

Heirs Property: Legal Strategies to Keep Older Adults in the Family Home

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

About Legal Aid Society of Middle Tennessee & the Cumberlandds

Legal Aid Society is Tennessee's largest non-profit law firm. Our mission is to enforce, advance and defend the legal rights of low income and vulnerable people in order to obtain for them the basic necessities of life. Legal Aid Society is committed to the principle that all citizens are due equal representation under the law.

Legal Aid Society is committed to providing the best resources available to low income people in all 48 counties to protect their livelihoods, their health, and their families. We have 48 attorneys in 8 offices providing help across 48 counties who are able to provide direct representation to thousands of people each year.

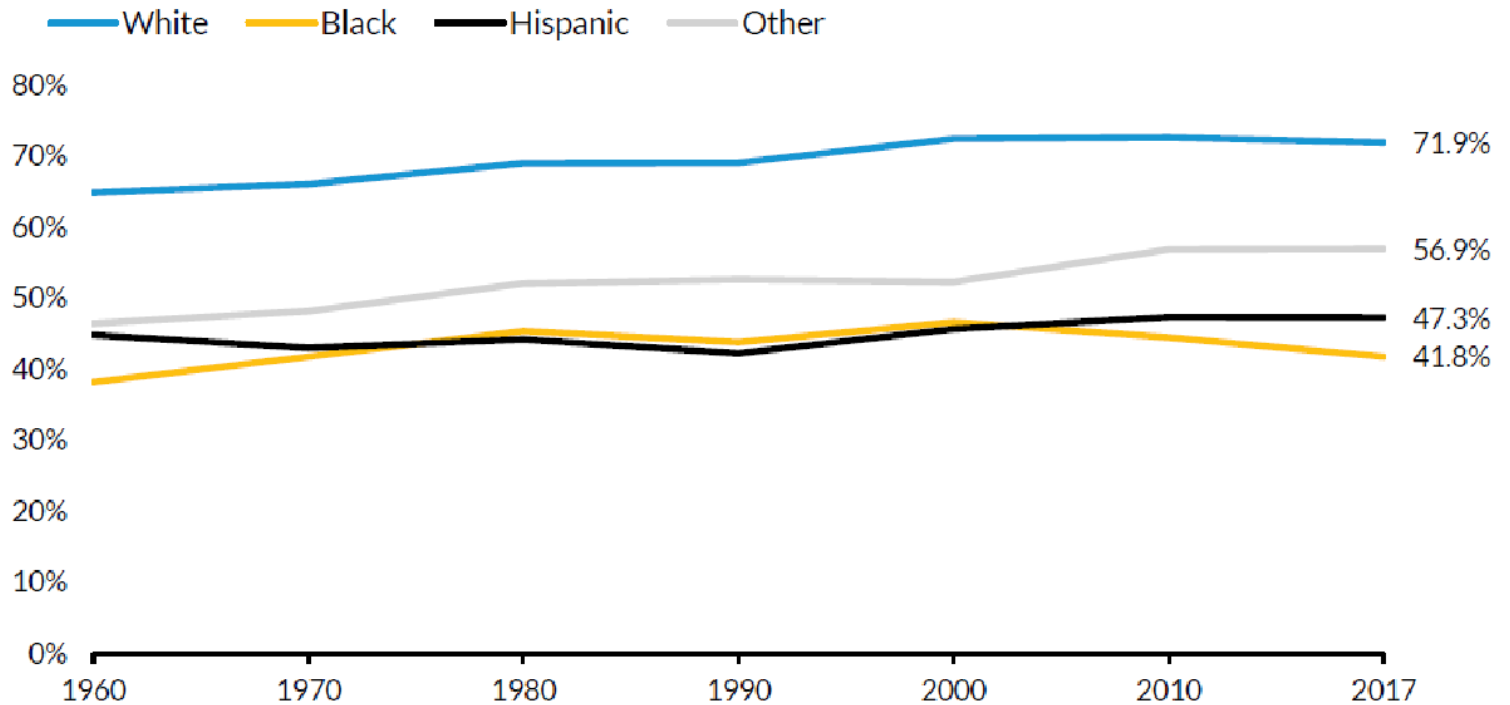
Key Lessons

- Heirs property increases the risk of home loss, especially for older adults and Black, Indigenous, and People of Color (BIPOC) property owners.
- There are legal tools that heirs property owners can use to clear or improve title.
- Many states have passed laws to help heirs property owners resolve title issues.
- Good estate planning is the key to preventing a home from becoming heirs property.

