

# HEIRS' PROPERTY:

Acting to Preserve Wealth



# ACKNOWLEDGEMENTS

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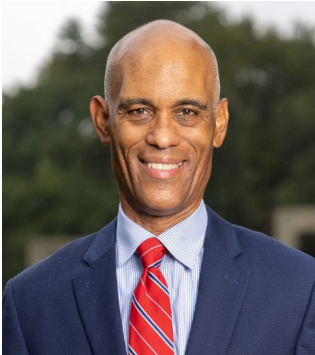
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# FOREWORD

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## Thomas W. Mitchell

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For many decades, a very large number of disadvantaged or otherwise vulnerable families throughout this country have experienced substantial problems with their family-owned properties, properties colloquially referred to as heirs' property due to the prevalence of such properties being transferred from one generation to the next without

a will or estate plan. These family-level property problems often have been correlated with blight, gun violence, and crime in many disadvantaged communities, especially in Black, Latino, and Indigenous communities.

The communities most impacted have lost tens of billions of dollars in generational wealth, exacerbating racial and ethnic wealth gaps. They also have had some significant aspects of their history, culture, and heritage wiped away in the process. Notwithstanding the massive scope of the problems, for decades heirs' property issues flew below the radar of important stakeholders from academia, the media, public policy circles, and the philanthropic community, among others, though they were in fact problems that were hiding in plain sight in both rural and urban areas throughout this country.

Over the course of the past twenty years or so, the issue of heirs' property has emerged from the shadows and has been rendered visible. The previous dominant narrative that nothing could be done to address heirs' property issues because those most negatively impacted simply lacked sufficient political and economic power to have change effected on their behalf no longer holds sway. Certain professors and researchers in law and certain social science disciplines have shined a light on a range of heirs' property issues that previously had been mostly overlooked or had remained unelaborated. After giving the issue little

coverage for decades, numerous media outlets have published articles, investigative reports, and documentary films, some of which have won major media awards such as the Peabody Award and the Aronson Award for Social Justice Journalism. Elected officials and other policymakers at the state and federal level have passed some landmark laws and developed some policies designed to address some critical heirs' property issues. The nonprofit sector—both established and new organizations—has proven it can respond to the needs of heirs property owners with a range of dynamic and novel interventions. And lastly, in addition, philanthropy has played a critical role in partnering with researchers, media, policymakers, and the nonprofit sector to invest in these initial innovations, give visibility to solutions, and debunk harmful narratives that maintain the status quo.

Though incredibly significant and a real source of hope for heirs' property owners, these developments simply are not enough to address the magnitude of heirs' property problems still plaguing many disadvantaged families and communities. More attention and actions are required, and philanthropy has the opportunity to spark and advance this important work. The primer provides helpful information on defining heirs' property, identifying a key driver of the creation of such property, and sketching out many if not all of the problems associated with heirs' property ownership. The primer also identifies key ways in which the philanthropic community can help fund vitally important work that can contribute to taking to scale a range of initiatives designed to help families secure their property ownership and to enable them to realize more of the economic and non-economic benefits and potential of such ownership.

Whether you are a national, regional, or place-based grantmaker, please review the many opportunities the Asset Funders Network has identified for philanthropic organizations to advance the scope and scale of work that is being done to address various manifestations of the heirs' property problem and then consider taking a leadership role in funding such work.

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## INTRODUCTION

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Land and other forms of property ownership are primary building blocks of wealth for current and future generations. Yet, for hundreds of thousands of Black, Latino, and Indigenous people who inherited their land and homes from family members, these assets—called heirs' properties—are at risk.

As asset funders work to build equitable economic security and to dismantle systemic barriers that create and sustain racial wealth gaps in our nation, securing and preserving the property rights of heirs' property owners requires more focused attention.

