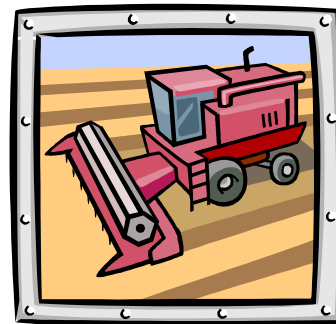
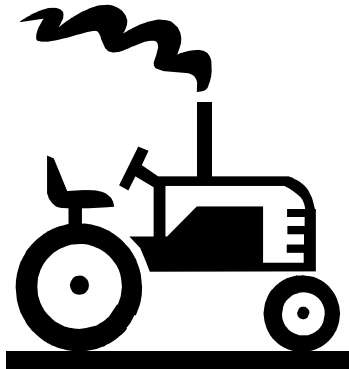




TEN WAYS TO SAVE YOUR LAND



Fifth Edition © 2005
Land Loss Prevention Project

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Fifth Edition 2005

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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 the main causes of land loss. We at the Land Loss Prevention Project want to help people keep their property, so we have written this handbook. This handbook provides information on the most common ways land is lost and gives advice on how to hold on to it. Small landowners and people working for them will find this handbook useful. And people who own homes may also find some sections helpful.

In this handbook, we will cover ten important topics about land loss. Each is explained in a separate section. There is a glossary of legal terms at the end of the book. These terms will be in bold when they first appear in the main part of the book. Also, if you are reading this document on a computer, you can click on any of the underlined words and it will take you to the definition of that word.

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.

About the 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. 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 411 W. Chapel Hill Street in Durham, North Carolina.

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1. **DEEDS**

Protect Your Right to Your Land With a Deed

As a landowner, you should have been given a deed to your property. A **deed** is a piece of paper which shows that you own your land.ⁱ The deed gives you title to your property and this **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 that you have a deed for it.

A. Features of a Deed

Written in every legal deed are the names of both the grantor and the grantee, and a description of the land and its boundaries. The deed also states that the property is being passed to a new owner. This may be written as, "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)ⁱⁱ; (2) the grantor who signs the deed fully understands what he or she is doing with the property; (2) the deed is accepted and signed by the grantee or his/her agent.ⁱⁱⁱ, and (3) the description of the property in the deed is specific enough so that the property can be identified^{iv}.

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 that you are relying upon. For instance, they might say in the contract that they guarantee you won't have any boundary problems. You must make sure that these promises also appear in the deed too; if they don't, they will be lost.^v You should also make sure that the description of the land you're buying is the same in the contract as it is in the deed.

B. Types of Deeds

A **warranty deed** insures you that the title to your land is good and legal. The grantor of the deed guarantees that s/he has the legal right to give or sell the property to you. The warranty protects you from anyone who might try to claim

your property, so this is the best kind of deed to have. However, a warranty deed may have conditions that limit what you, the owner, can do with your land. These restrictions, which should be listed on the deed, can be passed down from one owner to another. These restrictions include [mortgages](#), [liens](#), [covenants](#) and [right of ways](#).

A [quitclaim deed](#) also transfers a title from one person to another. However, it provides none of the protection of a warranty deed. A quitclaim deed conveys the grantor's interest in the land described *whatever that interest may be*, so if the grantor does not actually own the land at all, 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 find out if there were any conditions, limits 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 your land are not what you thought they were, that the state has the right to run a public sewer line through the land, or that 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 seize and sell your property to pay the unpaid taxes.^{vi}

Not all titles are good. If a lawyer did not prepare your deed when you got the title to your land, you should contact one 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 one. If there are problems, your lawyer may be able to straighten them out.

D. Tips About Deeds

- Keep your deed in a safe place, protected from fire and theft. A safe deposit box at the post office or bank is the best place.
- Register your deed immediately at the office of [Register of Deeds](#) in the county where your property is located. Because it is in a public

file, a registered deed proves that you own your land.^{vii} If your copy of the deed is lost or stolen, it can easily be replaced if it was registered. If two people each have a deed to the exact same property, the person who registered it first is considered the legal owner.^{viii}

- If there is to be an **easement** on your property- the reservation of a certain area of the property for use by another (a driveway, a walking path etc.) - be sure that the area and the specific use are described clearly in the deed. This will ensure that your land will not be used by other people or in ways that you do not desire. Also, if you expect to have an easement on someone else's property (for example, if your property is landlocked and you need to cut across your neighbor's else'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.^{ix}
- Never write on your deed without the advice of an attorney. Otherwise, you may make changes that you did not mean to make. For instance, it is possible to confuse the boundaries of your land or even to pass on the property to someone else by mistake.
- Never give your deed to anyone to hold for a debt or for any other reason, because another person could change the title of your deed. If you owe money to someone, that person should collect on your debt in other ways. If you are uncertain about the legal title to your land, contact an attorney.
- If there is a dispute over who owns your land, a lawyer can bring a **quiet title action** proving that you own it and ending all arguments over it.
- 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. (**But see** part 4 about adverse possession and part 5 concerning partition).
- If you are married, any property that you or your spouse acquires during the marriage is owned **in the entirety** (unless the deed clearly says otherwise). This means that if one of you dies while you are still married, the other will become the owner of the entire property. A married person cannot give away their "share" of the property at death; even if they say in their will that their share of the property goes to someone else, their spouse will still become owner of the whole

property at the time of death. The same is true if the spouse tries to sell the property; they cannot sell it without their spouse's consent. If they try, they will only be selling 1/2 of the property. 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 1/2 of it.

- 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." (this form of ownership is often 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.^x But people who own their land "forever" can will their land to anyone they choose.
- Do not make informal arrangements with other landowners, for instance, that they will be allowed to put a fence on part of your property, that you will be able to use a part of their land for grazing, etc. These arrangements can lead to big legal headaches for you, especially later if you try to sell your land. Any such agreements should be in writing, and may require additions to your deed or theirs. If you have a situation like this, consult an attorney.

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), or in person at the tax office or at various other offices. People who list after January 31 are charged a fine.

