



GEORGIA HEIRS PROPERTY
LAW CENTER


TANGLED TITLE AND TIMBER

How Heirs Property Affects Timber Management & Sales in Georgia

www.gaheirsproperty.org
(706) 424-7557

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INTRODUCTIONS

- Teresa Moore, Community Advocate, Georgia Heirs Property Law Center
- Alexandria Arnold, Staff Attorney, Georgia Heirs Property Law Center
- Dave Coyle, Assistant Professor, Forest Health and Invasive Species Extension, Clemson University

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DISCLAIMER

Disclaimer Regarding Tangled Title and Timber Continuing Education Presentation

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TANGLED TITLE AND TIMBER

Understanding heirs property (aka tangled title) is critical to working with underserved communities.

- The Georgia Heirs Property Law Center, Inc. is a nonprofit law firm that empowers families impacted by heirs property by providing direct legal services required to fully realize and increase the economic benefits of real property ownership.
- Developed by Georgia Heirs Property Law Center, Southern Regional Extension Forestry, SFI Georgia, and Clemson Cooperative Extension, this free and publically available webinar will explain how foresters can support heirs property owners to better manage their timber as an asset.

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WHAT IS HEIRS PROPERTY?

- Home or land that has been passed from **generation to generation** in such a way that multiple people own the same piece of property.
 - The recorded deed for the property is typically in the name of the deceased relative.
 - This results in **“fractured” or “tangled” title** shared among multiple family members.
- Heirs property is created when:
 - The owner dies **with a will** leaving property to **multiple beneficiaries**; or
 - The owner dies **without a will** so the property passes to heirs at law via **intestate succession**.



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HOW WIDESPREAD IS HEIRS PROPERTY?

- USDA Forest Service and UGA Carl Vinson Institute recently studied **heirs property in 10 non-metro** Atlanta counties.
 - Study identified **38,120 acres** as probable heirs property;
 - Heirs property totaled **11% to 25% of total acreage** within individual counties; and
 - Heirs property in those 10 counties had a total tax assessed value of **\$2.15 billion**.
- Heirs property is created **every day**, as owners die without wills or don't engage in thoughtful estate planning.



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**GEORGIA HEIRS
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The Georgia Heirs Property Law Center's mission is to increase generational wealth, social justice and community stability by securing and preserving property rights.

- 6 attorneys, 2 community advocates, 1 social worker, a network of pro bono volunteers, and grassroots organizational partners.




- State-wide work with geographic focus and outreach in **Atlanta and Southwest Georgia.**


- Offices in **Atlanta, Athens, Fitzgerald, and Macon.** 

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WHAT DOES THE CENTER DO?




Legal support for families, individuals, nonprofits and municipalities through:

- Title audits;
- Title clearing; and
- Remediation of fractured title.



Land loss prevention services to help slow down land loss and secure property assets through:

- Legal and mediation counsel; and
- Development of estate plans and assistance with financial planning.




Asset education through:

- Education of community members and stakeholders about heirs property and potential impacts on owners and their communities; and
- Education of landowners about ways to increase the value of their property and generate wealth now and for future generations.

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WHO ARE THE CENTER'S CLIENTS?

- Since 2015, the Center has provided legal services and closed **173 matters** - 43 title clearing matters, 70 title search/audits, and 60 estate planning matters.
- The Center currently has **91** open title clearing and estate planning matters in **35 counties** with a total tax assessed value of **\$8.24 million** - 39 in metro Atlanta area and 52 in Central and Southern Georgia.
- The Center, in collaboration with private attorneys and prop bono title companies, has reviewed titles for **157 tracts of land** collectively valued at **\$10.01 million**.

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WHO ARE THE CENTER'S CLIENTS?

- The Center received **62** inquiries from *individuals* seeking assistance this past quarter.
- The Center's **average client**:
 - Is **64 years old**;
 - Has an annual household income of **\$24,230**.
- The Center, solely or in collaboration with nonprofit and governmental partners, has completed 167 community outreach programs, trainings, and stakeholder meetings in 35 counties and trained approximately **5,580 individuals**.



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ROAD MAP FOR TODAY

- Title to Property and Heirs Property
- Role of a Forestry Professional
- Resolution of Heirs Property Issues
- Preventing Heirs Property Through Estate Planning
- Wrap Up and Questions



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TITLE TO REAL PROPERTY AND HEIRS PROPERTY

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WHAT DOES "TITLE" MEAN?