Heirs' property is a common legal form of property ownership in disadvantaged communities, in both urban and rural areas, particularly among Black families. But heirs' property is also a highly unstable form of ownership. The fractionated and clouded nature of heirs' property ownership makes heirs' properties highly vulnerable to forced sales, land grabs by investors, and other losses; they often become dead assets. The losses of these properties have had devastating economic and cultural consequences for Black and Latino families. By one measure alone, the forced sale of heirs' properties through partition law abuse has likely resulted in the loss of tens of billions of dollars in wealth for Black and Latino families and communities.<sup>1</sup>

This primer reviews the major issues associated with heirs' property and the disproportionate impacts that heirs' property has on Black families and other communities of color, exacerbating the racial wealth gap. The primer identifies opportunities for philanthropic engagement to help address these issues and, ultimately, help families from disadvantaged communities preserve and build wealth from their property.



## BACKGROUND: UNDERSTANDING HEIRS' PROPERTY

### What is heirs' property?

Heirs' property is real property (land as well as houses and other buildings that are permanently attached to the land) that has passed down to multiple family members via inheritance, often across multiple generations.

There are two core features of heirs' property:

**1 Fractionated ownership.** When someone dies and their real property is inherited by more than one family member, each heir inherits a fractional ownership interest in the entire property. The law calls this form of ownership "tenancy in common," with each owner a "co-tenant." The laws governing tenancy in common ownership require unanimous consent of all the co-tenants for major actions affecting the property, such as sales and leases.

With each passing generation that the property gets passed down as heirs' property, the number of co-owners (or, in the language of the law, co-tenants) grows, resulting in the ownership interests becoming even more fractionated. Eventually, the number of co-owners can number in the dozens or even hundreds, and family members lose contact with each other, making it extremely difficult or impossible to manage the property, sell the property, or secure a loan on the property.

**2 Clouded title.** The title to heirs' property is often "clouded," meaning that no legal paper trail exists to establish each of the heirs' ownership interest with lenders, title companies, government agencies, and other third parties. The primary way in which the title to heirs' properties becomes clouded is when a property owner dies without a formal estate planning document, such as a will or transfer-on-death deed. When this happens, the person is said to have died "intestate," and state intestacy laws dictate which relatives (typically the surviving spouse and children) inherit the property. When someone dies intestate, the ownership transfer happens automatically upon the owner's death, without any legal documentation of the transfer.

While not every heirs' property has clouded title, clouded title is a common feature of heirs' property. With each passing generation, as the number of co-owners increases, the likelihood of clouded title grows, making it even more difficult to establish and exercise all of the ownership interests in the property.

### Who is impacted by heirs' property?

Although heirs' property impacts all racial and ethnic groups across the United States, heirs' property is particularly prevalent among Black communities, as well as other disadvantaged communities.<sup>2</sup> In both rural and urban regions, heirs' property is most likely to be found in areas with higher concentrations of Black and Latino residents.<sup>3</sup> Heirs' property is also more concentrated where communities have lower incomes, low wealth, and low educational attainment.<sup>4</sup>

Millions of acres of Native American allotment lands share characteristics and challenges similar to those associated with heirs' property, particularly in regards to the fractionation of interests. These lands, which were allotted to individual tribal members in the late 1800s and early 1900s via the Dawes General Allotment Act, are held in trust by the U.S. government or have other restrictions on their use and disposition.

According to the Bureau of Indian Affairs, Native Americans today hold more than 2.4 million fractional interests in these lands, affecting 100,000 tracts and 5.6 million acres of land. Unlike heirs' properties, these lands are not subject to forced sale in partition actions.



Specific areas of the country where heirs' property is concentrated include:

- Historically Black-held lands in the rural South.
- Older urban neighborhoods that have historically high concentrations of Black and Latino homeowners. U.S. cities that have chronic heirs' property issues include New York City,<sup>5</sup> Jacksonville,<sup>6</sup> San Antonio,<sup>7</sup> Philadelphia,<sup>8</sup> Baltimore,<sup>9</sup> and Detroit.<sup>10</sup>
- Native Hawaiian-owned Kuleana lands.<sup>11</sup>

The informal nature of heirs' property makes creating a comprehensive inventory of heirs' properties extremely difficult. Notwithstanding these difficulties, researchers are working to identify heirs' properties in particular jurisdictions and increase our understanding of heirs' property and its disproportionate impacts on economic equity; much of this work focuses on the Southeastern United States.<sup>12</sup>