In late summer, tax bills are sent out. 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.^{xi} 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**: 2% for January and .75% a month for each additional month that your

bill goes unpaid.^{xii} So, if your 1997 property tax bill is \$1,000 you must pay the \$1,000 before January 6, 1998. If you pay later in January, then you will owe \$1,020 (\$1,000 plus \$20 in interest for January). If you do not pay your bill until February, then you will owe \$1,027.65 (\$1,000 original debt, \$20 in interest for January and \$7.65 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 the Land Loss Prevention Project for help. **And avoid surprises by carefully checking your mail.** Most often, if your land is being foreclosed upon you will receive notices 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 an ownership right in your land. And if the taxes owed are not paid, the government has the power to seize your land or garnish your wages.^{xiii}

Beginning around March, the tax collector will advertise all tax liens in the local newspaper and at the courthouse and 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 tax. The advertisement will also give notice that the unpaid taxes will be increased by interest and costs, and that the county or city may sell the land to collect the taxes.

To get rid of a tax lien and reclaim your land, you can pay the taxes due, interest and advertising cost at any time during the advertising period.^{xiv} Be sure to get a receipt from the tax collector for every payment you make. Pay your taxes only to the tax collector at his or her office. Do not pay taxes to a lawyer or to any other person. You do not have to pay attorney's fees. If your property is already in foreclosure, however, the tax office may not accept your payment. (see below)

If you do not know how much you owe in taxes, you are entitled to request a tax certificate from the tax collector.^{xv} 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 will collect the tax by 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

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.^{xvi} This certificate acts as a judgment and the government can execute on that judgment after it has been on file in the courthouse for at least three months but no longer than two years.^{xvii} Execution means that the government can have the land sold by the sheriff at public auction.

When the government uses this method, it must either personally serve you with a copy or it can send a registered or certified letter to you 30 days before the tax lien becomes a foreclosure. The letter will be sent to the your last known address. However, if the government is unable to find your address, it does not have to send the letter.^{xviii}

The sale of your land can be stopped. You or any other person having an **interest in the property**, can ask the clerk of superior court to cancel the foreclosure if the tax has since been paid or the tax lien was illegal. You can also get the sale canceled if you can now pay all the taxes owed plus the costs the tax office incurred up to this point.

Additionally, if the sale is held and the government buys your property, you may be able to convince it to resell the land to you for the amount of all taxes, costs, interest and penalties owed.

2. Foreclosure by Court Order

A court ordered tax foreclosure is more complicated and is used less often. It can start anytime after a tax lien is put on the land.

In a court ordered tax foreclosure, the tax collector must first post a notice of the tax liens stating the following information: (1) the names of everyone who owes property taxes, followed by the address of the property and the amount of unpaid tax; (2) notice that the unpaid taxes will be increased by interest and costs; (3) notice that the county or city may sell the land to collect the taxes.^{xix} The listed taxpayer and all other persons entitled to be made parties to the action are served with a summons (court papers) or may be served by publication (notice in the newspaper) if their addresses are unknown.^{xx}

You or your attorney can challenge the court's decision to sell your property if you have good reasons to back you up. These reasons may be 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 a trial will be held to sort all this out.

After the trial, the judge will make a decision or judgment. If the judgment is in your favor, you get to keep your land (though possibly under certain conditions). If the judgment is against you, the property will be sold at a public auction to the highest bidder. You are able to participate in the auction if you have the money to bid for the property.

C. The Foreclosure Sale

You can buy back your land at the auction if you are the highest bidder. But even if the property is sold to someone else, you have 10 days to make a higher upset bid^{xxi}. Either way, you may be able to hold on to your land. Or, if the government buys your property, you may be able to convince it to sell the land back to you for the amount of all taxes, costs, interest and penalties owed. You should know, however, that if your property is sold to someone else and they register a deed, you only have one (1) year to challenge that sale.^{xxii} On the flip side, if the county or municipality waits longer than ten (10) years to bring an action for unpaid taxes, they lose their right to foreclose.^{xxiii}

If you don't buy back your land, the money collected from the sale is used to pay off the tax lien and all other taxes owed. If there is money left over after paying all the unpaid taxes, the court will decide who should get it. But if no decision is made, then the money will be held by the court clerk until someone claims it. You, too, can claim this money.^{xxiv} But if the money collected from the sale of your property is not enough to pay all the unpaid taxes, you may still owe the balance left.

D. Special Tax Breaks

Senior Citizens / Disabled Citizens - Some senior citizens and disabled individuals may qualify for lower property (home and land) tax rates than other people. They must be at least 65 years old or permanently disabled, residents of North Carolina, and earn roughly \$19,000 or less after income taxes. ^{xxv} Disabled individuals must provide some proof of their disability, like a certificate from their doctor. To receive this special rate, apply to the county where you live or to the Department of

Revenue if your property is appraised by that department. (See Section 9 on tips for the elderly). Each county may have its own deadline by which you file under this provision and may be later than the tax filing deadline (January 31).^{xxvi}

Agriculture- To help farmers, there are also special, lower, tax rates on many farm products.^{xxvii} Crops that are to be sold qualify for this rate. But crops grown for feed do not qualify for the lower tax rates and neither do poultry or livestock. 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 way for you to give the things you own to the people you choose after your death.^{xxviii} Anyone who owns anything or anyone who may inherit anything needs to write a will. Young or old, poor or rich, you should not put off making one. Landowners especially need a will. In fact, **most land loss happens because landowners die without wills!**

A. Making A Will

You must be at least 18 years old and of sound mind (that is, not mentally ill or otherwise mentally incompetent) to make a will. To be certain that your will is legal and to prevent problems after you die, it is safest to hire an attorney to draw it up. A will written by a lawyer is not expensive usually. Although you may talk about your will with a trusted person, such as an undertaker, minister or insurance agent, **only a lawyer is trained and licensed to make a legal will.**

In North Carolina, most wills require at least two witnesses. A legal [witness](#) is someone over age 18 who is of sound mind and who does not receive anything in the will. So, for example, a wife cannot be a witness to her husband's will, but the lawyer who prepares the will can be a witness.^{xxix}

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 managing a will can be a lot of work. This person, who can be a friend or a relative, must be over 18 years old and should be a resident of North Carolina.^{xxx}

After your death, the executor/trix 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 things that you left behind. Then, following your wishes as you wrote them in the will, this person must give out your land and belongings.

One thing you should know is that if your will says that a person should get a piece of land and that person is dead at the time of your death, that clause in your will has no effect.^{xxxi} If you want the land to go to that person's heirs if they are not alive, you can say something like, "To X, or his heirs in the event that he predeceases me".