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- **Title** is the means or right by which someone owns or possesses property.
 - Title is passed through a deed or other instrument conveying title.
- **Marketable Title** is title that is free from reasonable doubt, evidences actual ownership and ensures the property can be sold to a reasonable purchaser or mortgaged to a person of reasonable prudence.
 - Marketable title is not the same as perfect title.
 - Marketable title is insurable title.
 - Without marketable title, you typically cannot sell the property, use the property as security for a loan, or participate in many government programs.

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WAYS TO TITLE REAL PROPERTY


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- **Sole Ownership**
 - One person owns the entire property in fee simple.
- **Tenants in Common**
 - 2 or more people own undivided interests in the entire property.
 - If a co-tenant dies, his or her undivided interest becomes part of his or her estate and generally must be probated.
 - Default form of joint ownership in Georgia.
- **Joint Tenants with Rights of Survivorship**
 - 2 or more people own undivided interests in the entire property.
 - Interest of any co-tenant automatically transfers upon his or her death to the other co-tenant(s).
 - If co-tenant dies, his or her interest never becomes part of the estate and probate is not required.
 - To create, specific language must be included in the deed for the property.



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COMMON WAYS TO OWN PROPERTY

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- **Life Estate:** right to occupy and use the property or benefits of property during one's lifetime.
 - Two "owners":
 - **Life tenant** who owns and possesses property during lifetime.
 - **Remainderman** who owns property but cannot take possession of property until life tenant dies.
 - Title **automatically transfers** to remainderman upon life estate holder's death.
 - No probate needed.
 - For marketable title, remainderman should record affidavit attesting to life tenant's death with death certificate in land records.
- Properties subject to life estates can be **sold and/or mortgaged** if both life tenant and remainderman agree.



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WHAT PREVENTS MARKETABLE TITLE?


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- Defective or fraudulent deeds
- Existing mortgage loans secured by property
- Liens against the property
 - Unpaid property taxes or utilities
 - Unpaid debt for labor or materials used to improve property
- Liens against the owner(s)
 - Unpaid federal and state taxes
 - Unpaid judgments against owner(s)
- Lack of access
- Encroachments on neighboring properties
- **Heirs property status**



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HEIRS PROPERTY REFRESHER

- Home or land that has been passed from **generation to generation** in such a way that multiple people own the same piece of property.
- Heirs property is created when:
 - The owner dies **without a will** and the property passes to heirs at law; or
 - The owner dies **with a will** leaving property to multiple beneficiaries.
- **WHY IS HEIRS PROPERTY A PROBLEM?**

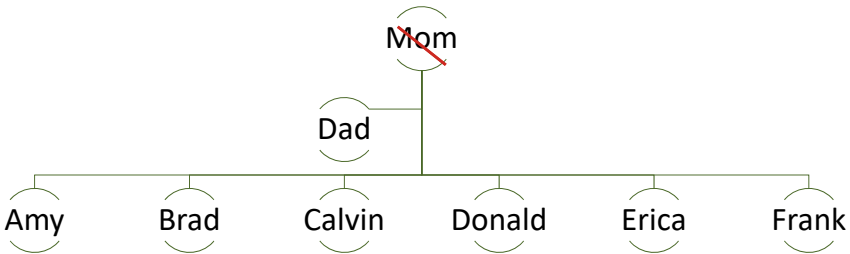
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HEIRS PROPERTY EXAMPLE #1

Mom owns a land and dies without a will.
She is survived by her husband and 6 children.
The property is co-owned by the **7 heirs**.



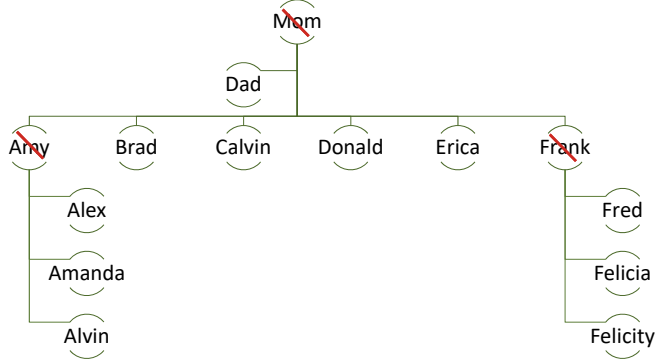
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HEIRS PROPERTY EXAMPLE #2

Mom is survived by her husband and 4 of their children.
 The 2 other children and their spouses died before Mom and did not have wills.
 But each of mom deceased children were survived by 3 children.
 The property is co-owned by **11 heirs**.



