble using that property as collateral for loans from banks and other creditors because there is no clear owner. This might lead you to sell your ownership interest if you decide it is not of use to you.

I. 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. Make a will and 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 offer to buy them out. A lawyer can help them "deed" their share to you.

4. 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 long time even though they have not inherited it or bought it from you. This is called **adverse possession,** and is sometimes called "**squatter's rights**."[37] These people, sometimes called squatters, can become the owners of the land by proving several things in court.

IN NORTH CAROLINA, SQUATTERS MUST BE ABLE TO PROVE:

- 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 shows 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).[38]

- They used the land openly as their own and acted like the true owners would, so that anyone, including the true owners, could have known the squatters were claiming the land.

- Their use of the land included physically entering or going onto the land, and was continuous enough that others could notice it.

- They did not have permission from the true owners to use the land.

- They were using the land exclusively and were not sharing it with the true owners or others.

If you own the land with someone as a cotenant or heir, that cotenant might be able to bring an adverse possession claim against you if they have been using the land and you have not for the full 20-year period.[39] If your cotenant has taken steps to deny you access to the land, he or she may have a claim for "constructive ouster."

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 regularly 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** or your lawyer can bring a "quiet title" action.

- 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 is trying to take your land by adverse possession, contact a lawyer immediately.

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 or heirs is called a **cotenant**. If all the cotenants decide they want to divide up the land, they can do this without going to court. Surveyors and lawyers can help with the division of the property and drawing up the deeds. It is necessary to know who all the cotenants are and for everyone to agree.

If all the cotenants do not agree, any one of the cotenants who wants to divide off his or her share of the property can ask the court for either an actual, physical **partition** or a partition sale. An actual 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. A cotenant may instead want to have the entire property sold, and most partition actions in court lead to a sale of the entire property. The land is sold at public auction and the price may be less than what it is worth. Anyone can bid at the auction. 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. In the petition, the cotenant can ask that the land be physically divided among the owners 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. If you are notified that someone has brought a partition action against property you own, contact a lawyer as soon as possible because you have a limited time to file a response with the court.

B. Dividing Land By Partition

If the clerk of court decides that the land should be physically divided through an actual partition, the clerk will appoint three people to be commissioners. The commissioners 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.[40] They will divide the land based on each cotenant's ownership share, since some of the owners may have inherited a larger share of the land than others. If the land cannot be split up perfectly according to each owner's interest and some pieces are more or less valuable than they should be, the commissioners may make some owners pay money to others to even things out and make the division fair.. 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.[41] 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 file an exception with 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 through the court. The total cost includes fees for the surveyor, appraiser, attorneys, commissioners, and the expense of new maps and deeds. This is often more expensive than if the cotenants had agreed to have the land physically divided outside of court.

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.

- 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.

- 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 can 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.

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. 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.

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 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 at least one cotenant.[42]

If the court does decide to sell the partitioned land, this is usually done by public auction. All of the other cotenants must be notified at least twenty days prior to the sale.[43] 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.

Be sure to get a lawyer as soon as you learn that your land is going to be partitioned. Although the court is supposed to try to divide the land, the outcome depends on the evidence and arguments that are presented to the clerk. A lawyer can help you make your side heard.

Even after the land is sold in a partition sale, 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 problems for you and the other owners.[44]

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.

You want to show that each owner will be better off with their own share of the land than with their share 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 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 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 such a contract and later decide to ask for a partition, the court will not allow it.

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 court or government officials. 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. 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 the **mineral rights** to your land.[45] 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. Depending how the sales contract or lease is written, this person may be allowed to own all that he or she digs up.

Unfortunately, sometimes 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**.[46] 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.[47] (See section 5 on partitions for more about this.)