### RECENT FINDINGS ON THE PREVALENCE OF HEIRS' PROPERTY IN URBAN AREAS

Initial findings from a recent study in Duval County, Florida, which includes Jacksonville, found that at least 9.2% of all residential properties are likely heirs' properties, with the highest proportion concentrated in historically segregated Black neighborhoods cut off from financial investment by racist redlining practices.<sup>13</sup>

Another recent study found that at least 10,407 residential properties in Philadelphia have clouded titles. These properties, which represent 2% of all residential properties in the city and have a collective value of more than \$1.1 billion, are concentrated in neighborhoods with lower housing values and higher percentages of Black and low-income residents.<sup>14</sup>

## A Key Driver of Heirs' Property: Lack of Formal Estate Planning

The disproportionate concentration of heirs' property in Black and Latino communities has been shaped in part by the racial and ethnic gap in will-making and other forms of formal estate planning. In particular, for many African American families, owning land and keeping it in the family was a priority from Reconstruction onward. The land provided these families a vital source of personal and economic freedom. But many Black families distrusted or lacked access to the legal system and relied instead on the informal passage of title.

While gaps in estate planning have narrowed over time, they still persist today, disproportionately impacting both Black and Latino residents. According to a 2023 national survey, only 29% of Black and 23% of Hispanic respondents had a will or other estate planning document, compared to 39% of white respondents.<sup>15</sup>

Another study of homeowners residing in the colonias of South Texas, a population of almost exclusively very low-income, Latino residents, found that 89% of the adult residents lacked a will. The study's findings led the researchers to predict that heirs' property issues are likely to become more prevalent in older colonias in the coming two decades, including a "dramatic increase" in clouded property titles in this part of the country.<sup>16</sup>



## The Problems Associated with Heirs' Property Ownership

Heirs' property ownership is associated with a number of issues that undermine the social and economic well-being of the land's owners. With the passing of each generation of heirs, these problems intensify as the number and remoteness of the co-owners increases and the title becomes more clouded.

Some of the key issues associated with heirs' property ownership include:

■ **Predatory and coercive sales in areas with rising property values.** Heirs' property owners in older communities of color experiencing rising property values are highly vulnerable to losing their homes and land through partition lawsuits and predatory tactics by real estate developers and speculators.

For decades, real estate speculators have been taking advantage of state partition laws to target heirs' property owners in these communities.<sup>17</sup> Acquiring a single relative's fractional interest in a property, no matter how small the interest, gives the speculator the right to file a partition lawsuit forcing the sale or division of the family property.

Because families with heirs' property tend to be "property rich and cash poor,"<sup>18</sup> simply the threat of a partition lawsuit is often enough to force the heirs to sell at a bargain. Partition has had particularly devastating impacts in the African American community, where partition sales are considered to be a leading cause of land loss.<sup>19</sup>

The loss of Black-owned land, which often has been in families for generations, has not only stripped African American families of their wealth but has also undermined families' connections to their heritage, history, and culture.<sup>20</sup>

### FORCED SALES OF HEIRS' PROPERTY

#### New York City<sup>21</sup>

In the Queens borough of New York City, real estate speculators forced Mr. Wilson, an older, Black homeowner, to sell the home he had occupied since his childhood, which he had acquired from his parents as heirs' property. The home, located in a rapidly gentrifying neighborhood, had dramatically increased in value over the prior decades. By acquiring his estranged siblings' co-ownership interests and then threatening to file a partition lawsuit, the speculators ultimately stripped at least \$500,000 in equity from Mr. Wilson's family home and forced Mr. Wilson into a rental apartment where he experienced difficulties keeping up with his rental payments.

#### San Antonio<sup>22</sup>

In San Antonio, real estate speculators threatened to force Mr. Henry, an older, Black homeowner, out of his home after acquiring his estranged brother's co-ownership interest at a steep discount. Mr. Henry had resided in the home, located in a rapidly gentrifying neighborhood, his entire life. The speculators sent a demand letter to Mr. Henry asserting, the right to collect rent from Mr. Henry for residing in the home. When he refused to pay rent, the speculators filed a partition lawsuit to force the sale of the home. With the help of legal aid lawyers, Mr. Henry was ultimately able to hold onto his home.