The Racial Homeownership Gap

FIGURE 1

Homeownership by Race or Ethnicity



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Sources: Decennial Census and the American Community Survey.

How is Heirs Property Created?

Most often:

- Property owner **dies without a will**. State law makes **all heirs** (spouse, children, etc.) the new owners.
 - OR
- Property owner makes a will that **leaves one piece of real estate to multiple people**.
- With the passing of each generation, there are more heirs, who all own the property together.

Who Does Heirs Property Impact?

- **Impact on older adults:** most heirs are **over age 50** and a **quarter are over age 61** when they inherit.
- When heirs lack resources to probate immediately, the challenges grow, such as property expenses and risk of home loss.
- Property tax payment relief may end; heirs may not know to apply for basic or senior exemptions.
- Skyrocketing shelter costs at a time of reduced, fixed income creates a heightened risk of home loss.

Who Does Heirs Property Impact? (cont.)

- **Deepest Impact:** Studies show that **Black, Indigenous, and People of Color (BIPOC)** are between 10-14% less likely to have estate plans in place than their White counterparts.
- Researchers estimate that about half (½) of Black-owned land in the United States is heirs property.
- Heirs property prevents owners from fully benefiting from the advantages property ownership and makes owners vulnerable to forced sale.

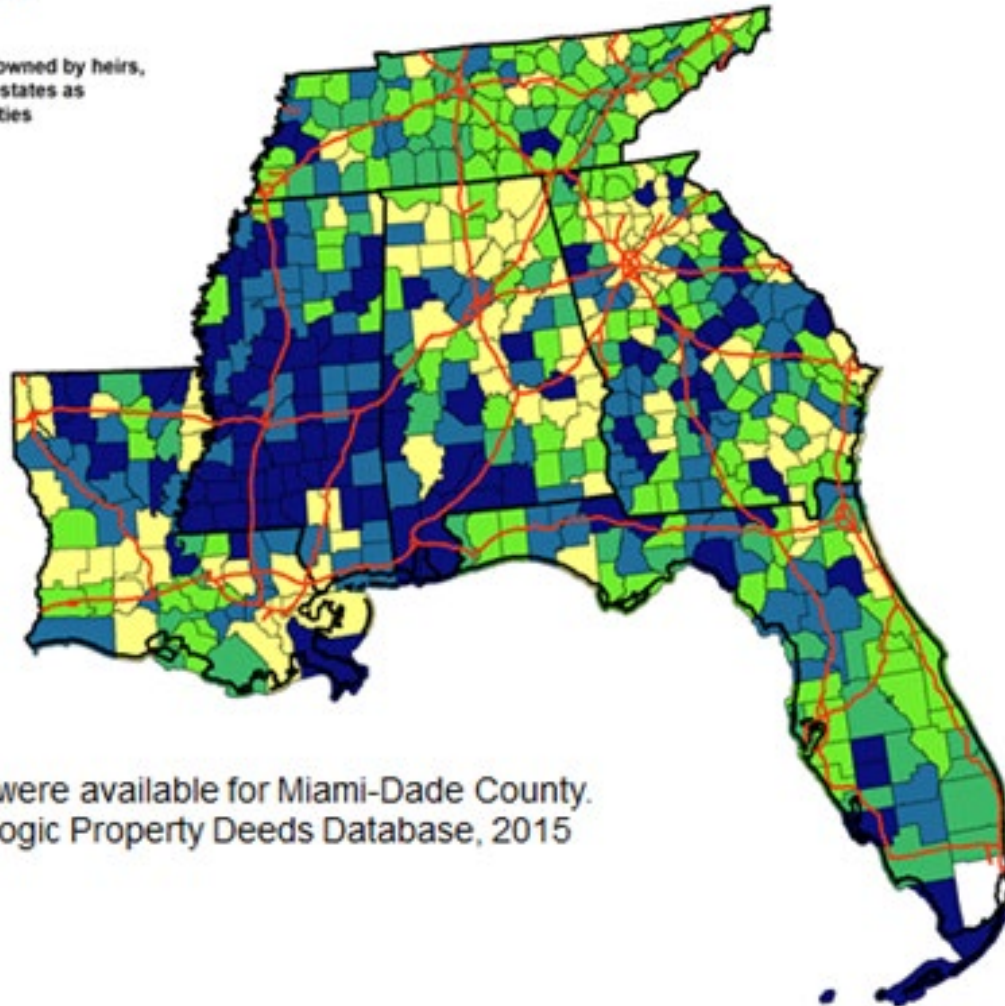
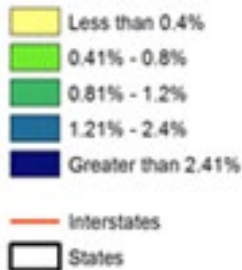
Heirs Property and Black Land Loss