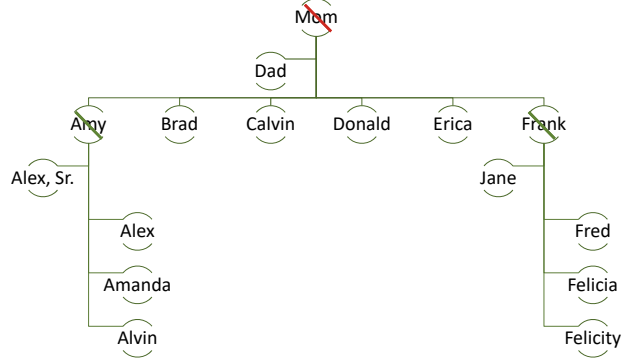
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HEIRS PROPERTY EXAMPLE #3

Mom is survived by her husband and their 6 children.
 2 children died after Mom and did not have wills.
 Each deceased child was survived by 3 children and 1 spouse.
 The property is now co-owned by **13 heirs**.



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**WHAT DOES IT MEAN
TO OWN HEIRS PROPERTY?**

Owners of heirs property are **tenants in common**:

- **Each** heir has equal rights to full use and possession of the property.
- **Each** heir is legally responsible for taxes and other property-related expenses.
- **Each** heir may transfer interest in property to another heir or outsider.
- **Each** heir may seek a partition of the property (in kind or by sale).
- **Each** heir must agree to any major decisions about the property.



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**PROBLEMS FACING
HEIRS PROPERTY OWNERS**

- Face increased risk of **forced sale and eviction**.
- **Cannot sell or mortgage** property without agreement of all heirs.
- Cannot qualify for **rehab programs** or **secure financing** for needed repairs.
- May not be able to participate in **government programs** offered by USDA, HUD, FEMA, and other federal and state agencies.
- May not qualify for **loss mitigation programs** when facing foreclosure.
- May not be able to qualify for **homestead exemptions** to reduce property tax burden.
- Can lose a connection to **family history and community**.
- Can also lose the sense of **independence** associated with ownership.
- May **ruin or permanently damage** family relationships.

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HEIRS PROPERTY INCREASES FAMILY DISPUTES AND DISCORD

- Disagreements among heirs about whether to **sell property** or **keep it in the family**.
- One or more heirs may want to use the property to the **exclusion of others**.
- Burden of **paying property taxes** or other expenses may fall on one heir.
 - Payment of taxes does not give one heir more rights than any other heir.
 - Miscommunication or disagreement could lead to loss of property through tax sale.
- One heir could use the property as **leverage** to force another heir to do something **contrary to his or her interests**.
- With heirs property, otherwise rational family members can begin to **act destructively based on sentimentality, laziness or spite**.



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CLOUDED TITLE ROBS HEIRS OF PRIMARY MEANS OF GENERATING WEALTH

When heirs have clear title...

- They can sell the property for a **profit**.
- They can open a **line of credit** or apply for a **mortgage**.
- They can use the property as **collateral for a loan** to start a business or to send their kids to college.
- They can generate income by **leasing the property**.
- They can generate income by **farming or selling natural resources** on the property.
- They can pass the property on to their **children**.



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ROLE OF A FORESTRY PROFESSIONAL

Help you (the landowner) make sound management decisions regarding your timberland.

Help you maximize the value of your timber.

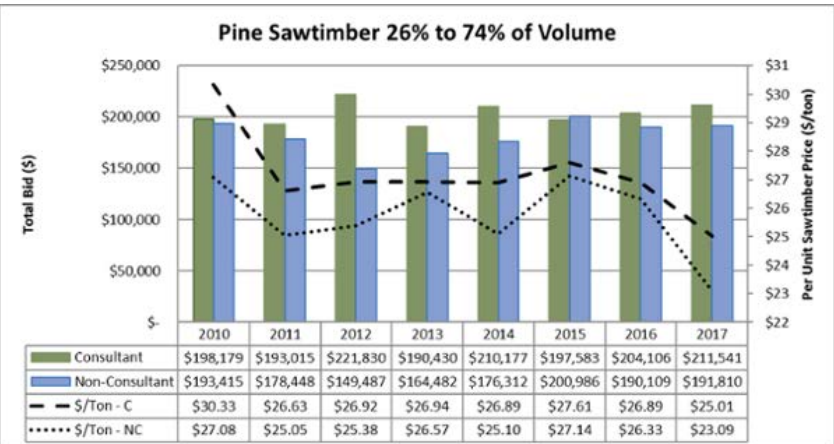
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ROLE OF A FORESTRY PROFESSIONAL