### ■ Challenges with maintenance and management.

Fractionated ownership and clouded titles make it very difficult for heirs to maintain and manage their property. Heirs' property presents specific challenges for owners trying to maintain their properties:

- Before a home or land held as heirs' property can be sold or mortgaged to pay for repairs or improvements, every heir must be identified and each one must consent to the financing or sale. Legal documentation must then be provided to a title insurance company to establish each of the heirs' ownership interest. With each passing generation, as the number of heirs swells into the dozens or even hundreds and not all are easily identified, securing a loan or selling the property becomes ever more difficult and complex, making the property "dead capital" that cannot be used to generate wealth in the future.<sup>23</sup>
- Heirs' property owners are cut off from a number of important federal, state, and local government repair and rebuilding programs, which require clear title. For example, tens of thousands of heirs have been barred from accessing one of the largest sources of disaster recovery assistance for repairing and rebuilding homes—the Community Development Block Grant-Disaster Recovery Program—as a result of their clouded and fractionated titles.<sup>24</sup>
- Many states exclude heirs' property owners from accessing important savings available through property tax relief programs such as homestead exemptions, by requiring clear title or consolidated ownership as a condition of accessing these exemptions.<sup>25</sup> In states with these barriers, heirs' property owners get hit with higher tax bills. For example, a study of older homeowners who hold heirs' property in San Antonio found that their property tax bills were, on average, \$1,157 higher a year than they would have been if the property had not been held as heirs' property.<sup>26</sup>
- As the number of heirs multiplies, the day-to-day management of heirs' property becomes inherently more difficult. In addition to challenges with financing, sale, and taxes, family disputes around who will pay the property taxes or pay for repairs, how the property can be used or improved, and other issues are common. Homeowners with heirs' property often end up in unsafe and insecure living conditions, while heirs who own timberland and agricultural land are less able to use their land for income generation.<sup>27</sup>

These difficulties have follow-on effects that resonate through generations, creating barriers to wealth generation and setting the stage for land loss.

■ **Barriers to wealth generation.** Ultimately, many heirs' property owners today are effectively barred from accessing the wealth-generating opportunities of property ownership. Consequently, they cannot pass this important form of wealth onto their children, perpetuating our nation's massive racial and ethnic wealth gap. Even where property owners escape predatory asset stripping by speculators, the legal complications presented by fractionated ownership and clouded title mean that heirs' properties often become "dead capital," not available to support wealth-generating opportunities such as starting a business or funding a university education.

■ **Land loss.** Because of the difficulties in financing improvements and disagreements among dispersed co-owners, heirs' properties are much more vulnerable to being lost to code enforcement actions and property tax foreclosure sales. For example, the initial findings from a study underway in Tarrant County, Texas, which includes the City of Fort Worth, has found that close to 50 percent of all property tax foreclosure sales over the past four years involved heirs' properties.<sup>28</sup>

■ **Impacts on communities.** Heirs' properties are also at a heightened risk of eventually becoming vacant and abandoned. Properties that follow this trajectory can generate harmful spillover impacts on neighboring properties and impose significant economic and public safety challenges for cities.



# OPPORTUNITIES TO PRESERVE WEALTH THROUGH HEIRS' PROPERTY

Tools and strategies for addressing heirs' property fall into four categories:

1. Prevention
2. Management and Preservation
3. Research and Public Education
4. Policy and Advocacy

Each of these areas presents many opportunities for grant-makers to invest productively to address issues associated with heirs' property.

## Prevention: Help families avoid the generation of heirs' property.

Investments in community education, grassroots outreach, and affordable legal services are critical to helping property owners in historically underserved communities develop plans for avoiding the creation of heirs' property, with all its complications. Community education in this area includes providing property owners with information about the risks of heirs' property, the importance of estate planning, and the pros and cons of different estate planning options.

Free and affordable legal services for the preparation of wills, trusts, and transfer-on-death deeds can help property owners plan for the property to remain in the family. After the property owner dies, if there is a will, many families also need legal assistance with probate proceedings and financial assistance to cover the costs of probating the will.

