



Farm Service Agency

Guidance for Heirs' Property Operators to Participate in Farm Service Agency (FSA) Programs

FACT SHEET
December 2022

Heirs' Property Overview

Heirs' property is family owned land that is jointly owned by descendants of a deceased person whose estate did not clear probate. The descendants, or heirs, have the right to use the property, but they do not have a clear or marketable title to the property since the estate issues remain unresolved.

The 2018 Farm Bill authorizes alternative documentation for heirs' property operators to establish a farm number. A **farm number** is required to be eligible for many different USDA programs, including lending, disaster relief programs, and participation in county committees.

Operators on heirs' property who cannot provide owner verification, or a lease agreement, may provide alternative documents to substantiate they are in general control of the farming operation.

What is the Difference Between a USDA Farm Operator and Farm Owner?

A **farm operator** is defined by USDA as an individual, entity, or joint operation who is in general control of the farming operations for the current year. The farm operator is the person who runs the farm, making day-to-day management decisions. The operator could be an owner, hired manager, cash tenant, share tenant, or a partner.

USDA defines a **farm owner** as an individual or entity who has legal ownership of farmland.



How Do I Establish My Farm as an Operator?

How to establish your farm as an operator may vary based on whether you farm in a state that has enacted the Uniform Partition of Heirs Property Act (UPHPA). UPHPA helps preserve family wealth passed to the next generation in the form of real property. If a landowner dies intestate, the real estate passes to the landowner's heirs as tenants-in-common under state law. As of December 2022, 22 states and the Virgin Islands have passed the UPHPA. To see if your state has enacted the Act, please visit this **Uniform Partition of Heirs Property Act webpage**.

In states **that have adopted the UPHPA**, the following are options FSA recognizes to establish your farm as an operator:

- A court order verifying the land meets the definition of heirs' property as defined in the UPHPA, or
- A certification from the local recorder of deeds that the recorded owner of the land is deceased and at least 1 heir has initiated a procedure to retitle the

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- land, or
- any of the options listed below for heirs in states that have not adopted the UHPA.

In states that have and in those states **that have not adopted the UHPA**, the following are accepted by FSA to establish your farm as an operator:

- A tenancy-in-common agreement, approved by a majority of the owners, that gives the individual the right to manage and control a portion or all of the land.
- Tax returns for the previous 5 years showing the individual has an undivided farming interest.
- Self-certification that the individual has control of the land for purposes of operating a farm or ranch.
- Any other documentation acceptable by the FSA county office, that establishes that the individual has general control of the farming operation, including, but not limited to, any of the following:
 - affidavit from an owner stating that the individual has control of the land
 - limited power of attorney giving the individual control of the land
 - canceled checks and or receipts for rent payments and/or operating expenses.

Important Note: All of these methods are acceptable by FSA offices regardless of the UHPA state designation.



How Do I Establish Farm Ownership?

Proof of ownership may include the following:

- A copy of the deed, if recorded.
- An unrecorded deed, if the specific USDA program does not require a recorded deed.
- A land purchase contract or other similar document that affirms ownership interest.
- An FSA employee's check of the record at the county land records office or website.
- A certification of an heir that may not be able to provide a legal documentation to confirm ownership of the property. The certification will need to be accompanied by documentation such as:
 - real estate tax assessment or bill
 - proof of gift tax
 - will
 - affidavit of ownership
 - other documentation as may exist under State law.

How Do I Get Started?

Your first step should be contacting the FSA office at your local USDA Service Center. Find your local USDA Service Center at www.farmers.gov/service-locator. Schedule an appointment to meet with the county outreach coordinator to discuss your farming aspirations and USDA programs available for new farmers and ranchers.