7. FARM ISSUES

Take Advantage of Programs Specially Designed to Assist Farmers

A. FEDERAL CROP INSURANCE CORPORATION

The Risk Management Agency (RMA) under the USDA operates the Federal Crop Insurance Corporation (FCIC). The FCIC's mission is to provide crop insurance to American providers in order to preserve and strengthen the economic stability of America's farmers.[48] The federal crop insurance policies are usually either yield-based or revenue-based, with the majority protecting against crop revenue loss.[49] The FCIC tries to make the indemnities (the amounts paid to farmers if they have a loss) equal total premiums (the amounts paid by farmers for the insurance), including premium subsidies.[50] 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.[51] As a farmer, you may request that RMA expand this program to your county if a policy is not available.[52] While this program is not mandatory to participate in, farmers give up their eligibility for any disaster benefits during a crop year if they did not purchase crop insurance.[53] Contact a crop insurance carrier for more information about this program.

B. FARM SERVICE AGENCY (FSA)

The **Farm Service Agency** (FSA) is a government office which lends money to small farmers and to other rural landowners who may not be able to 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.

The FSA is designed to help farmers. If you are having trouble with the FSA, remember you have several important rights when you work with the FSA.

YOUR RIGHTS IN WORKING 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. They can be witnesses to what is said in the meetings. ✚ 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 make the FSA follow and improve its rules.

1. Applying For A FSA Loan

Although the FSA helps lots 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 days to decide if you qualify to be considered for an FSA loan.[54]

REQUIREMENTS TO QUALIFY FOR FARM SERVICE AGENCY LOANS

- You must have "legal capacity" to be held responsible for the loan debt.[55]
- You must be a U.S. citizen.[56]
- You are "creditworthy,"[57] which has to do with your credit history, in particular over the last three years.[58]
- You cannot get credit elsewhere.[59]
- 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.[60]
- You do not have a current judgment against you by the United States in a federal court (except for U.S. Tax Court).[61]
- You have not been disqualified because of a Federal Crop Insurance violation.[62]
- 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.[63]
- You must obtain "borrower training."[64]
- 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).[65]
- You have not received debt forgiveness from FSA in the past (with some narrow exceptions).[66]
- You have assets you can use as collateral for the debt.[67] 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.[68]

The FSA can 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. In recent years in North Carolina, thousands of farmers 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 90 days late in your payments, you will receive a notice from FSA. This notice will explain what steps you must now take to try to 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.[69]

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 FSA) which is called a **write-down**.

The process of changing your loan agreement with the FSA 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 60 days of when you received it.[70] Then, people from the FSA office will review your application. They will probably talk with you several times 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 has sixty days to make a decision after it receives your completed application.[71]

Remember, if you miss the sixty day deadline and do not take action, 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. 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** an FSA 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; (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. (See section 10 for more information about bankruptcy.)

5. The Land Loss Prevention Project Can Help

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 fill these out correctly and on time. We can also advise you about what kind of changes in your loan agreement to apply for. And we can give you information on preservation loan servicing, buying back your land, and bankruptcy. Our services are free to many 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 to a Farm Credit lender 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. The Land Loss Prevention Project may be able to help you develop 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 crop growth while saving resources and improving soil fertility. These programs will benefit the environment by reducing erosion. Many nonprofit organizations and extension agents can provide you with information on sustainable methods of farming.

8. EMINENT DOMAIN

Know Your Rights Regarding Eminent Domain and Condemnation

Under certain conditions, our cities and towns have the power to force landowners to sell all or part of their land. This power is called **eminent domain**.[72] 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. Condemned land must be bought by the government for a fair price, meaning fair market value. This amount should be at least equal to the price of the land if it were sold to any other buyer. This is called "**just compensation.**"

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 "land condemnation" cases. It is possible that he or she will not charge you any money unless you win your case. This fee arrangement is referred 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 condemning 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 the public.

9. TIPS FOR THE ELDERLY

Take Steps to Keep Your Land in the Family

A. GIVE YOUR LAND AWAY WHILE YOU ARE ALIVE

If you are an older person, you can choose 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. This can 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. You can have the deed written so that you keep a life estate, which gives you the right to live on and keep using the land for the rest of your life.