## SYSTEMIC STATE REFORMS: ALTERNATIVES TO WILL-MAKING

Twenty-nine states now allow for the creation of transfer-on-death deeds (also known as TODDs). This fairly new and affordable estate planning tool provides a simple way for families to pass down the title to property, because the transfer happens automatically upon the property owner's death—outside of any probate process. A TODD allows the heirs to transfer title without going through an estate administration process, which can cost thousands of dollars. However, although a TODD creates a legal record of ownership for the heirs, it can still result in the generation of problematic heirs' property to the extent that property is passed down to multiple heirs without a plan for its long-term use and maintenance.





## CASE STUDY

# Center for Heirs' Property Preservation: A Holistic Approach to Addressing Heirs' Property and Helping Families Use Their Land for Wealth Generation<sup>29</sup>

The Center for Heirs' Property Preservation, or CHPP, grew out of a project funded by the Ford Foundation in the 1990s to explore economic development opportunities in rural communities of South Carolina. In focus groups, residents repeatedly identified issues with heirs' property as a major impediment to taking economic advantage of their land. In response, a series of pilot projects were developed by the Coastal Community Foundation and the South Carolina Bar Foundation. The projects focused on community outreach and legal education to combat common myths around heirs' property ownership, along with estate planning legal clinics to "staunch the blood-flow of land loss."<sup>30</sup> These successful pilots led to the creation of the CHPP in 2005.

The CHPP, which was initially focused on four counties in coastal South Carolina, has grown to 35 staff members serving 22 counties. Today, the nonprofit has three buckets of work: prevention of heirs' property, resolution of heirs' property issues, and support for historically underserved landowners to develop sustainable land uses.

CHPP focuses on preventing the growth of heirs' property through community, education, and legal assistance in the form of free wills clinics, legal consultation, and assistance with probating estates.

Services to resolve heirs' property issues include personalized presentations that bring family members together to help them reach agreement regarding their land, along with the full range of legal services required to resolve heirs' property issues, including conducting title searches, preparing legal documents, and bringing quiet title actions in court.

CHPP's third bucket of services offers education and other support to historically underserved landowners, with the goal to help them sustainably manage and maximize the generation of income from their land. The CHPP also hosts an annual symposium for underserved rural landowners at which participants can access education and networking opportunities, as well as technical assistance sessions on a range of topics related to land ownership, including heirs' property issues and forestland management.

Since its founding in 2005, the CHPP has provided free one-hour legal consultations to more than 3,569 families and more intensive legal services to help 955 families resolve their title issues. CHPP has also provided forestry education and services to more than 450 families, who collectively own more than 40,000 acres of forestland.



## OPPORTUNITIES FOR GRANTMAKER LEADERSHIP

Funders can invest in nonprofit organizations providing community education, outreach, and affordable estate planning services that target historically underserved communities where heirs' property generation is prevalent, as well as pro bono bar association programs that support these efforts. Attention should be paid to ensuring that legal services are accessible to underserved landowners who may not meet traditional legal aid eligibility criteria given their land-rich but cash-poor status.

Funders can also support the development of newer, innovative approaches for landowners to secure access to affordable estate planning services and education about heirs' property. For example, estate planning services could be tied into local, state, or federal government-funded homeownership programs, so that a new homebuyer receives counseling and legal assistance with estate planning documents as part of the home purchase process.

### EXAMPLE:

**Grow Brooklyn** provides free and low-cost legal services for estate planning and administration to low-income homeowners as a core part of its mission of growing and preserving the assets of Brooklyn residents.

**The Center for Heirs' Property Preservation (CHPP)** offers heirs' property education seminars and estate planning clinics in South Carolinian communities where heirs' property is prevalent. To reach underserved communities, the CHPP employs a team of outreach workers and offers workshops in communities, asking churches, libraries, and community centers to host the events. See the case study below for more information on CHPP.

The **Georgia Heirs Property Law Center, Inc.**, has worked with a broad range of partners to train affordable housing nonprofits and housing counselors on the importance of estate planning and to help them incorporate estate planning into their services. The Center has also partnered with the State Bar of Georgia to develop estate planning forms and educational materials to increase access to affordable estate planning.<sup>31</sup>





## Management and Preservation: Assist heirs' property owners with preserving and managing their property.

Helping heirs preserve and manage their properties requires a holistic approach using a range of strategies, depending on the owners' needs, interests, and resources:

■ **Providing family education and mediation.** Organizations can work one on one with families that hold heirs' property to (1) identify common goals for the property, (2) develop a management plan, and (3) understand the special risks that could arise from their ownership status. CHPP provides a model for this work; see the case study above.