B. Types Of Wills

There are three kinds of wills: attested wills, holographic wills and nuncupative wills. We recommend that you make an attested will because it is the safest.

- Attested Will - This is a typewritten will, the kind a lawyer would write. To make it legal, you must sign it in front of at least two witnesses and they must sign it in front of you. ^{xxxii} 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 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.

- 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've asked to safeguard it^{xxxiii} 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.

- Nuncupative Will - A dying person can make a will by speaking his or her wishes to at least two witnesses. ^{xxxiv} However, land and homes should not be willed this way (The Statute of Frauds requires that conveyances of land be written, so to avoid potential challenges, it is better to have your wishes in written form) This kind of will is not very reliable and is often contested because people will question the competency of the dying person or the honesty of the person hearing the dying wish. 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. To be safe, you may also copy your will and keep it in several places. Or, for no charge, you may file it with the clerk of superior court. ^{xxxv} You can get to it there if you need to, but other people cannot (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 scratch or write on your will. This may make it illegal. If you want to change your will, you should write a new one or, for an attested will, write and attach a [codicil](#). A codicil is a typewritten addition to the will that states the changes. It must be witnessed and signed. You may change your will as often as you want. Or you may write a whole new will.

F. If You Make A New Will

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

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. But if you die without one (this is called dying [intestate](#)), the government must make these decisions. 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. And, 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

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

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

If your property is partially owned by other people, you may have trouble getting loans from banks and other credit businesses for use on your property because there is no clear owner. This might force you to sell it.

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 disagreements before they become family squabbles. Also, encourage the other heirs to make wills to prevent even more people from becoming owners of the land. Be sure to keep current addresses of all the heirs.

If the other heirs are not interested in the land, you may be able to buy them out. A lawyer can help them "deed" their share to you. Also, a lawyer can make legal arrangements so that any heirs who live on the land can be the ones to make the decisions about it.

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 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** or "squatter's rights."^{xxxvi} These people, known as squatters, can become the owners of the land by proving several things to the court. However, they must first let you know that they are taking action to claim your land.

In North Carolina, squatters must be able to prove that:

- they have lived on or used the land for twenty years in a row. If the squatters can show a deed or something like a deed which seems to prove that the land was granted to them and also show that the boundaries of the property they're using are well known, they may be able to get the legal title to that area of land in seven years instead of twenty. However, the squatters must have received the deed thinking that it was legal. ^{xxxvii}
- they used the land openly as their own so that anyone including the owner could notice;
- they took care of the property as if they were the owners;
- to others they appeared to be the owners.

I

Even if you share the land with someone as a cotenant, that cotenant might be able to bring an adverse possession claim against you if they've been using the land and you haven't.^{xxxviii} If your cotenant has taken steps to deny you access to the land, he or she may have a claim for "constructive ouster".

Your Rights - If you rent out your land, write down an agreement with your renters. A written **contract** protects you from renters who later may try to claim that they own your land. When the time of the lease is up, be sure that the renter is off the land or write out a new agreement.

If you keep your land vacant, check it every year or two for squatters. Should you find people living, farming or using your land without your permission, you can force them to leave. These people can be charged with **trespassing** or your lawyer can bring a "quiet title" action.

You should defend your right to your land against any people who claim they own it. You can put up signs on your property saying that you are the owner. And you can and should take down any signs on your land that were posted by people

who have no legal right to the land. If someone tries to take your land by adverse possession, contact a lawyer immediately.

5. PARTITIONS

Court-Ordered Partitions Can Cause Land Loss

When several people own one piece of land together (often as a result of inheriting the land), each of the owners is called a **cotenant**. If any one of the cotenants wants to divide off his or her share of the property, that person must ask the court for a **partition**. A partition is the division of land among its co-owners by a court. A cotenant may want to divide up the land to live on it, build, lease, farm, sell it, or whatever. However, if the land cannot be split by the co-owners themselves, the court will order a partition, and most court-ordered partitions lead to a sale of the whole piece of land. Often this land is sold for much less than what it is worth. Usually the buyer is not one of the cotenants but is someone looking to buy land cheap. 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 court offices 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 divided into equal shares or that all of the land be sold so the money can be divided between the owners.

All of the other cotenants must receive a notice that this person has asked for a partition so that they have an chance to respond. If some of the cotenants cannot be found or their names are not known, a notice must also be printed in at least one newspaper. If the unknown cotenants still do not appear, the court may appoint a person to represent them.

B. Dividing Land By Partition

The clerk of court will appoint three people to be commissioners. They must have no personal interest in the land. Their job is to decide how to divide the land among the cotenants^{xxxix} and they must take an oath promising to be fair to each of the owners. They will divide the land equally based on how much each person is entitled to, since some of the owners may have inherited more of the land than others. Sometimes after the land is split up, the divided pieces are worth different amounts even though each piece of land is the same size. When this happens the commissioners may make the owner of the more valuable property pay some money to the owner of the less valuable land. This is to make it a fair split. The charge is called an **owelty**.

The commissioners have sixty 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.^{xl} A map of the land, prepared by a surveyor and showing the divided shares is generally filed with the report. If the commissioners have problems getting their job done on time, the clerk of court may give them sixty additional days.

Any cotenant that disagrees with the way the land has been divided may protest by filing an [exception](#) to the commissioners' report. This person has ten days, from when the report was filed, to go to the clerk of court. If no exceptions are filed, the report will be approved, or confirmed, and sent to the register of deeds in the county where the land is located. After that, the division of the land will be settled. Once this is done, all of the cotenants must chip in to pay the cost of having the land divided. The total cost includes fees for the surveyor, appraiser, attorneys and commissioners, and the expense of new maps and deeds.

Your Rights

If you receive a notice that you are involved in a court-ordered partition action, you should get a lawyer. Contact the **Land Loss Prevention Project** if you cannot afford an attorney.

If you feel that any of the commissioners will be unfair to you, you should tell the clerk. Then, with your lawyer, give to the clerk a list of people you think will be fair and honest.

You may be able to stop the partition if you can prove to the clerk of court that the person who asked for the partition is not one of the owners of the land.