Pine Sawtimber 26% to 74% of Volume



	2010	2011	2012	2013	2014	2015	2016	2017
■ Consultant	\$198,179	\$193,015	\$221,830	\$190,430	\$210,177	\$197,583	\$204,106	\$211,541
■ Non-Consultant	\$193,415	\$178,448	\$149,487	\$164,482	\$176,312	\$200,986	\$190,109	\$191,810
- - \$/Ton - C	\$30.33	\$26.63	\$26.92	\$26.94	\$26.89	\$27.61	\$26.89	\$25.01
..... \$/Ton - NC	\$27.08	\$25.05	\$25.38	\$26.57	\$25.10	\$27.14	\$26.33	\$23.09

<https://blog-forest2market.com/data-reinforces-value-of-a-consulting-forester-on-timber-sales>

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ROLE OF A FORESTRY PROFESSIONAL


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- Help you (the landowner) make sound management decisions regarding your timberland.
 - Site preparation
 - Planting stock
 - Fertilization
 - Competition control
 - Thinning



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ROLE OF A FORESTRY PROFESSIONAL


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- Help you maximize the value of your timber
 - When and where to sell timber
 - Type of timber to sell
 - Getting the best price for your timber
 - Executing the timber sale contract



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THINGS FORESTERS WANT YOU TO KNOW
ABOUT TIMBER SALES/HARVEST


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We (foresters) only have the information given to us. If that information is faulty, future decisions based on that information will also be (unintentionally) faulty.



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THINGS FORESTERS WANT YOU TO KNOW
ABOUT TIMBER SALES/HARVEST



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We have to do a timber cruise to know the value of your product.

No cruise = determining the value of your product comes down to an educated guess.


These can be highly subjective!

Meaning the landowner may not get the full value of their timber.

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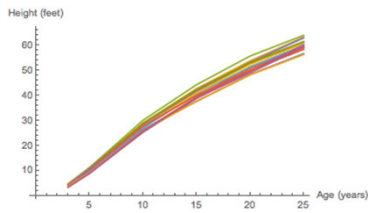
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THINGS FORESTERS WANT YOU TO KNOW ABOUT TIMBER SALES/HARVEST

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- Trees will keep growing regardless of the ownership issues.
 - If ownership issues drag on a long time, crucial silvicultural operations may be missed.
 - Stand may suffer ecologically AND financially.



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THINGS FORESTERS WANT YOU TO KNOW ABOUT TIMBER SALES/HARVEST

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- If there's not one sole owner or decision maker, **EVERYONE** has to agree on **EVERYTHING**.

YES



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RESOLUTION OF HEIRS PROPERTY ISSUES

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TITLE HELD BY SINGLE PERSON

- Requires that all heirs convey their interests in the property to **one or two heirs**.
 - If result will be multiple owners, be careful to avoid creating heirs property.
 - Owners could be “joint tenants with right of survivorship” or hold life estates.
- Heir(s) must be **prepared to purchase** other heirs’ interests if they will not convey for free.
- In exchange for deed of gift, heir(s) can **release past unpaid obligations** for taxes, maintenance and other property-related expenses.



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TITLE HELD BY SINGLE ENTITY

- **Title Held by Limited Liability Company**
 - Requires that all heirs transfer their interest to LLC, which owns property.
 - Heirs become owners of LLC with shares equivalent to prior ownership of property.
 - Operating agreement creates rules of road for how decisions are made, rights and responsibilities of members, buyout provisions, circumstances in which property can be sold and what happens to an heir's interest when he or she dies.



- **Title Held by Trustee of Family Trust**
 - All heirs agree to donate their interests in the property to a family trust.
 - Heirs become beneficiaries of trust.
 - Legal title is held by the trustee(s), which manage the property for the benefit of the beneficiaries/heirs.
 - Trust agreement controls how the trustee(s) will manage the trust, how any income will be distributed, and what happens to an heir's interest as beneficiary of the trust when he or she dies.