There are advantages and disadvantages of giving your land away before your death. If you do not give away your land before your death, it is possible your heirs might be forced to sell your land after your death to pay off your taxes and bills (including your mortgage, hospital bills and funeral expenses). Also, if you give your land to your children, relatives, church, a **trust**, or favorite charity while you are still alive, they will not have to pay death taxes (estate and inheritance taxes) on the land after you die.

Disadvantages of this option include that once you give your land away, you will no longer have full rights to mortgage, sell, or use the land as you see fit. 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.

WAYS TO GIVE AWAY YOUR LAND DURING YOUR LIFETIME	
Deed Your Land to Others	**Set Up A Trust**
✚ Have an attorney prepare a deed giving your interest in the property to a family member or whomever you choose.	✚ Have an attorney prepare a trust document which gives your interest in the property to the trust. ✚ A trust creates a relationship between the trustee, the trust property, and the beneficiary of the trust.[73] ✚ The trustee must manage the trust property to the benefit of the beneficiary.

When you want to give your land to more than one person, giving it away while you are alive can prevent the fights that sometimes happen when several people own the same piece of land. A lawyer and a surveyor can help you divide up the land so you can deed each piece of it separately to each person.

Another way to deal with giving your land to more than one person 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.

If you want to keep living on or using the land, you must have it written into the deed or make a written agreement with the person or people to whom you are deeding the land.

If you want to deed your land to family members, you may want to consider selling it to themif you are having money problems and your family members can afford to buy your land

B. <u>Owning Land While On Public Assistance</u>

Public assistance programs like Medicaid, SSI (Supplemental Security Income) and others have rules about people owning land while they receive benefits. If you own land worth more than $1,000, you should see a lawyer before you apply for one of these programs. Sometimes the value of the land will make you too rich to qualify for assistance.

Even if you decide to deed away your property while you are still alive, you should see a lawyer before you apply for these programs. Deeding your land may also keep you from getting Medicaid or SSI benefits. Or doing this may mean that you will have to wait a long time for benefits. Medicare and Social Security, on the other hand, do not have any rules about owning land. You can apply for these benefits at your local Social Security office.

C. <u>Special Property Tax Rates For People 65 Years Old Or Older</u>

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 $25,000 or less after income taxes last year.[74] Also, you must be at least 65 years old or must be permanently disabled. 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.[75] 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. You can submit an application at any time up to June 1 in order to claim the lower rate for your next tax bill. You must reapply every year by this same deadline in order to keep the special tax rate.

10. DEBTS, MORTGAGES AND BANKRUPTCY

Do Not Lose Your Land Due 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. Sometimes, 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 the landowner has already given the creditor the home or land as "security" for the loan. If you borrow money, pay attention to whether you are pledging your land or home as security for the loan, or whether the loan is "unsecured" instead, with nothing pledged as collateral. If the loan is unsecured, the creditor will have a more difficult time making claims on your land or home or other property.

Usually when you borrow money or pay for something over time (using credit), you are asked to sign a contract. The first step is to make sure you understand your loan or credit 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.

The contract may 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. Avoid using your land as collateral. Pay attention to the number of missed payments it takes before the creditor can claim your collateral. In some contracts, a creditor can start claiming it after only one missed payment! Also, pay close attention to when your payments are due and whether there is an "acceleration" clause in the contract. Acceleration allows creditors to 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 have missed payments or otherwise broken the terms of your loan, the creditor will probably take action against you. If the creditor has already taken your collateral and claims it is not valuable enough to cover the debt, or if the debt was unsecured with no collateral, the creditor may file a lawsuit against you for the debt you owe. Assuming the creditor proves that you owe a debt to him or her, 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 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 on their homes such as new roofs or aluminum siding. Often, this type of loan is a **secured loan**. In this type of secured loan, sometimes called a home equity 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 think you will have any trouble paying back a home equity loan or other type of secured loan, do not take the loan in the first place.