You can also file an exception to the commissioners' report. Even after the commissioners' report is confirmed, if you find mistakes in it or find evidence of [fraud](#) or [collusion](#), you may be able to get the partition changed or thrown out.

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 where there is a [preponderance of evidence](#) that actually dividing the 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 the cotenant.^{xli}

If the court does decide to sell the partitioned land, all of the other cotenants must be notified 20 days prior to the sale.^{xlii} And 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.

Your Rights - 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, some clerks of superior court may still order a sale.

Even after the land is sold, you may be able to save it. You have fifteen days after the clerk's confirmation to ask the court to cancel the sale. You need to be able to prove one of three things: 1) you were never told 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 and that this is causing money problems for you and the other owners.^{xliii}

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 split of the money after the property is sold to the highest bidder. First, your lawyer must prove to the court that the property can be split up equally and fairly among all the cotenants. Then, your lawyer should present a map showing exactly how the land can be divided. It 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 it. 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.

1. 3. When All the Cotenants Agree, Land Can Be Sold Without a Court-Ordered Partition

You do not need a court-ordered partition sale to sell land that is owned by many different people. If all the cotenants agree, the land can be sold just like other property. This kind of sale does not involve any government people. It may bring a higher price for the land and each owner may be able to make more money. Also the cost of selling the land will be lower because no commissioners will have to be paid.

6. MINERAL RIGHTS

Don't Give Away Part of Your Land by Accident

Most people who own land own the land below the surface as well as the property they can see and walk around on. They also 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 (that is, rent) the mineral rights to your land.^{xliv} 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. And, this person may be allowed to own all that he or she digs up.

Unfortunately, many landowners accidentally sell all of their land (ground level and below the ground) when they mean only to sell the mineral rights to it. This usually happens because they sign a paper thinking it is just for mineral rights when actually it is a deed for all of their property. If you decide to sell or lease the mineral rights to your land, be sure to have the help of an attorney. Do not sign any papers until your lawyer has first read them and talked with you about them.

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 paper, you should list any limits 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 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 mineral 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](#).^{xlv} 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.^{xlvi} See Section 5 on partitions for more about this.

7. FARM ISSUES

A. Federal Crop Insurance Corporation

You may be eligible for additional crop insurance coverage if you have a General Crop Insurance Policy, a Common Crop Insurance Policy, or a Group Risk Plan Policy in effect. There are further qualifications that must be met. Speak with the agent who issued your policy to find out if you qualify for the additional crop insurance coverage. If you do qualify for this program, you will not be responsible for paying the premium for this additional insurance. Instead, you must pay a fee of \$50 per crop per county with a maximum payment of \$200 per county and \$600 for all counties combined. Contact your current crop insurance carrier for more information on this program.

B. Farm Service Agency (FSA)

FSA Has Loans That Can Help Your Farm In Business

The Farm Service Agency (FSA) is a government office, which lends money to small farmers and to others who cannot get loans from banks. Before 1994, this type of lending service was handled by the Farmers Home Administration (FmHA). The FSA offers many different kinds of loans -- loans to help people buy farms and loans to help farmers keep farming. For example, for farmers who do not make much money, there is the Limited Resources Loan, which charges a low interest rate. Many small farmers who would qualify for this loan may not even know about it.

1. Applying For A 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 thirty days to decide if you qualify to be considered for an FSA loan. Some of the requirements are:

- You can't get credit elsewhere^{xlvi}

- You are 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) ^{xlvi}
- You have experience or education on managing and operating a farm^{xlix}
- You have a workable plan for operating the farm (including managing cash flow, expenses, and debt payments),¹
- You have not received debt forgiveness from FSA in the past (with some narrow exceptions)^{li}
- 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.^{lii}
- You don’t have a current judgment against you by the United States in a federal court (except for U.S. Tax Court).
- You are “creditworthy”,^{liii} which has to do with your credit history in particular over the last three years.
- You have assets you can use as collateral for the debt.^{liv} This could be land, farm equipment, crops, or 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.^{lv}

The FSA is required by law to help you complete your application,^{lvi} as well as answer questions you have about applying.^{lvii} Furthermore, FSA can’t tell you not to apply because they think you won’t 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 don’t 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** (that is, 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 six months 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 the Availability of Loan Service Programs for Delinquent Farm Borrowers." 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.^{lviii}

3. Restructuring A Loan

There are many different options for helping you repay your loan. For example, one is to get the due dates of your payments changed so that you have more time between payments; this 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; this is called [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; this is called [consolidation](#). Or your lender might be willing to reduce the amount you owe (especially if it is a government agency like the Farm Services Administration); this is called [write-down](#).

Before any changes can be made in your loan agreement, you must get permission from the FSA. This can be complicated and usually takes about one year. First, you must fill out a very long application form enclosed with the notice about the loan service program. The form must be sent to the FSA office within sixty days (two months) of when you received it.^{lix} Then, people from the FSA office will study your application. They will probably talk with you several times over the course of many months about how much money you have and about your farming. After that, they will decide whether or not to allow you to [restructure](#) your loan, that is, to make changes in your loan. And they only have 90 days to do so.^{lx}

Remember, if you miss the 60 day deadline, or do nothing, you will lose your chance for loan restructuring! Or, if you do not complete all the information that the FSA asked for, your request will be considered incomplete. If that happens you will not be eligible for help. FSA no longer has to inform you that an application is incomplete until after the 60 day deadline has passed. Be sure to 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 Can't Restructure

If the FSA decides not to allow you to make changes in your loan agreement or if you missed the application deadline, there are other things you can do to try to save all or part of your land from foreclosure. 1) You can **appeal** the decision. When FSA notifies you that you are not able to restructure your loan, they must also inform you of your right to appeal. You should read the instructions for the appeal carefully and contact an attorney if possible to assist you with your appeal; (2) You can have your **collateral** released from the FSA debt by paying FSA a lump sum equal to the fair market value of the collateral; (3) you may be able to hold on to your land by filing for bankruptcy protection; (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. Things To Know About The Farm Service Agency

Like many government offices, the FSA can be hard to work with sometimes. However, there are things you can do to make things go more smoothly now and in the future:

- Keep good records of all meetings and conversations with the FSA. Write down when and where they took place, 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.

If you are having trouble with the FSA, there are some things you should know:

- 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.

