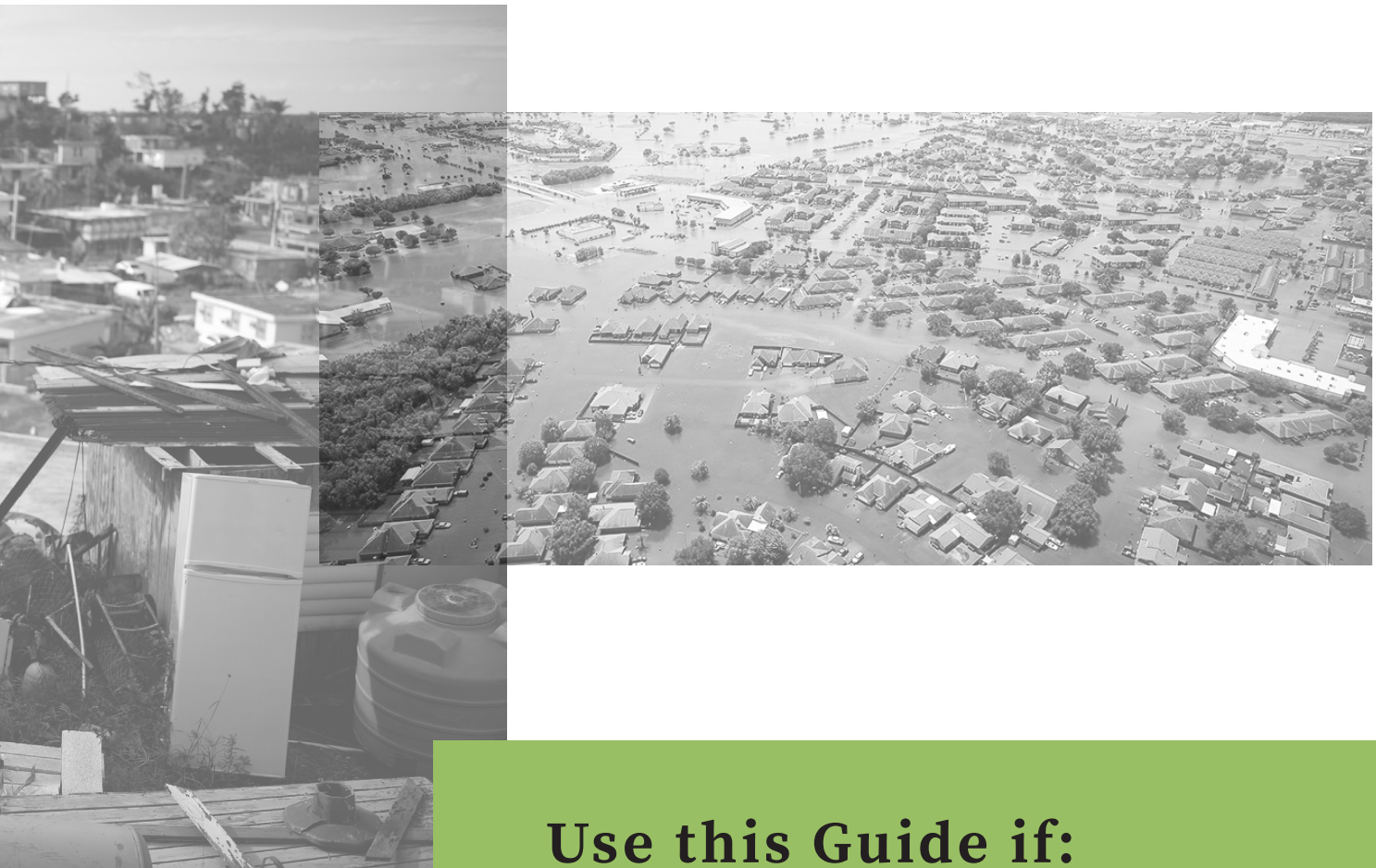


# Clearing Title Guide



## Use this Guide if:

- + You live in a family home
- + You are part-owner of a property or home
- + You were denied disaster recovery assistance because you are not the primary owner

# Clearing Title Guide

**Do you live in a family home, or have a property that was passed down?** If so, you may be one of the many who own an heir property. An heir property refers to a property that was passed down, and is now owned by multiple people. Heirs properties, or properties with a cloudy title, face additional challenges when trying to hold on to, improve, or sell a property or home because the property has divided ownership.