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PROPERTY REMAINS WITH HEIRS SUBJECT TO TENANCY IN COMMON AGREEMENT

- If heirs want property to remain in their individual names, they can sign a **tenancy in common agreement** governing the property.
- Tenancy in common agreements can:
 - Identify who can live on the **property** or manage the land;
 - Govern who is **responsible for taxes**, insurance and maintenance;
 - States that property cannot be sold or encumbered without unanimous agreement;
 - Can include provision **prohibiting transfer of interest to an outsider** without prior written consent and right of first refusal; and
 - Can **prohibit co-tenants from filing partition actions** seeking to sell or divide up property.



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PROPERTY REMAINS WITH HEIRS
SUBJECT TO LIMITED POWER OF ATTORNEY


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- Tenants in common can also appoint heir(s) to serve as **attorney-in-fact** to handle **specific financial transactions** on their behalf.
- **Limited powers of attorney** can:
 - Give attorney-in-fact the power to buy, sell or lease the property;
 - Give attorney-in-fact the right to enter into and/or sign contracts on behalf of the co-tenants;
 - Give the attorney-in-fact the power to borrow or take out loans for the co-tenants; and
 - Allow the co-tenants to participate in government programs through attorney-in-fact.



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**PREVENTING HEIRS PROPERTY
THROUGH ESTATE PLANNING**

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WHAT IS ESTATE PLANNING?

- An **estate** is all of the property and other possessions belonging to a deceased individual.
- **Estate planning** is the process of anticipating and planning what will happen to you and your property when you die or become incapacitated.
 - How will you hold title to property when you are alive?
 - Who will inherit your property after you die?
 - Who will make health care decisions for you if you are unable to make them for yourself?
 - Who will manage your property if you become incapacitated?



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WHO NEEDS ESTATE PLANNING ADVICE ABOUT HEIRS PROPERTY?

- **Everyone**, even if they don't currently own real property or just have a fractional interest in real property.
- **Estate planning is especially vital for people who want to ensure that the value of a long-term crop - like timber - gets passed appropriately to their heirs.**



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HOW CAN ESTATE PLANNING PREVENT HEIRS PROPERTY ?

- Own property as **joint tenants with rights of survivorship**.
- Prepare a **Last Will and Testament** directing how property should be distributed upon your death.
 - Leave property to **single** beneficiary.
 - Instruct executor to **sell property** and divide proceeds between beneficiaries.
 - Give family members **option to purchase** property.
 - Instruct executor to **divide property** among beneficiaries.
- Place property into **limited liability company** or **trust**.



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ADDITIONAL RESOURCES

Georgia Heirs Property Law Center (GA):
<https://www.gaheirsproperty.org/>

Center for Heirs Property Preservation (SC):
<https://www.heirsproperty.org/>

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US Endowment for Forestry and Communities,
African American Land Retention Program
(AALRP):
<http://www.usendowment.org/initiatives/forestretention.html>

Federation of Southern Cooperatives:
<http://federationsoutherncoop.com/>

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Black Family Land Trust (VA, NC, SC):
<http://www.bflt.org/>

The Roanoke Center Sustainable Forestry and
Land Retention Project (NC):
<https://www.recforestry.org/>

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Association of Consulting Foresters:
<https://www.acf-foresters.org/>

Georgia Forestry Commission:
<http://www.gfc.state.ga.us/>

South Carolina Forestry Commission:
<https://www.state.sc.us/forest/>

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Sustainable Forestry Initiative
<http://www.sfiprogram.org/>

Society of American Foresters:
<https://www.eforester.org/>

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Southern Regional Extension Forestry:
<https://sref.info/>

University of Georgia Extension:
<http://extension.uga.edu/>

Clemson Extension:
<https://www.clemson.edu/extension/>

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QUESTIONS?

- Teresa Moore, Community Advocate, Georgia Heirs Property Law Center tmoore@gaheirsproperty.org
- Alexandria Arnold, Staff Attorney, Georgia Heirs Property Law Center aarnold@gaheirsproperty.org
- Dave Coyle, Assistant Professor, Forest Health and Invasive Species Extension, Clemson University
dcoyle@clemson.edu

The Georgia Heirs Property Law Center increases generational wealth, social justice, and community stability by securing and preserving property rights of low and moderate income Georgians.
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