- By 1910, African Americans had acquired more than 16 million acres of land
- **90% of this land was lost over the past century** – a value of \$326 billion
- Heirs property can be an entry point for family conflict and predatory practices that drive involuntary loss of land, especially within Black communities, both rural and urban.

Where is Heirs Property?

Percentage of Residential Heirs' Properties by County in the Southeast

Percentage of properties owned by heirs, tenants in common, and estates as a percentage of all properties



Note: No data were available for Miami-Dade County.
Source: CoreLogic Property Deeds Database, 2015

What's at Stake?

Heirs' property is fundamentally an issue with the title to the property:

- Difficulty benefiting from their property
 - Problems earning income from assets
 - Property tax exemption eligibility
 - Challenges selling or mortgaging property
- Difficulty repairing or improving property
 - Earning income from assets
 - Homestead and other tax exemption eligibility
 - Challenges participating in government programs such as those offered by USDA, HUD, & FEMA
- Increased likelihood of property loss
 - Increased risk of forced sale
 - Mortgage complications and increased risk of foreclosure
 - Increased risk of tax foreclosure sale

Challenges of Heirs Property and Common Misconceptions

- **Challenges:**
 - Need for unanimous agreement among heirs to sell or mortgage the property
 - Hard to qualify for homeowner benefits like tax relief or disaster funding
- **Misconceptions:**
 - Whoever who pays the mortgage or taxes has the most say
 - The eldest heir or the resident heir has most say
 - The last living child owns the property outright

Heirs and the Racial Wealth Gap

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Summary of Heirs Property Legal Interventions



Resolving Heirs Property (1 of 2)

- Two means of inheriting property:
 - **Testate**: with a will—the will names **beneficiaries**
 - **Intestate**: without a will—the state names **heirs**
- Probate filings:
 - Court takes will or statement that there was no will
 - Court makes sure that debts, taxes, etc. are paid from assets of the estate
 - Court transfers title to heirs or beneficiaries of the will
 - Not everyone needs to “avoid probate”—sometimes, probate is necessary

Resolving Heirs Property (2 of 2)

- Heirship Affidavits
 - Sworn statement identifying heirs
 - Often recorded in real property records to document new owners
- Use varies by state:
 - May not result in insurable title
 - In states without statutes/title standards providing for heirship affidavits, title insurance underwriters will make a case-by-case determination based on number of heirs, property value, heir's net worth
- Even without insurable title, may be sufficient proof to obtain property tax, disaster relief