## Helpful Terms for Understanding Title

- + **Asset:** Assets are any property owned that has monetary value, such as cash or bank accounts, vehicles, household furnishings, and real property.
- + **Equity:** Equity is the value of an asset, minus any liabilities or debts. For example, if you own a home, and the value is higher than the total cost of your mortgage, the value left over is the equity you have in your home.
- + **Title:** Title refers to your ownership, or the rights you have to use a property. This can include full rights/ownership or partial rights. Anyone who has title, or rights to a property, can access the land, potentially modify, or seek to sell their portion of ownership. Of course, you can never legally transfer more than you own.
- + **Clear Title:** Clear title is a phrase used to describe someone or a couple who have sole ownership of a property, and no one else can make a legal claim of ownership. It is common to still use the term clear title when a property still has a mortgage.
- + **Cloudy Title:** Cloudy title is a phrase used when a property has multiple owners, or multiple people with a partial ownership claim. This can happen when properties are inherited or passed down without properly transferring the ownership of the property.
- + **Deed:** A deed is a legal tool used to transfer ownership from one to another.
- + **Heir Property:** An heir property is a property owned by multiple heirs of the original owner. This is often due to property owners not putting their property through an estate or probate process, such as filing a will in a county probate court.
- + **Intestate:** When a person dies without a will.
- + **Testate:** When a person dies with a will.
- + **Probate:** Probate is a court-supervised process of authenticating a last will and testament if the deceased made one. It includes locating and determining the value of the decedent's assets, paying their final bills and taxes, and, finally, distributing the remainder of the estate to his rightful beneficiaries.



## What Is an Heir Property?

Land that has been passed down informally from generation-to-generation is referred to as heir property. In most cases, it involves landowners or homeowners who died without a will. When someone dies without a will or legal tool, the state decides who inherits the property and what portion. This is commonly when a property's ownership becomes less clear, and its title becomes "cloudy".

Regardless of who lives in the property or pays taxes, heir property is owned by all of the heirs. Overtime, when land is passed down over several generations without a will, more and more relatives become co-owners of the same property.

The challenges related to heir property have led it to be a primary cause of involuntary land loss among Black property owners. If you want to find out if a particular property is an heir property you can contact the Appraisal District in the county associated with the property, or you can pay a title company to conduct a title search.



# What Does it Mean to Have a Clear Title?

A clear title generally mean that no one else has a financial interest in your property. It also means there is no question of ownership, and that the ownership history of a property can be easily traced. If you can look at the records for a property as see that one person sold it to another person, and they transferred to another person, who then sold it to another, and so on.

When a property is not legally transferred, or deeded over to another person this is when the title or ownership of a property can become “cloudy”. As we have mentioned, this can happen when someone dies without a will or something similar, or when a family doesn’t administer a will.

## How do I Keep My Title Clear?

### File a Transfer on Death Deed

- + A Transfer on Death Deed (TODD) is a simple way to **transfer real estate** to someone else after you die. A TODD will transfer the deceased’s real property using a simple deed. It is similar to a Payable on Death form with a bank. With a TODD, you can avoid the cost and hassle of probate, and decide in advance who should inherit your real property.

### Prepare a Will

- + If you have a **more complicated estate** you should prepare or execute a will to ensure that your property is divided according to your wishes after you die. A will does not need to be notarized in Texas, simply signed by you or your representative, and two witnesses. However, having a will notarized or “Self Proving” will speed up the probate process. A will must go through probate to legally transfer property to heirs.