■ **Remediating clouded titles.** Helping heirs' property owners obtain clear title is often complex, time intensive, and expensive, but it is essential to the long-term management of heirs' property. Remediation assistance can take two forms:

- Legal assistance services—to help families with heirs' property clear clouded titles and create legal documentation of their ownership interests—such as preparing affidavits of heirship, probating estates, and bringing quiet title actions and other litigation.
- Financial support to cover the costs of court proceedings and other title-clearing processes.

■ **Consolidating titles.** Families with heirs' property can consolidate ownership, reducing the number of co-owners and simplifying management, via buy-outs and gift deeds. Organizations can facilitate the process by providing legal assistance, mediation, and financial support.

■ **Facilitating collective management.** Heirs' property co-tenancy ownership can be converted into more stable legal structures, such as family LLCs or land trusts; alternatively, tenancy-in-common agreements governing the use and management of the property can help co-owners manage and maintain the property. Organizations can provide legal support for these solutions and, where legal services are unavailable, accessible forms to create a personalized tenancy-in-common agreement.

### ■ Providing asset education and technical assistance.

Organizations can support heirs' property owners in the stewardship of their land by, for instance, assisting them with gaining access to government programs, including property tax exemption programs, the USDA Heirs' Property Relending Program, and opportunities to enhance the value of their land.

■ **Combatting predatory actions.** Community education and timely, affordable legal assistance can help heirs' property owners defend their land from partition lawsuits and other predatory actions by third parties.

## OPPORTUNITIES FOR GRANTMAKER LEADERSHIP

A holistic array of strategies and services is essential to meeting the needs of heirs' property owners and helping them ensure the preservation and strengthen the management of their property. With the support of funders, a small number of nonprofit organizations have built robust and highly effective programs to serve the needs of heirs' property owners in specific states. These organizations are models for launching and growing initiatives in other regions with a concentration of heirs' property. With additional, targeted financial support, nonprofits with well-developed programs can serve as sources of technical assistance for other organizations.

Grantmakers can also support the development of new, low-interest loan products to help land-rich, cash-poor families clear and consolidate the titles to their properties. The recently created Heirs' Property Relending Program, overseen by the US Department of Agriculture, could serve as a model here.

### EXAMPLES:

**The Mississippi Center for Justice** launched an Heirs Property Project in 2021 that provides a range of educational and legal services to help low-income families manage and preserve their inherited property. The Center's initiatives include a two-year pilot project with the Center for Heirs Property Preservation, with support from the World Wildlife Fund and Kimberly-Clark, to help underserved families in Mississippi protect and manage their forestland through legal services, forestry education, and access to funding.

The City of Philadelphia, as a funder, has taken a number of holistic approaches to help homeowners clear their titles, including a recent \$7.6 million investment in four legal services organizations providing title-clearing work for low-income homeowners. **Philly VIP**, a pro bono legal services program, also administers the City of Philadelphia's Tangled Title Fund, which provides grants of up to \$4,000 to help low-income homeowners cover title-clearing expenses, such as probate and recording fees.

**The Federation of Southern Cooperatives**, as part of its focus on helping Black farmers retain their land, hosts an annual national conference for heirs' property owners; the conference provides opportunities for heirs to interact directly with a broad range of professionals who support heirs' property owners, including tax professionals, attorneys, and experts in the field. Heirs receive practical information on resolving heirs' property issues and creating estate plans.

## Research and Public Education: Increase awareness about heirs' property.

Research has documented the existence and impact of heirs' property, but much remains unknown about heirs' property, and an overall lack of awareness of the systemic issues associated with heirs' property persists among policymakers and other leaders. Additional research and educational campaigns will help deepen our collective understanding of these issues and identify systemic solutions needed to help families with heirs' property in vulnerable communities preserve their wealth.