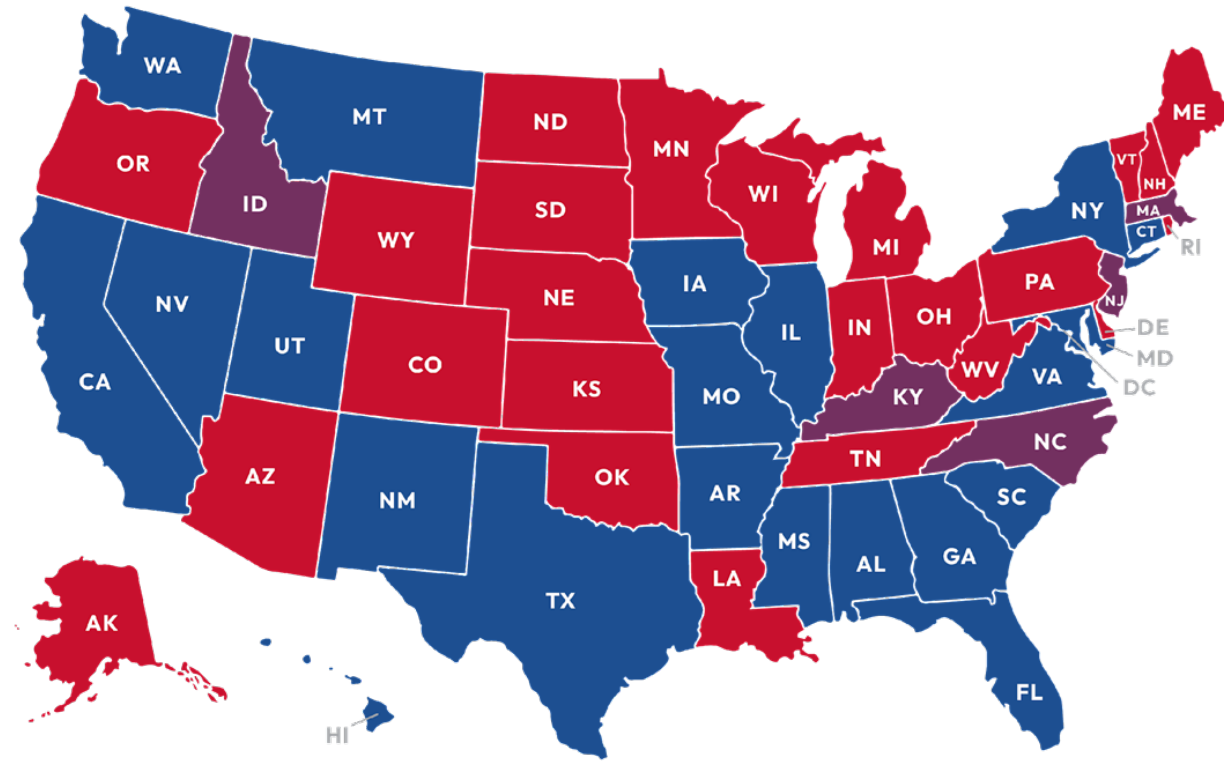
Protecting Heirs Property (1 of 2)

- Death of a relative often accompanied by delinquent taxes, particularly as property tax exemptions expire
 - Exemptions may even be removed retroactively
 - Partial exemptions based on pro rata ownership
- Need for expanded access to relief programs, improved notice, and flexible payment options
- Depending on jurisdiction, Heirship Affidavit can help qualify for property tax relief program or establish title

Protecting Heirs Property (2 of 2)

- Partition
 - Any heir can sue their fellow heirs to “partition” the property by physically dividing it or by selling it outright. There is no defense.
- Uniform Partition of Heirs Property Act (UPHPA)
 - Notice to all co-owners if partition pursued
 - Independent appraisal to determine fair market value
 - Opportunity for buyout
 - Favor partition-in-kind over partition-by-sale
 - Differences between states

