

TEXAS: CHECKLIST OF STATE AND LOCAL LEGAL HEIRS' PROPERTY PROTECTIONS

Status within the state may involve a yes, no, or partial, in addition to notes below each item regarding the nuances and issues to be addressed in the state. This checklist is based on the full brief, Heirs' Property: Policies to Preserve Wealth.

POLICY	GOAL	WHO BENEFITS MOST	FREQUENCY OF NATIONAL ENACTMENT	STATUS
PROTECTION: Laws aimed at protecting heirs' property from loss				
Tax Foreclosure Policies				
Homestead exemption accessibility to heirs	Make homestead tax benefits available to heirs (partial ownership, flexible proof)	Residential heirs' property owners	Moderate to rare	Yes
Notes: Texas has strong laws in this area. Some issues remain with inconsistent implementation.				
Penalty elimination	Waive late fees and penalties, allow retroactive homestead tax relief	Residential heirs' property owners	Rare	Partial
Notes: Retroactive homestead tax relief going back 2 years. If an appraiser discovers that an exemption has been erroneously allowed, the tax bill can be adjusted going back 5 years. Tex. Tax Code 11.43(i). No waiver of late fees and penalties, except for homeowners with the homestead exemption who are in a payment plan under Tex. Tax. Code §33.02.				
Reduction of payment shock	Reduce payment shock for heirs	Residential heirs' property owners	Rare	No
Notes: No policy currently in place. Payment shock could arise if the decedent had a senior freeze or a deferral. Tax assessors must allow at least a 12-month payment plan and may allow up to 36 months, if the owner has a homestead exemption in place. See Tex. Tax. Code §33.02. Such a plan may be used to pay back a deferred amount.				
Thorough noticing	Give heirs meaningful opportunities to avoid tax foreclosure by making a diligent search and posting notice on the property	Residential heirs' property owners	Rare	Partial
Notes: An attorney ad litem is appointed in cases involving unlocatable heirs, but the steps taken by an attorney ad litem vary widely. No uniform requirement to post notice on the property. Some probate courts have strong standards, e.g., Tarrant County.				

POLICY	GOAL	WHO BENEFITS MOST	FREQUENCY OF NATIONAL ENACTMENT	STATUS
Tax Foreclosure Policies continued				
Foreclosure avoidance options	Allow heirs to enter into affordable tax repayment plans	Residential heirs' property owners	Moderate	Partial
Notes: Payment plans are available, but some counties require a lump sum up front, which is often cost-prohibitive.				
Access to surplus equity	Give heirs access to surplus home equity after a property tax foreclosure	Residential heirs' property owners	Moderate	Yes
Notes: A process exists under Tex. Tax Code §34.03-34.04. Some questions about how easily it can be navigated by a pro se person.				
Effective outreach to heirs	Create partnerships between Local government players and community groups to reach heirs' property owners and inform them of property tax relief	Residential and nonresidential heirs' property owners	Rare	Partial
Notes: Significant efforts have been made in some places; more is needed on this front. There is still very low uptake on the homestead exemption, especially by heir owners.				

POLICY	GOAL	WHO BENEFITS MOST	FREQUENCY OF NATIONAL ENACTMENT	STATUS
Medicaid Estate Recovery Policies				
Limiting the estate	Do not collect against homes transferred through TODDs	Residential, first-generation heirs	Moderate	Yes
Notes: Estate is limited to the probate estate.				
Limiting recoverable debt	Limit the amount of debt to be recovered as much as possible	Residential, first-generation heirs	Moderate	Yes
Notes: Texas does not attempt to recover amounts beyond what the federal rules require.				
Clear and accessible waivers	Avoid estate recovery whenever possible	Residential, first-generation heirs	Rare	Partial
Notes: Reasonably clear exemptions and hardship waivers. Some questions remain about clarity of communication with heirs.				
Disaster Relief And Home Repair Assistance				
Clear and flexible proof	Allow heirs' property owners to prove ownership with affidavits	Residential, heirs' property owners of highly fractionated land	Rare	Partial
Notes: Texas is one of the few places where the CDBG-DR program does allow affidavits as proof of ownership. For home repairs many barriers exist, including cities requiring consolidated ownership.				
Presumption of authority	Allow one active heir to authorize demolition and replacement, authorize repairs, and receive disaster aid	Residential, heirs' property owners of highly fractionated land	Rare	Partial
Notes: Texas law allows heirs to authorize demolition and replacement if they submit an affidavit. Inconsistently applied in practice.				