Additional research is needed in several areas:

- Identifying where heirs' property exists and mapping its impacts on household and community wealth, particularly in older, Hispanic communities and urban areas. Much (but not all) of the research to date has focused on rural properties in the Southeastern United States. Research to identify heirs' properties can be time-intensive and the results imprecise, given the informal nature of heirs' property and the different ways in which counties track property titles. Still, identifying where heirs' property exists and defining the nature of its impacts is important to understand.

- Improving understanding of the legal and other barriers heirs' property owners face in maintaining and managing their property and identifying legal reforms, policies, and programs that could remove these barriers. For example, recent research has brought to light the prevalence of state laws that bar heirs' property owners from accessing homestead exemptions and other important property tax savings programs, as well as opportunities for removing these barriers.<sup>32</sup>

- Analyzing current approaches to addressing heirs' property issues to assess their effectiveness and support the development and dissemination of best practices.

### OPPORTUNITIES FOR GRANTMAKER LEADERSHIP

In addition to directly supporting research and analysis, funders can support this work by convening researchers to share findings, facilitate collaborations, and identify best practices for navigating the challenges that arise in this field of research. Funders can also help elevate awareness among policymakers and other stakeholders about the latest research findings and policy changes and investments in services that are making a difference.

#### EXAMPLES:

In 2017, the Federal Reserve Bank of Atlanta and the U.S. Forest Service's Southern Research Station convened researchers and direct service providers to discuss research, policy, and practice associated with heirs' property in the South. The meeting played an important role in fostering dissemination of best practices and identifying new opportunities to better protect intergenerational wealth, as well as identifying critical needs and issues for future research.

The Initiative on Land, Housing & Property Rights at Boston College Law School, which was recently formed to preserve and expand property rights for disadvantaged communities, includes a focus on research and devising legal reforms and policy solutions to address issues affecting heirs' property owners.

## Policy and Advocacy

Federal and state governments have adopted several significant policy reforms to help protect heirs and their property and to prevent the future proliferation of heirs' property. These reforms include:

- The adoption in at least 23 states of the Uniform Partition of Heirs' Property Act, a landmark model law providing important protections for family members when an investor acquires an interest in their property and brings a partition action.

- FEMA's policy change in 2021 to allow heirs' property owners to qualify for disaster recovery assistance without formal legal proof of ownership. Prior to this policy change, well over 100,000 heirs' property owners were denied FEMA assistance to repair their homes as a result of clouded titles. Those denied were disproportionately Black and Latino homeowners.

- The creation of the U.S. Department of Agriculture's Heirs' Property Relending Program through the 2018 Farm Bill, which provides loans to help heirs to farmland resolve clouded titles. Lenders applying to participate in the USDA program receive priority if they are located in states that have adopted the Uniform Partition of Heirs Property Act.

- The adoption of legal reforms in several states to make it easier for low-income families to pass down their properties with clear title while avoiding costly court filings. For example, at least 29 states have adopted transfer-on-death deed laws, which provide an affordable legal mechanism for passing title to property when the landowner dies, without the expenses of probate or other estate administration processes.<sup>33</sup>

### OPPORTUNITIES FOR GRANTMAKER LEADERSHIP

Funders can get involved in supporting policy and advocacy around heirs' property issues in a number of ways. For example, funders can support the development of policy and advocacy centers focused on these issues.

Funders can also support state- and national-level convenings and collaborations of leaders working to develop the next generation of policy reforms in this field.

Additional policy reforms and advocacy to address the issues associated with heirs' property are urgently needed. Opportunities for investment in advocacy and narrative change to support policy reforms include, but are by no means limited to, the following:

- Adoption of the Uniform Partition of Heirs Property Act in the 32 states that have not yet adopted the Act (as of late 2022).

- Removal of the barriers heirs' property owners face in accessing some federal, state, and local government programs.

- Legal reforms are needed in most states to allow heirs' property owners to access homestead exemptions and other property tax savings programs.<sup>34</sup>

- Modifications are needed to the stringent titling requirements for participation in home repair programs funded through federal block grants, including the Community Development Block Grant Disaster Recovery Program, in order to allow heirs' property owners to access these important programs.<sup>35</sup>

- Reforms to state estate administration laws to make these proceedings more accessible to low-income property owners, in addition to the adoption of transfer-on-death deed (TODD) laws in the states that still do not have this affordable legal tool for passing down title to real property without a will.