Preventing Predatory Partition



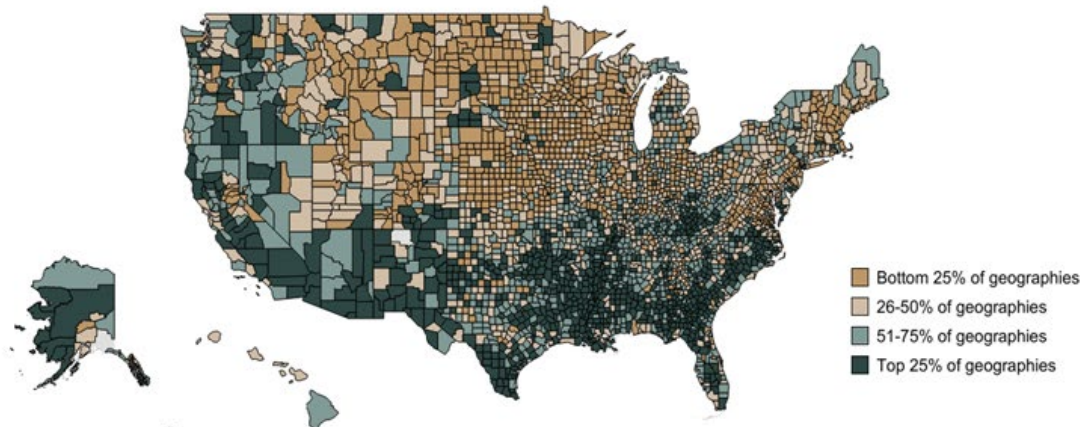
- Enacted UHPA** (21 states and DC)
- Introduced UHPA** (5 states)
- Neither Enacted Nor Introduced UHPA** (24 states)

More on Protecting Heirs Property

- Other forms of Equity Theft
 - High pressure home sales / i-buying
 - Fraudulent probate filings by scammer
 - Foreclosure rescue scams
 - State statutes and case law (fraud, unfair & deceptive practices)
- Avoiding Mortgage Foreclosure
 - Heirs can get information about the mortgage once they get confirmed as a successor in interest
 - Heirs can get loan modifications if the monthly payment is unaffordable
 - Federal RESPA regulations and investor rules

Natural Disasters (1 of 2)

Explore the relationship between areas of Black homeownership and their social vulnerability to disasters
(County-wide, 2018)



Data source: US Centers for Disease Control, Social Vulnerabilities Index (SVI), 2021. 2021 is the most recent data year. US Census, American Community Survey 2021 five-year estimates. 2021 is the most recent year for five-year estimates.

	Abbeville County, South Carolina	Acadia Parish, Louisiana	Accomack County, Virginia	Ada County, Idaho	Adair County, Iowa
Social Vulnerability Index	0.86	0.92	0.80	0.14	0.0
Black Population Percentage	26.9%	16.6%	28.5%	1.3%	0.6%
Percent Black Owner-Occupied Housing Units	21.9%	9.8%	17.0%	0.6%	0.0%

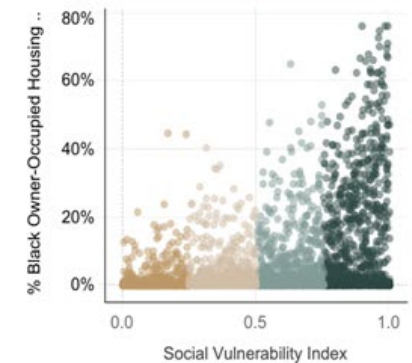
Hover on the map to find information by race in the tooltip. Click on the map to populate the table below with tooltip information for that county. Apply the Black population percentage filter to explore the relationship between Black population and selected indicators.

Filters

County
All

Black Population Percentage
All values

Social Vulnerability Index



The SVI provides a composite score on how each county in the United States is expected to withstand shocks and stressors caused by health, environmental, or economic disasters. Use the correlation plot to explore the relationship between rates of Black owner-occupied housing and vulnerable areas, as defined by SVI.