6. 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 and 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 is overdue. If your loan is delinquent or if you are repaying your loan on an irregular basis, you may be able to restructure your loan. If that is the case, you must prepare a plan that shows two different things:

1. That you cannot pay the loan according to the original agreement.
2. That if you restructured your loan, you would be able to pay the debt on time.

You should receive written notice of loan restructuring policies when you are delinquent. When Farm Credit gives you notice, it should include a copy of the district restructuring policy. It should also include any other material that you need to complete an application. When you receive notice, immediately gather your financial records and get help.

Remember, your cash flow information and alternatives will be the most important information used in the restructuring process. Farm Advocates and the Land Loss Prevention Project can 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**.^{lxi} 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 (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. He or she will not charge you any money unless you win your case (they may also refer to this 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, too, will probably need a lawyer to protect their rights.

If the government has condemned your land and you believe their decision is unfair, you should also see a lawyer. A lawyer may be able to make the government change its decision. For example, you and your lawyer may be able to get the government to change the path of a new road if you can prove that the proposed path would unfairly impact your land. Or, you may be able to get the government to cancel a building project if you can prove that it will not benefit most of the public.

9. TIPS FOR THE ELDERLY

TAKE STEPS WHILE YOU ARE STILL ALIVE TO KEEP YOUR PROPERTY IN THE FAMILY

A. Deeding Your Land To Others

If you are an older person, you should think about deeding your land while you are still alive instead of waiting until after you die to pass it on (like with a will). This can save your heirs money, time and trouble later on, and you can be certain that your land is given to the person or people of your choice. However, you should think very carefully before you decide to do this because it could cause you to lose some government benefits. Talk to a lawyer before you make a decision.

If you do not give away your land before your death, 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 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.

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

If you want to keep living on or using the land once you have deeded it to someone else, you must have it written into the deed or make a written agreement with the person or people you have deeded the land to.

When people deed their land to their heirs, usually they give it away. However, you can also sell it to them. If you are having money problems and your heirs can afford to buy your land, this may be a good solution. It will still save money, time and trouble for your heirs later on, and you can still arrange to keep control of the land during your lifetime.

B. Owning Land While On Public Assistance

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. Special Property Tax Rates

For People 65 Years Old Or Older

Older people 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 \$18,000 or less after income taxes last year.^{lxii} 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 \$20,000.^{lxiii} 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 \$10,000 worth of property ($\$30,000 - \$20,000 = \$10,000$).

To apply for the lower property tax rate, go to the tax office in your county. You will need to fill out a form and get it back to the office by April 15. You must reapply every year by this same deadline in order to keep the special tax rate.

10. DEBTS, MORTGAGES AND BANKRUPTCY

Don't Lose Your Land to Debt;

Bankruptcy May Be a Better Way to Go

A. Controlling Your Debts

Many landowners lose their land when they are unable to pay back loans. Often when several payments have been missed, the **creditor** (the person or the bank who lent the money) will sell the owner's land to collect the amount owed on the loan. If you borrow money, you can take steps to keep this from happening to you.

Usually when you borrow money or buy something over time (credit), you are asked to sign a contract. The first step is to make sure you understand your loan contract before you sign it. You should get a lawyer to read it over and explain it to you. Written into the contract are rules and conditions about how you are to pay back the loan, the amount of the interest rate, what can happen if you are late with your payments, and the penalty for **defaulting** (when you do not repay all of the loan). By signing the loan agreement, you promise to follow the rules of the contract. However, the terms of every loan are different. You should understand your contract before you sign it. There may be things written into it that you were not expecting or that you think are unfair. These things should be fixed before you sign the contract.

Often, the contract will list something you own (your house, land or another kind of property) as **collateral** for your debt. This means that if you are unable to pay back the money you have borrowed, you promise to give to your creditor the property listed in the contract. Unless your lawyer tells you differently, do not use your land as collateral.

Another thing you need to look out for is the number of missed payments it takes before the person who lent the money can claim your collateral. In some contracts, a creditor can start claiming it after only one missed payment! Also, pay close attention to when your payments are due and make sure that there is no "acceleration" clause in the contract. Acceleration allows creditors to be paid back faster. It allows them to move up the dates your payments are due. If this happens, you could be late with a payment even when you thought you were paying it on time.

If you do not pay your debt as it becomes due, your creditor will most likely file a lawsuit against you for the money you owe. Assuming the creditor proves that you owe a debt to him, a judgment will be entered against you. This judgment is in the form of a **lien** against your property. Once a judgment has been entered, the

creditor must notify you of your right to claim some of your property as **exempt** from execution on account of the judgment. When you receive a notice of right to claim exemptions, you have twenty (20) days to fill it out and return it to the court. It is very important that you fill out this form. All property not exempt is subject to sale by the sheriff. Money from the sale goes to the creditor until the debt is paid, and any money left over is given to you. If you are being sued, get a lawyer to represent you. There may be a way for you to keep your property, or you may need to file bankruptcy (see part C of this section).

Many people get loans to make repairs or improvements of their homes or (such as new roofs or aluminum siding). Often, this type of loan is a **security loan**. In a security loan, the house or the land (whichever is being repaired or improved) is put up as collateral for the loan. This means that if the person who borrowed the money cannot pay it all back, the person who lent the money can sue for the right to sell the borrower's home or land.

If you think you will have any trouble paying back a loan, do not take the loan in the first place; it is best to wait and save your money until you can pay cash for what you need. Also, do not buy on credit unless you are certain that you can pay it back.

If you already have a debt and are having trouble making the payments, see if you can get an extension on the loan. Your creditor may be able to give you more time between payments, or may be able to make each of your payments smaller if you agree to make more payments over all. If your loan agreement is changed in any way, make sure that you get the change in writing and that the agreement is signed by both you and the person lending you the money.

B. Mortgages: One Type of Loan Contract

Landowners and homeowners often **mortgage** their property to borrow large amounts of money. Mortgages (sometimes called **deeds of trust**) can be very useful because they can be paid back over a long period of time, sometimes as long as forty years. They are usually made at banks and are registered at the register of deeds. However, a mortgage is a kind of secured loan in which the property is the collateral. So, if you fall behind on your mortgage payments you could lose your property to the bank. Then, most likely, the bank will sell your property to collect the rest of the money that you owed.

If you are having trouble making your mortgage payments you should contact the bank 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.