If you already have a debt and are having trouble making the payments, contact your creditor. 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. It is best to have a lawyer help you review the new agreement.

B. Mortgages: One Type of Loan Contract

Landowners and homeowners often **mortgage** their property to borrow large amounts of money. Mortgages (involving **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. Often, a buyer takes out a mortgage on the property he or she is purchasing, in order to have the money to purchase the property. Mortgages are usually made at banks and deeds of trust are registered at the register of deeds. A mortgage is a kind of secured loan in which the property is the collateral. The deed of trust gives the bank the right to foreclose and take the land if the owner falls behind on payments or otherwise breaks the loan contract. Therefore, if you fall behind on your mortgage payments, you could lose your property.

If you are having trouble making your mortgage payments, you should contact the bank as soon as possible. Your banker (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 bank may begin to foreclose on your property. Depending on the terms of your deed of trust, you may receive a notice of default or notice of acceleration of your loan. The foreclosure action starts with a court hearing. You should receive a written notice, giving its time and place, at least 10 days before the date of the hearing. If you receive such a notice about your mortgage, you need to contact a lawyer immediately. Also, save the notice and any other papers or information related to your mortgage. They may contain information that is useful to your lawyer.

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 come to and speak at the hearing. You might also receive a notice of the foreclosure sale along with the notice of hearing.

The purpose of the hearing is to decide if the bank should be allowed to foreclose on your property. You may want to ask the clerk to postpone the hearing for reasons such as that you are trying to work out a resolution of your bank, you are getting the money together to pay what you owe, or you have not had time to obtain an attorney.

The clerk who will make the decision will study all sides of the case. If you do not believe you are behind on your payments or if you have made payments that the bank has not accepted, you or your lawyer should bring this up at the hearing. There may be other defenses to a foreclosure; it is best to have a lawyer to help you raise them. If the clerk decides that there is a valid debt and deed of trust and that you did not keep up your end of the mortgage agreement, he or she will probably allow the bank to go ahead with a foreclosure sale.

You can appeal to the judge of the superior court within ten days of the clerk's decision to allow the sale. 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—the landowner will receive notice of the sale, which is by public auction followed by an upset bid period. (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, including any interest and penalties, and the costs of the foreclosure action. 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**. If such a suit is brought against you, you should get a lawyer. Your lawyer may be able to defend you by showing that the property was sold for much less than its true value.

4. When You Have Paid Off a 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 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 from the register of deeds 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. Depending on your situation, including the kinds and amounts of debts you owe, property you own, your income, and your day-to-day expenses, 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 want to have an attorney to help you with the forms because they are complicated. Once you have filed the required 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 and some individuals file for bankruptcy under Chapter 11. Some family farmers file under Chapter 12. Individual people, including some farmers, file for personal bankruptcy under Chapter 7 or Chapter 13.

Chapter 7 is sometimes called straight bankruptcy or liquidation. Under Chapter 7, depending on the value of the property you own, you may have to sell some of it to pay back your creditors. 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 usually keep all of your property, but you must make payments on your debts over the course of a three-to five-year bankruptcy plan. Chapter 12 is similar to Chapter 13 but is for family farmers and fisherman.

Bankruptcy does not take care of, or discharge, all of your debts. 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 and may make it harder for you to get a loan during that time. However, some lenders may be inclined to make loans to individuals, especially farmers, who are involved in a Chapter 12 or 13 bankruptcy because payment of the new debt is often approved by the bankruptcy court under the debtor's approved plan.

Bankruptcy is a complicated area of the law, and bankruptcy is not the right solution for everyone who is in trouble with debt or afraid of losing their land. Everyone's situation is different, and a lawyer experienced in bankruptcy law can give you advice about whether bankruptcy will help you, and in particular, whether bankruptcy will help you keep your land.

1. Bankruptcy Exemptions

When you file for bankruptcy, you are allowed some exemptions.[76] **Exemptions** are certain kinds or amounts of your property that you get to keep even though you have judgments against you or have filed bankruptcy. If your property does not have value above the exemption amount, it will not have to be sold to pay your debts. If the property does have to be sold, you get to keep the exemption amount amount from the cash proceeds of the sale.