### Prepare for a Disaster

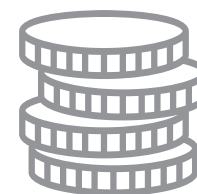
- + **Make copies** of all of your important papers (deeds, insurance, wills, proof of residence, etc) and keep them in a durable, waterproof container to keep them safe in the event of a disaster.
- + If you have to evacuate, **take these documents with you**

## Did You Know?

Title and Deed are not the same. You can have a **legal interest** in a property without a **deed**. You may also have a **deed** for a property with a **cloudy title**.

# Why Is Having a Clear Title important?

A “Cloudy Title” can make the following challenging:



**Disaster Recovery Assistance:** Disaster recovery home repair programs require that you show proof of ownership to qualify. Homeowners with a “cloudy title” have been denied access to these programs.

**Property Tax Benefits:** Texas homeowners are able to benefit from Homestead Property Tax exemptions on their primary residences. Until recently, homeowners living in heir properties were not able to apply for the exemption. Not having access to this property tax benefit meant homeowners of heirs properties were more likely to be burdened by increased property taxes or values.



**Improving or Selling Your Property:** The lack of clear title or sole ownership may prevent a homeowner from investing in their property, particularly if they do not think they will benefit from the investment. Additionally, they may not be able to qualify for local home improvement or repair programs. When selling a property with multiple owners, all of the owners must agree to the terms of the sale and sign the final sales documents. Getting everyone to agree can be difficult.

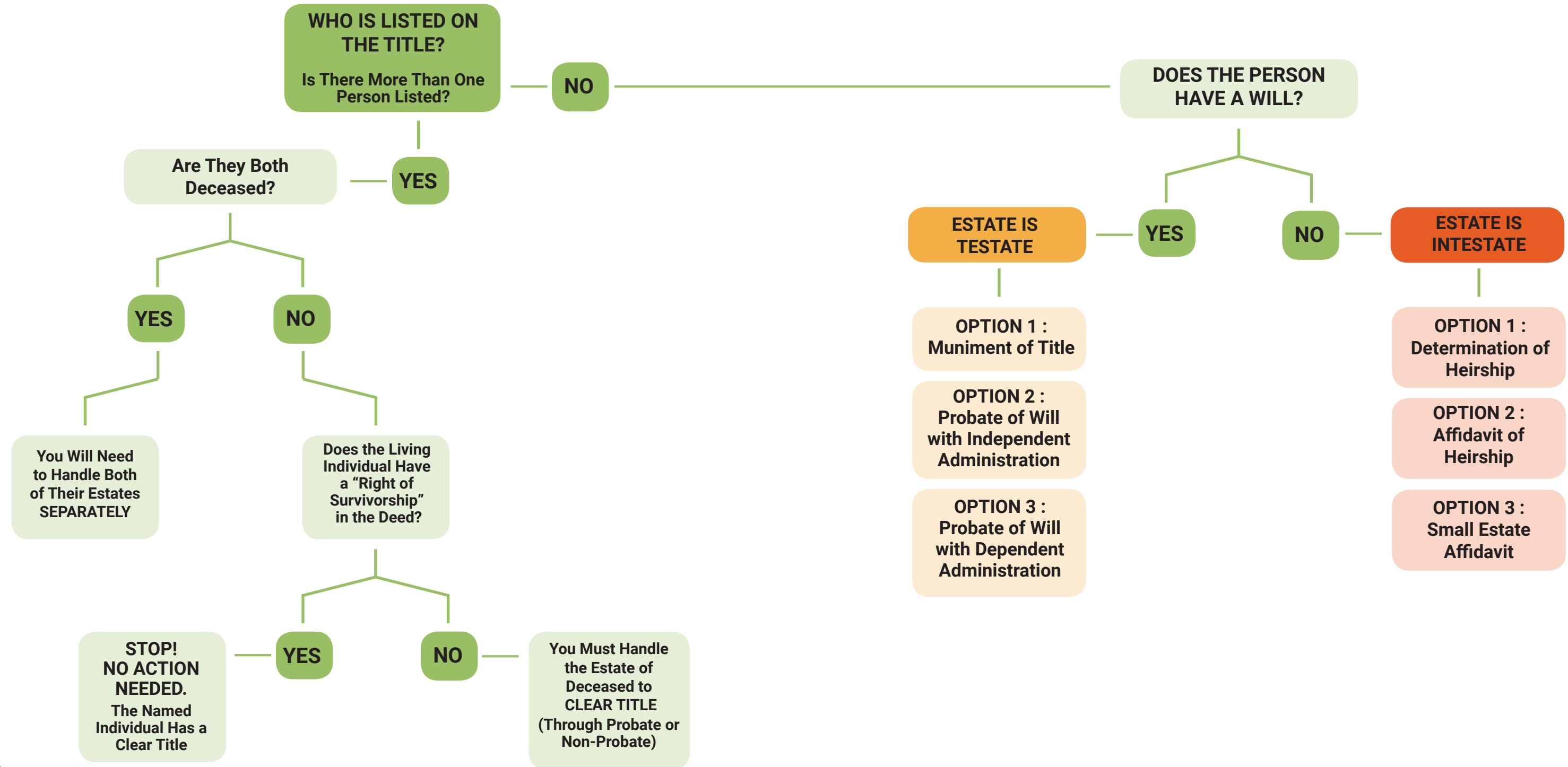
At a larger scale, properties with lack of clear title can lead to underinvestment in land, the deterioration of property and neighborhoods, and the abandonment of property that then becomes extremely difficult to redevelop.