The Foreclosure Hearing

If you miss payments on your mortgage, the bank may begin to foreclose on your property. This action starts with a court hearing. You should receive a written notice, giving its time and place, at least ten days before the date of the hearing. If you receive such a notice about your mortgage, you need to contact a lawyer immediately because this area of the law is very complicated. 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 speak at the hearing. Some notices may contain information about both the hearing and the sale of your property.

The purpose of the hearing is to decide if the bank should be allowed to foreclose on your property. The clerk who will make the decision will study all sides of the case. If the clerk decides 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.

Your Rights - Through a lawyer, you can [appeal](#) to the judge of the superior court within ten days of the clerk's decision. During the appeal there can be no foreclosure sale but you must post a bond. This means that you must give the court a certain amount of money to hold until a final decision has been made.

The Foreclosure Sale

A foreclosure sale on mortgages is identical to a foreclosure sale for tax default. See Section 2 ("Taxes") Part C for how this is handled.

After the Sale

Money made from the sale of the property is used to pay back the mortgage debt. If there is any money left over, it is given to you, as the past owner of the property.

However, if the sale did not bring in enough money to pay off all of the 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 can defend you by showing that the

property was sold for much less than its true value. But, if the bank itself actually ran the auction sale of your property, it cannot sue you at all.

When You've Paid Off a Mortgage

When you pay back all of your 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 for your records.

Make sure that once you have repaid all of the loan, your mortgage is marked "canceled" or "satisfied" by both the bank and the register of deeds. You may need this proof in case someone tries to collect additional payments from you. If, for some reason, you have trouble getting the canceled mortgage from the bank, you should see a lawyer.

C. Bankruptcy

If you think your debts have gotten out of hand, you should see a lawyer. He or she can advise you of all the legal ways to deal with your problem. If you are very deep in debt, your lawyer may suggest that you file for bankruptcy.

Bankruptcy can give you a fresh start or at least it can give you a chance to get control of your debts. You will need an attorney to help you with the forms because they are complicated. But once you have filed, the court will take over. Then your creditors (the people you owe money to) can no longer try to collect what you owe them.

There are different kinds of bankruptcy and the bankruptcy laws change often. You and your lawyer can select the right type for you to file. Businesses, including some family farms, file for bankruptcy under Chapter 11 or Chapter 12. Individual people, including some farmers, file for personal bankruptcy under Chapter 7 or Chapter 13.

Chapter 7 is also called straight bankruptcy or liquidation. Under Chapter 7, you must sell most of what you own to pay back the people you owe money to. Then your creditors must clear you of your debts even if they are not paid back the full amount that you owed them. Chapter 13 bankruptcy, also called the wage earner plan, is different. Under Chapter 13, you can keep all of your property but you must pay back your debts in a set number of years.

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

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

Bankruptcy Exemptions

When you file for bankruptcy, you are allowed some exemptions.^{lxiv} **Exemptions** are certain kinds or amounts of your property that you get to keep even though you have gone bankrupt. In other words, exempt property may not have to be sold to pay your debts. But when the exempt property does have to be sold, you get to keep a certain amount of the money made from the sale.

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

A lawyer should help you fill out the forms. They are very long and mistakes could cause you to lose your exemptions. Also, the lawyer can tell you what exemptions you will be allowed to take since the exemptions can be different for different people.

Exemptions can be complicated. Here is a list of some of the things that may be exempt for you if you go bankrupt:

- Up to \$10,000 worth of either the land, house or mobile home that you own and that you or your **dependents** live in, or the burial plots you own for yourself and your dependents. However, if what you own is worth more than \$10,000, you will have to sell. Then you will be allowed to keep \$10,000 of the money made from the sale and the rest will be used to pay off your debts.

For example, if you (not the bank) own your house and it is worth \$10,000, you will not have to sell it if you go bankrupt. But if it is worth \$25,000, you will have to sell it. The first \$10,000 made from the sale will go to you and the rest of the money (\$15,000) will be used by the court to pay off your debts. Any other land or burial plots that you own will also have to be sold if you exceed the \$10,000 exemption and are not covered by another exemption.

- Up to \$1,500 worth of a car that you own. If your car is valued at \$1,500 or less, you will get to keep it. But if it is worth more, you will have to sell it. You will get to keep \$1,500 of the money made from that sale. However, if you own more than one car, you must sell the other cars and all of this money will go to pay back your debts.

- Up to \$3,500 worth of your clothes, furniture, books, musical instruments, animals, crops and other personal, family or household items. An additional \$750 of personal items for each dependent may be exempt, provided the dependents' exemptions do not exceed \$3,000.

- Up to \$750 worth of books and tools you use in your trade. For example, if you are a farmer, you can keep \$750 worth of your farm tools. The rest of your tools will have to be sold.

- 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 of 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 and proceeds, North Carolina unemployment compensation, AFDC payments, and certain governmental pensions may also be exempt.

- Up to \$3,500 of any property owned by the person filing for bankruptcy protection may be exempt, if and only if, the debtor has not exceeded the \$10,000 limitation for homestead protection and/or burial plot exemptions.

Keep in mind, the value you are allowed to keep is on the "equity" you have built up in the property. For example, if you own a home worth \$60,000 and you owe the bank \$55,000 on that house, you only actually own \$5,000 worth of the house. Only the "paid for" amount is considered in determining the exemptions. Therefore, in this example, you would own \$5,000 of your house and may be able to keep the house. If you are considering bankruptcy, consult an attorney to find out if you will be able to keep your property.

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

- Anything that you bought less than ninety days (three months) before the court declared you bankrupt is not exempt.
- If your house or land has on it a materialmen's, laborers' or mechanics' lien, it is not exempt from bankruptcy.
- If your house or land has a mortgage on it, it is not exempt from bankruptcy and must be given back to the bank.
- Also, bankruptcy will not stop any tax sale foreclosures against you.

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". Keep in mind, it is very important for you to stay aware of what is going on with your property. Always open your mail and never ignore any legal papers or notices you receive in your mail.

If you have a farming business and want farming advice, you can contact:

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

or you can contact your local Agricultural Extension Agent.

Remember, this Handbook is for general information only. If you have a legal problem, you should see a lawyer. We strongly recommend the use of lawyers because the rights regarding land are all based on the law, and mistakes are often difficult to correct. You may think that hiring a lawyer to help you will be too expensive, but the loss of your land will cost you much, much more.