SOME EXEMPTIONS

- Up to $35,000 worth of either the land, house or mobile home that you own that that you or your dependents live in, or the burial plots you own for yourself and your **dependents**. If you are married, you may each be able to claim this amount for a total of $70,000, and if you are over

- Up to $3,500 worth of one car that you own. Up to $5,000 worth of your clothes, furniture, books, musical instruments, animals, crops and other personal, family or household items. An additional $1000 of personal items for each dependent may be exempt, provided the dependents' exemptions do not exceed $4,000.

- Up to $2,000 worth of books and tools you use in your trade. For example, if you are a farmer, you can keep $2,000 worth of your farm tools and equipment.

- When only one spouse files for bankruptcy, property held as tenancy by the entirety is exempt from debts owed by the spouse filing for bankruptcy protection.

- Certain property or business partnerships may also be exempt if an individual partner files for personal bankruptcy protection.

- Health aids, personal injury proceeds, employee group life insurance policies, North Carolina unemployment compensation, AFDC payments, and some retirement benefits may also be exempt.

- Up to $5,000 of any property owned by the person filing for bankruptcy protection may be exempt if there is unused exemption amount out of the $35,000 homestead exemption.

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 in equity in 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, which is well within the homestead exemption amount and thus your house would not be sold in a bankruptcy or in a collections action by a creditor. If you are considering bankruptcy, consult an attorney to find out what property you will be able to keep.

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 and keep good records. 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 getting advice from a lawyer 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!

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 Taxes on Time
- Visit or Have Someone Visit the Property on a Regular Basis
- Create An Estate Plan
    - Will
    - 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
    - Consider a L.L.C. or Other Business Entity
- 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

STEP 5: Seek Professional Advice

- Consult a Tax Professional
    - If You Need A Referral Contact:
      Western North Carolina LITC
      http://www.lssp.org/index
      704-971-2622 800-438-1254

      Northeastern Community Development Corporation
      www.northeasterncdc.org/
      252-338-5466 ext.21 252-331-1601

- Consult an Attorney
    - If You Need a Referral Contact:
      Land Loss Prevention Project
      http://www.landloss.org/
      P.O. Box 179
      Durham, NC 27702
      1-800-672-5839

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

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 sometimes called "squatter's rights."

Appeal: To ask that a decision or judgment be reviewed in hope 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 of 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 a piece of property.

Deed of Trust: A paper used in mortgages which gives the lender rights to the property if the terms of the mortgage are violated.

Default (on a loan): When you do not follow the terms of your loan, such as not making payments on time.

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 court judgment that a lender obtains after selling the collateral for too little to cover the amount of the debt. The remaining amount is the deficiency.

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 (may include 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 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 in the partition process. 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 a creditor has a judgment lien against you or when you file bankruptcy.

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 your mortgage lender or the government takes your land because you could not pay a debt or your property taxes. 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 often owned by married couples in North Carolina. If one spouse dies, the other instantly owns the entire 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.

Materialmen's, Laborers' or Mechanics' 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 greater than 50% 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 without any guarantees about the grantor's ownership.

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 payment amounts or how often payments are to be made.

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.

Secured 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 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 and you are a witness.
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.

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

[2] N.C. Gen. Stat. § 22-2 (2011).

[3] 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").

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

[5] *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).

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

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

[8] N.C. Gen. Stat. § 47.18(a).

[9] *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).

[10] 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.

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

[12] N.C. Gen. Stat. §§ 105-360(a)(1), (a)(2).

[13] 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).

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

[15] N.C. Gen. Stat. § 105-369(e).

[16] N.C. Gen. Stat. § 105-361(a).

[17] N.C. Gen. Stat. § 105-369(b1)-(c).

[18] N.C. Gen. Stat. § 105-375(i) (outlines the local government right of in rem foreclosure).