**Getting a Loan:** Many homeowners use the value of their home, or equity, to help them get a loan. They can use this money to improve their home, help pay for education, or other big expenses. Having only a partial interest in a property may make it difficult when applying for a loan.



# How Do I Clear My Title?

Clearing a title can be a long and complicated process. ***It is recommended that you seek the guidance of a lawyer to help you.*** Some of the options for clearing a title will require that you file forms with your local probate court or county court, go before a judge, or be represented by a lawyer. This should help you get familiar with what is involved in clearing your title.



# Estates With a Will

## *Testate Options*

### Option 1: Muniment of Title

- + The deceased must have will
- + Good option for estates valued under \$50,000 (excluding the value of the home)
- + This option is faster than Probate of Will with Issuance of Letters
- + Only works to transfer a homestead, or primary dwelling, property
- + The property cannot have a Medicaid Estate Recovery Program (MERP) claim, or the MERP claim has to be waived
- + The estate's debts cannot exceed the value of its assets
- + Cannot be used to transfer financial assets from a bank or other institution UNLESS cleared with the bank ahead of time
- + Must have an attorney
- + You must go to probate court

### Option 2 & 3: Probate of Will with Administration

- + Independent or dependent administration
- + Best option if the deceased left a will that names an executor and gives them power to make decisions for the estate
- + Only option if the estate includes:
  - Non-homestead real property
  - Assets of \$50,000
  - A MERP claim
  - Debts that exceed the estate's assets

# Estates Without a Will

## *Intestate Options*

### Option 1: Determination of Heirship

- + Best and clearest option
- + Must include information about all heirs, marriages, estate assets, estate debts
- + You must give notice to all heirs and creditors and receive waivers stating they let go of any claim to the property
- + Must post notice for all unknown heirs and potential creditors
- + Process applies to all estate property, not just real property
- + Results in Issuance of Letters of Administration, which gives the named Administrator the ability to
  - Clear title by deed
  - Collect assets for banks and financial institutions
  - Work with mortgage companies and other creditors
  - Transfer title of vehicles
- + Only way to immediately get clear title to non-homestead real property
- + Requires an attorney
- + Must go to court