If you want more information or need a lawyer, please contact the **Land Loss Prevention Project**. If you don't have money to retain a lawyer then you may be able to get a lawyer for free. Call or contact:

Land Loss Prevention Project

P.O. Box 179
Durham, NC 27702
1-800-672-5839 (Durham)

LET'S SAVE THE LAND!

GLOSSARY

Adverse possession-- When someone gets legal title to your land simply by living on it or using it for a long time even though they have not inherited it or bought it from you. This is also called "[squatter's rights](#)."

Appeal -- To ask that a decision or judgment be reviewed in hopes that a different decision will be made. Usually an appeal is made to someone with more power than the person who made the first decision.

Appraise -- To find the value or worth of a house or land. An appraisal is the amount of money that the house or land is worth in the general market.

Bankrupt -- The situation which happens when you cannot pay your debts. To be legally bankrupt, you must file bankruptcy forms; then the court will handle your debts.

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.

Creditor -- A person or bank who lends money to a person or business.

Debt restructuring -- To change a loan agreement, usually to change the way the loan must be repaid.

Deed-- A paper which shows that you own something.

Deed of trust -- A kind of mortgage

Default (on a loan) -- When you do not and cannot repay all of your loan.

Deferral (of a loan) -- When loan payments are put off for a certain amount of time as a way of helping out the debtor.

Deficiency Judgment – A situation where a lender sells off a piece of land that was mortgaged but is unable to sell the land for enough to repay the debt. A deficiency judgment is the amount of money that is still owed.

Delinquent (on a loan) -- To be late or behind in paying your payments on a loan or a mortgage.

Dependents -- People who count on you to pay for their food, clothing and housing (children, elderly parents, wife or husband).

Easement -- the reservation of a certain area of property for use by another (a driveway, walking path, etc.)

Eminent domain -- The right of our government to force landowners to sell all or part of their land for a public project. The land must be sold for a fair price.

Exception -- An exception is a way for you to note your disagreement with a decision made by a judge or commissioner. You can file an exception through your lawyer.

Executor or Executrix-- A man or a woman named in someone's will to carry out the orders of the will.

Exemptions -- Certain kinds or amounts of property that you are allowed to keep when you have gone bankrupt.

Farmers Home Administration (FmHA) (now the **Consolidated Farm Services Agency (FSA)**) -- The former name of a government office which lends money to small farmers and to others who cannot get loans from banks.

Foreclosure -- When you have lost all rights to your property and the government or some other who lent money seizes your land because you could not pay a debt. The property is usually sold to pay back what you owed.

Fraud -- Cheating someone on purpose by hiding, changing or twisting the truth about something.

Grantee --The person buying or inheriting land (usually written on a deed).

Grantor -- The person selling, willing or giving the land (usually written on a deed).

Hearing -- A meeting, with evidence and witnesses, where officials study all sides of an issue in order to make a decision. It is like a court trial but less formal.

Heir -- A person who will inherit or receive property from another person after that other person dies.

Heir Property – property that is owned by many different owners, often because it has been passed along without the use of a will.

Interest -- A kind of penalty or fine charged when a tax bill or other kind of bill is paid late. Also, it refers to the additional cost connected to a loan or mortgage.

Interest In Land -- When a person has an interest in a piece of land, it means that either the person owns all or part of the land, or has something to do with the land in another way.

Intestate -- When a person dies without a legal will or without any will at all.

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.

Owerty – an amount of money paid by one cotenant to another during a partition action due to the fact that the land is not divided equally.

Partition -- When land is divided into parts among those who share ownership in it.

Petition -- To ask the court or the government to take a certain kind of action on a problem or issue

Preponderance of evidence – when something is more likely than not (in other words, a 51% probability).

Probate - When the court makes sure that a will is real and legal.

Quiet title action -- A legal action to prove that you own your land.

Quitclaim deed -- A kind of deed that passes ownership of a piece of land or a house from one person to another. Its title is not guaranteed to be legal.

Register of deeds -- A county office where you can keep a copy of your deed and where other people's deeds are recorded and stored.

Rescheduling a loan – changing the timing of when you make payments.

Restructure a loan -- When you make changes in a loan agreement. For example, when you make changes in how the loan is to be paid back.

Right of way -- When a landowner gives another person the right to travel on his or her property. For example, if Peter gives Jane a right of way to run her driveway through a corner of his land, he is letting her use part of his land for her driveway.

Security loan for repairs or improvements -- A loan for a repair or improvement on your house or land in which the house or the land is the collateral for the loan.

Squatter's rights -- When someone becomes the legal owner of land simply by living on it or using it for a very long time even though they have not inherited it or bought it. This is also called adverse possession.

Surface rights -- When you own the land that you can walk around on but do not own the earth that is under the ground.

Tax lien -- This is a legal claim placed on your property by the government for the unpaid taxes owed on your property. If the taxes are not paid after a lien is placed on the property, the government can seize your property.

Title-- The legal right to your land. You can also have a title to other things. For example, title to your car gives you the legal right to your car.

Title search -- A check into all the past owners of a property and the past agreements made about it. This is usually done when land or a house is bought and sold.

Trespassing -- To be on someone's property without their permission.

Warranty deed -- A kind of deed that passes the ownership of a piece of land or a house from one person to another. It guarantees that the title is good and legal.

Will -- A paper that explains how you want your property to be given away after your death.

Witness -- A person who sees something happen. For example, if you witness Mary Brown's signature, you have watched her sign her name on some document.

Write-down -- When a lender agrees to reduce the total amount of debt owed by the borrower, usually because the borrower is having financial difficulties.

ⁱ See, Patrick K. Hetrick & James B. McLaughlin, Jr., Webster's Real Estate Law in North Carolina §§ 152, 161, 176, 199 (3d ed. 1988) [hereinafter referred to as "Webster's"]. See, generally, N. C. Gen. Stat. Chapter 39 (Conveyances).

ⁱⁱ N.C. Gen. Stat. 22-2.

ⁱⁱⁱ The need for a seal was eliminated in 1999 by N.C. Gen. Stat. § 39-6.5, which states that "The seal of a signatory shall not be necessary to effect a valid conveyance of an interest in real property."