Natural Disasters (2 of 2)

- FEMA's new written self-declarative statement addresses some of the accessibility issues
- CDBG-DR program requirements remain ad hoc and state-by-state, however, leading to varying heir eligibility across states
- See Texas, Louisiana

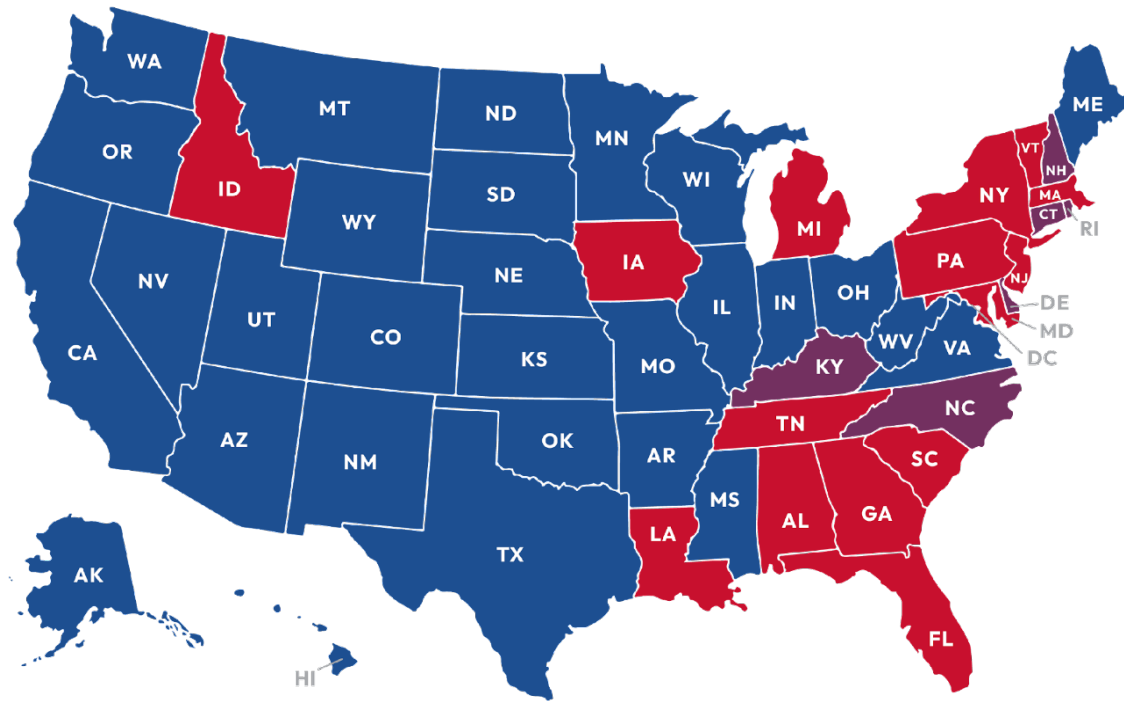
Preventing Heirs Property (1 of 2)

- Estate planning
 - Many communities have no tradition of estate planning
 - Historic and present lack of access to attorneys
 - Community-level distrust of attorneys and courts, especially related to a family's land
- Outreach
 - Churches, community centers, senior centers, clinics
 - Sharing risks of dying without a will or leaving property to multiple people
 - Referrals to direct service providers
 - It takes people time to make these important decisions

Preventing Heirs Property (2 of 2)

- Transfer on Death Deeds: transfer property to a specified beneficiary upon owner's death
 - Allows families to bypass probate
 - Most jurisdictions provide simple TODD form for advocates, homeowners to use
 - Must record in deed records
- Enhanced life estate deeds ("Lady Bird deeds"): allow property owner to grant remainder interest to beneficiary, who inherits property upon owner's death
 - Grantor maintains control over property during lifetime; does not require beneficiary's consent to lease/mortgage/sell
 - Used in Texas, Florida, Michigan, Vermont, and West Virginia (title insurance)

An Ounce of Prevention: Transfer on Death Deeds



- Enacted TODDs (29 states and DC)
- Introduced TODDs (6 states)
- Neither Enacted Nor Introduced TODDs (15 states)

More on Preventing Heirs Property

- Living trusts: legal instrument enabling an individual to transfer ownership of assets into trust account, avoiding probate
 - Requires trustee to manage trust assets
 - May be revocable/irrevocable
- May allow for communal property ownership, but can also be expensive/complex to manage
 - Creation and maintenance fees

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Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.