POLICY	GOAL	WHO BENEFITS MOST	FREQUENCY OF NATIONAL ENACTMENT	STATUS
Equity Theft Prevention				
Uniform partition of heirs property act (UPHPA)	Protect heirs from exploitative forced sales through notices, buyout rights, and sales at fair market value	Residential and nonresidential heirs' property owners where land values are increasing	Moderate	Yes
Notes: Texas passed the UPHPA in 2017.				
UPHPA 2.0	Protect heirs from exploitative forced sales through effective rights of first refusal and limits on investor partition	Residential and nonresidential heirs' property owners where land values are increasing	Rare	No
Notes: Legislation is being filed to address this in the 2025 session.				
Probate fraud prevention	Protect heirs from loss of home equity by enforcing existing laws against scams involving probate fraud	Residential and nonresidential heirs' property owners where land values are increasing	Rare	Yes
Notes: Enforcement of existing laws seems to be adequate; advocates are not seeing this crop up very often.				
Right of rescission	Protect heirs from loss of home equity through high-pressure sales contracts by allowing a sale contract to be rescinded under certain circumstances	Residential and nonresidential heirs' property owners where land values are increasing	Rare	No
Notes: Texas does not provide a right to cancel a purchase and sale contract entered under duress or with an unlicensed wholesaler.				
Deed fraud prevention & resolution	Protect heirs from loss of home equity through deed theft by providing greater resources for enforcement and making it easier to correct the deed records	Residential and nonresidential heirs' property owners where land values are increasing	Rare	Partial
Notes: Advocates do not report significant gaps in prosecuting deed fraud. Making civil remedies easier (applying presumptions) in cases of criminal prosecution would help to clarify title.				

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RESOLUTION: Laws aimed at facilitating resolution of heirs' property – clarifying or consolidating title				
Making Probate Easier and Less Costly				
Streamlined probate processes	Broaden eligibility for streamlined probate	First- and second-generation heirs	Moderate	Yes
Notes: Texas has a small estate affidavit process.				
Probate fee waivers	Make probate affordable and allow fee waivers for low-income filers	First- and second-generation heirs	Moderate	Partial
Notes: Texas rules of civil procedure allow for waiver of court fees based on poverty. Some courts reject fee waiver applications based on assets in the estate, which should not be an issue. Fees to record deeds and heirship affidavits are not waived.				
Documenting Ownership Without Probate				
Heirship affidavits	Allow heirs to use heirship affidavits to get property tax relief, home repairs, and disaster relief	First- and second-generation heirs	Moderate	Yes
Notes: Strong use of heirship affidavits, including simple forms that exist.				
Consolidating Title				
Tenant in common adverse possession	Allow an heir who is occupying the property and paying taxes to obtain the ownership interests of inactive heirs over time	Owners of highly fractionated land; heir occupants	Rare	Yes
Notes: Simple and clear statutory process, either through adverse possession or through a forced sale of the co-heir's interest if the co-heir has failed to pay their share of property taxes (Tex. Prop. Code § 29.001-004 and 16.0265).				

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Facilitating Co-Tenant Agreements and Entity Formation				
Funding for family mediation and agreements	Help large groups of heirs reach agreement on joint management of the land	Owners of highly fractionated land or of agricultural, timber, or mineral land	Moderate	Partial
Notes: Some resources exist but are not sufficient to meet the need.				
PREVENTION: Laws aimed at preventing the creation of new heirs' property or additional fracturing of existing heirs' property				
Transfer on Death Deed (TODD) Statutes				
Statutory TODDs	Allow property owners to convey the property upon death outside of probate	Homeowners	Common; enacted in at least 31 states plus DC	Yes
Notes: Strong, clear TODD statute.				
Contingent Beneficiaries in TODDs	Allow property owners to convey the property upon death without the risk that the TODD fails to take effect	Homeowners	Common	Yes
Notes: TODD statute allows contingent beneficiaries.				
Funding & Resources for Estate Planning, Outreach, and Consolidation				
Public funding	Increase the use of public resources for estate planning	All property owners and heirs	Moderate	Partial
Notes: Some resources exist but are not sufficient to meet the need.				
Public-private partnerships	Increase philanthropic resources for estate planning	All property owners and heirs	Moderate	Partial
Notes: Some resources exist but are not sufficient to meet the need.				

ACKNOWLEDGEMENTS

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The authors and AFN thank the following experts for assistance in summarizing the applicable Texas laws:

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Amir Befroui, Lone Star Legal Aid

Molly Rogers and Corinne Waite, Texas RioGrande Legal Aid