[19] N.C. Gen. Stat. § 105-375(c).

[20] N.C. Gen. Stat. § 105-374(c).

[21] N.C. Gen. Stat. § 1-339.25.

[22] N.C. Gen. Stat. § 105-377.

[23] N.C. Gen. Stat. § 105-378.

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

[25] 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).

[26] N.C. Gen. Stat. §§ 105-277.1(a), (c) (the formula for determining income eligiblity is specified in 105-277.1(a2).

[27] N.C. Gen. Stat. § 105-277.1(c).

[28] N.C. Gen. Stat. § 105-277.01.

[29] *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).

[30] N.C. Gen. Stat. § 31-10.

[31] 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.

[32] *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).

[33] 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).

[34] N.C. Gen. Stat. § 31-3.4.

[35] N.C. Gen. Stat. § 31-3.5.

[36] N.C. Gen. Stat. § 31-11.

[37] N.C. Gen. Stat. §§ 1-35 to 1-45 (Adverse Possession).

[38] *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).

[39] 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).

[40] N.C. Gen. Stat. §§ 46-7 to 46-10 (Partition Commissioners).

[41] N.C. Gen. Stat. § 46-17.

[42] N.C. Gen. Stat. § 46-22 (Partition Sales).

[43] N.C. Gen. Stat. § 46-28.

[44] N.C. Gen. Stat. § 46-28.1 (Setting aside a partition sale).

[45] *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.

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

[47] N.C. Gen. Stat. § 46-4 (In-kind); N.C. Gen. Stat. § 46-26 (By Sale, Partition of Minerals).

[48] Risk Management Agency, *About RMA Factsheet*, United States Department of Agriculture (last modified November 2010), http://www.rma.usda.gov/pubs/rme/aboutrma.pdf.

[49] Dennis A. Shields, *Federal Crop Insurance: Background and Issues*, Congressional Research Service Report for Congress, 3 (last modified December 13, 2010), http://www.nationalaglawcenter.org/assets/crs/R40532.pdf.

[50] *Id.*

[51] *Id.*

[52] *Id.*

[53] Risk Management Agency, *About RMA: A History of the Crop Insurance Program*, United States Department of Agriculture (last modified June 20, 2011), http://www.rma.usda.gov/aboutrma/what/history.html.

[54] 7 C.F.R. § 764.53(c) (2011).

[55] 7 C.F.R. § 764.101(b).

[56] 7 C.F.R. § 764.101(c).

[57] 7 C.F.R. § 764.101(d).

[58] 7 C.F.R. § 764.101(d).

[59] 7 C.F.R. § 764.101(e).

[60] 7 C.F.R. § 764.101(f) (the definition of "delinquent" derives from 31 C.F.R. § 285.13(d)).

[61] 7 C.F.R. § 764.101(g).

[62] 7 C.F.R. § 764.101(h) (Federal Crop Insurance Violation is defined in 7 C.F.R. § 718).

[63] 7 C.F.R. § 764.101(i).

[64] 7 C.F.R. § 764.101(j) (Borrower training is described in 7 C.F.R. §§ 764.451 to 764.452).

[65] 7 C.F.R. § 764.101(k).

[66] 7 C.F.R. § 764.101(d)(2).

[67] 7 C.F.R. § 764.103(b).

[68] *See* 7 C.F.R. § 764.103(c).

[69] 7 C.F.R. §§ 766.101 to 766.115.

[70] 7 C.F.R. § 766.101(d)(3).

[71] 7 C.F.R. § 766.106.

[72] N.C. Gen. Stat. § 40A (Eminent Domain).

[73] N.C. Gen. Stat. § 36C (North Carolina Uniform Trust Code).

[74] N.C. Gen. Stat. § 105-277.1 (establishes the income limit, which has a base of $25,000 but which is increased incrementally each year as specified by the statute).

[75] N.C. Gen. Stat. § 105-277.1 (Valuation for Elderly).

[76] 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.