- Reforms to state laws to make it easier for heirs' property owners to create a legal paper trail of their ownership interests when they inherit their property via intestacy, such as the adoption of approaches taken in some states to allow affidavits of heirship or affidavits of descent, rather than requiring expensive probate court proceedings.

- Funding allocations by federal, state, county, and city governments to support the prevention and remediation of heirs' property issues.

## CONCLUSION

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Heirs' property issues continue to be deeply entrenched in Black, Latino, and other socioeconomically disadvantaged communities across the country. Philanthropy has a vital role to play in tackling these issues and, in doing so, contributing to greater economic security in these communities.

This work requires many strategic layers at the local, state, and national levels. Funders can support work to help heirs' property owners preserve and manage their property; efforts to prevent the future generation of heirs' property; research and education to elevate awareness about heirs' property issues; and advance the next generation of policy reforms. Local and national funders are well positioned to support each of these efforts, and funders' investments are desperately needed to address these issues.

Ultimately, greater philanthropic involvement in this work is imperative to the preservation and stewardship of land and other property that has been passed down, and continues to be passed down, among families in disadvantaged communities.





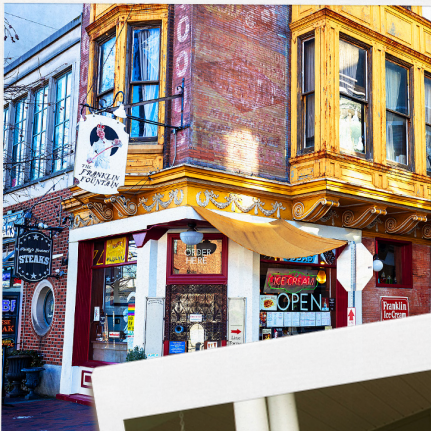
# Resources:

## Where to Learn More About Heirs' Property

### Books and Collections

**Thomas Mitchell and Erica Levine**, eds. Heirs' Property and the Uniform Partition of Heirs Property Act: Challenges, Solutions, and Historic Reform. American Bar Association, 2022.

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### Articles

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**Leah Douglas**, "African Americans Have Lost Untold Acres of Land Over the Last Century," The Nation, June 26, 2017, <https://www.thenation.com/article/archive/african-americans-have-lost-acres/>

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**Matt Reynolds**, "How Jim Crow-Era Laws Still Tear Families from Their Homes," State & Local Law News, April 28, 2021, [https://qa.americanbar.org/groups/state\\_local\\_government/publications/state\\_local\\_law\\_news/2020-21/spring/how-jim-crow-era-laws-still-tear-families-their-homes/](https://qa.americanbar.org/groups/state_local_government/publications/state_local_law_news/2020-21/spring/how-jim-crow-era-laws-still-tear-families-their-homes/)

## ENDNOTES

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5. Spectrum News, "After NY1 Investigation, Legislator Proposes Law Limiting 'Partition Actions' Forcing People From Their Homes," NY1, March 28, 2019, <https://www.ny1.com/nyc/all-boroughs/news/2019/03/28/ny1-investigation-prompts-state-bill-on-property-partition-actions>; TRD Staff, "Investors Are Using Court Orders to Force the Sale of Properties with Multiple Owners," *The Real Deal*, March 21, 2019, <https://therealdeal.com/new-york/2019/03/21/investors-are-using-court-orders-to-force-the-sale-of-properties-with-multiple-owners/>.
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28. The final findings from this study will be available in early 2024. For more information contact the researchers: Heather K. Way, The University of Texas School of Law, and Noah Durst, Michigan State University.
29. This case study is drawn largely from Jennie L. Stephens, et al., "Working with Heirs' Property Families: The Center for Heirs' Property Preservation and the Georgia Heirs Property Law Center," in Heirs' Property and the Uniform Partition of Heirs Property Act: Challenges, Solutions, and Historic Reform, ed. Thomas W. Mitchell & Erica Levine Powers (2022), 67–XX, and "Support Our Work," Center for Heirs' Property Preservation, <https://www.heirsproperty.org/support-our-work/>
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