### Option 2: Affidavit of Heirship

- + A form filled out by two unrelated people who knew the deceased.
- + They must list all heirs on the affidavit
- + Texas Probate Code outlines how property will be divided

### Option 3: Small Estate Affidavit

- + Must have same information and witnesses as in Affidavit of Heirship
- + Estate must:
  - Have a value under \$50,000 (excluding the value of the home)
  - Be valued higher than the value of its debts
- + Can only be used for a homestead, or primary dwelling, property and other personal assets (car, personal belongings, etc.)
- + Some banks and financial institutions will NOT accept Small Estate Affidavits to release funds. Instead, they require Letters of Administration.
- + No Lawyer required
- + Must go to court

## Common Documents Used in Clearing Title:

**Affidavit of Heirship:** This form lets people know that you inherited your house from somebody. You will have to gather information on the person who died, as well as have witnesses who can say under oath that the affidavit is true and correct. Use this document when you don't have a will.

**Will:** This document is a way for people to decide how and where their property goes when they die. If you are listed in the will as the person who got the house, this will help you prove you own the house. If it has been more than four years since the person who wrote the will died, you will need to go to probate court to use the will.

**Quitclaim Deed:** Legal document used to transfer ownership of a property, or someone's share of ownership to another person or organization. If other heirs to a property are willing to give up their ownership stake, these are two tools could be helpful in consolidating ownership. You may want to consult with a lawyer or title expert when choosing which process offers the best tax and liability outcome for your situation.

**Application to determine heirs:** This is used to determine who inherits property after somebody dies without a will.

**Muniment of Title:** This is used when you have a will and the only thing you are trying to do is get a title to the home.

**Small Estate Affidavit:** This is used when you don't have a will, when the estate is worth less than \$75,000, when the only property is the home, and the home will be inherited by the deceased

## Common Probate Terms

**Decedent:** The person who died

**Estate:** The property that belonged to the decedent.

**Exempt Property:** Some property in a deceased person's estate is exempt from forced sale under the state constitution or Texas state laws to pay debts, including any allowance paid in place of that property.

**Family Allowance:** The Texas Estates Code allows for payment of a family allowance sufficient for the maintenance of the decedent's surviving spouse, minor children, and adult incapacitated children for one year from the date of the decedent's death. The amount of the family allowance is set by court order.

**Intestate Succession:** How the courts determine to which relatives the property is distributed when someone dies without a will.

**Liabilities:** Liabilities are debts owed by the deceased at the time of his or her death.

**Personal Representative:** A personal representative is someone authorized to take actions on behalf of a deceased person's estate. The term "personal representative" can include an executor, an estate administrator, or a successor estate administrator.

**Separate Property:** Separate property is property owned before marriage, property owned after a final divorce decree, or property acquired by gift or inheritance. It must be distinguished from community property, which is any property acquired during marriage other than by gift or inheritance.

## Additional Help...

### Who do I call if I need help with a title issue?

- + Reach out to Texas Legal Aid to see if they can help you address your title issue.

### Where do I find additional information about probate, wills, or estate planning?

- + TexasLawHelp.org is a helpful online resource
- + Visit your local Probate Court or County Court to get the forms you need, and additional information on how they process cases.
- + Print out a TODD from TexasLawHelp.org

### Reference:

1. What You Need to Know About Heir Property, USDA
2. North Texas Legal Aid
3. Lone Star Legal Aid

### About This Project:

buildingcommunityWORKSHOP has developed four disaster recovery guides to help support those recovering from a disaster event. The content in this guide was developed with the support of Lone Star Legal Aid.

This Hurricane Harvey recovery project was funded in part by a grant from the American Red Cross.







# 04

## Red Cross Disaster Recovery Guides

- 01 Avoiding Contractor Fraud
- 02 Renter's Rights After a Disaster
- 03 Flood Insurance Guide
- 04 Clearing Title After a Disaster