^{iv} *Overton v. Boyce*, 289 N.C. 291, 221 S.E.2d 347 (1976)

^v As per the doctrine of merger.

^{vi} N. C. Gen. Stat §§ 105-367 and 105-368 describe the procedures for levy of taxes and attachment respectively.

^{vii} See, generally, N. C. Gen. Stat. § 47.18 (Registration). See, also, Webster's § 370.

^{viii} N. C. Gen. Stat. § 47.18(a).

^{ix} *Bowling v. Burton*, 101 N.C. 176, 7 S.E. 701 (1888).

^x 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.

^{xi} N. C. Gen. Stat. § 105-360(a) sets forth due date of taxes, the interest charges, and delinquency.

^{xii} N. C. Gen. Stat. §§ 105-360(a)(1), (a)(2).

^{xiii} N. C. Gen. Stat. § 105-355. N. C. Gen. Stat. §§ 105-367 and 105-368 describe the process of levy on real property and attachment to income streams of the property owner in the case of tax default.

^{xiv} N. C. Gen. Stat. § 105-369(e).

^{xv} N. C. Gen. Stat. § 105-361.

^{xvi} Session Laws 1999-439, s. 2, effective January 1, 2001, changed the period for filing with the municipal court from six months to thirty days.

^{xvii} N. C. Gen. Stat. § 105-375 outlines the local government right of In-Rem foreclosure. Session Laws 2001-139, s. 9, effective July 1, 2001, changed the waiting period to execute the judgment from six months to three months.

^{xviii} N. C. Gen. Stat. § 105-375(c).

^{xix} N. C. Gen. Stat. § 105-3 describes tax lien foreclosure in the nature of a mortgage foreclosure for private purchasers and Counties, Cities, Townships, etc, and 105-369(c) describes the advertising process.

^{xx} N. C. Gen. Stat. § 105-374(c).

^{xxi} N.C. Gen. Stat. § 1-339.25.

^{xxii} N. C. Gen. Stat. § 105-377.

^{xxiii} N. C. Gen. Stat. § 105-378.

^{xxiv} N. C. Gen. Stat. § 105-374(q) (Application of sale proceeds).

^{xxv} N. C. Gen. Stat. §§ 105-277.1(a), (c). Note that there is a complicated formula for determining income eligibility which is specified in 105-277.1(a2).

^{xxvi} ^{xxvi} N. C. Gen. Stat. §§ 105-277.1(c).

^{xxvii} N. C. Gen. Stat. § 105-277.1 (and related subsections) and 105-277.01.

^{xxviii} See, generally, N. C. Gen. Stat. Chapter 31. A spouse may dissent from a Will under certain circumstances. See N.C. Gen. Stat. § 30. See, also, N. C. Gen. Stat. § 29 (Intestate Succession Law).

^{xxix} N. C. Gen. Stat. § 31-10.

^{xxx} 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.

^{xxxi} See Neal v. Nelson, 117 N.C. 393 (1895).

^{xxxii} N. C. Gen. Stat. § 31-3.3.

^{xxxiii} N. C. Gen. Stat. § 31-3.4.

^{xxxiv} N. C. Gen. Stat. § 31-3.5.

^{xxxv} N. C. Gen. Stat. § 31-11.

^{xxxvi} N. C. Gen. Stat. §§ 1-35 to 1-45 (Adverse Possession).

^{xxxvii} 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),

^{xxxviii} An adverse possessor typically needs to prove that there has been an actual ouster of one cotenant by another. But 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 hasn't entered the land or made any demands for rents or profits, that may be enough for a constructive ouster. See *Collier v. Welker*, 19 N.C. App. 617 (1973).

^{xxxix} N. C. Gen. Stat. §§ 46-7 to 46-12 (Partitions).

^{xl} N. C. Gen. Stat. § 46-17.

^{xli} N. C. Gen. Stat. § 46-22 (Partition Sales).

^{xlii} N. C. Gen. Stat. § 46-28.

^{xliii} N. C. Gen. Stat. § 46-28.1 (Setting aside a partition sale).

^{xliv} Mineral Rights; see footnotes 13 & 14 below; See, also, N. C. Gen. Stat. § 1-42 and § 42-25 and generally N. C. Gen. Stat. Chapter 74.

^{xlv} N. C. Gen. Stat. §§ 1-42.1 to 1-42.6 (Mineral Rights - Cloud of Title).

^{xlvi} N. C. Gen. Stat. § 46-4 (In-kind); N. C. Gen. Stat. § 46-26 (By Sale, Partition of Minerals).

^{xlvii} 7 C.F.R. §§ 1941.6, 1943.6, 1941.12, 1943.12.

^{xlviii} 7 C.F.R. §§ 1941.12, 1943.12, FSA Notice FLP-117.

^{xlix} 7 C.F.R. §§ 1941.12(a)(3), 1943.12(a)(3).

^l 7 C.F.R. §§ 1941.4, 1943.3, 1924.55, 1924.56.

^{li} 7 C.F.R. §§ 1910.5(c), 1941.12(a)(1), 1943.12(a)(10), FSA Notice FLP-88, FSA Notice FLP-10.

^{lii} 7 C.F.R. §§ 1941.12(a)(11), 1943.12(a)(11). The definition of "delinquent" derives from 31 C.F.R. 285.13(d).

^{liii} 7 C.F.R. §§ 1910.1, 1910.5(c), 1941.12(a)(4), 1943.12(a)(4).

^{liv} 7 C.F.R. §§ 1941.19, 1943.19.

^{lv} See 7 C.F.R. § 1941.19, for example.

^{lvi} 7 C.F.R. § 1910.4(b).

^{lvii} 7 C.F.R. § 1910.3(c).

^{lviii} P. L. No. 100-233, 101 Stat. 1586.

^{lix} 7 C.F.R. § 1951.908(b).

^{lx} 7 C.F.R. § 1951.908(c).

^{lxi} N. C. Gen. Stat. Chapter 40A (Eminent Domain).

^{lxii} N. C. Gen. Stat. § 105-277.1 establishes the income limit, which has a base of \$18,000 but which is increased incrementally each year as specified by the statute.

^{lxiii} N. C. Gen. Stat. § 105-277.1 (Valuation for Elderly).

^{lxiv} 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.