

EXECUTIVE SUMMARY

Heirs' Property: Policies to Preserve Wealth



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Heirs' property is real property that has been passed down through inheritance, often across multiple generations. Over time, this can lead to dozens of heirs with an increasingly small ownership interest in the property. Without a registered deed or legal proof of ownership, heirs' property owners are limited in their ability to obtain property tax relief or disaster recovery funds and are at high risk of loss to speculation. With ownership fractured among many heirs, it may be impossible to benefit from the value of the property by selling or mortgaging the property and heir occupants can face displacement.

Communities of color disproportionately experience heirs' property ownership, due to both historical abuse at the hands of the legal system and present-day lack of access to quality legal services. Older adults are also heavily impacted, as many inherit family property and land during their older years, at a time of low or fixed income. Finally, the vast majority of heirs' property owners are low-income individuals.

The legal system disadvantages heirs' property owners in a myriad of ways. Exclusionary policies prevent many families from enjoying the full physical and financial security and economic mobility promised by home and land ownership. Protecting heirs' property owners from losing their homes, while also increasing avenues for families to obtain clear title, is therefore an essential aspect of the fight to increase housing and economic security, protect marginalized communities, and reduce the racial wealth gap through wealth preservation.

At this moment, funders have a unique opportunity to protect and build generational wealth by investing in strategically designed initiatives focused on addressing fractured ownership. Grantmakers aiming to mobilize the wealth-building potential of heirs' property must consider the importance of targeted policy reforms in tandem with effective delivery of direct services.

This paper surveys the state and local policies that impact heirs' property. These legal interventions, taken together, have the power to enable family owners to make full use of their heirs' property and protect their legacy. Yet few, if any states, have provided the full slate of these possible protections. In jurisdictions with these policies in place, funders should support direct services organizations that can use them to protect heirs' property owners. In places where these policies are not in place, philanthropy has a crucial role in promoting their adoption to stem home loss and protect inherited wealth.

CHECKLIST OF STATE AND LOCAL LEGAL PROTECTIONS:

Readers may use this checklist to assess the status of policies in their own state or jurisdiction. Note the location-specific status of each policy with a "Yes" or "No" and consider plans for education or improvement in the jurisdiction.

POLICY	GOAL	WHO BENEFITS MOST	FREQUENCY OF 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	
Penalty elimination	Waive late fees and penalties, allow retroactive homestead tax relief	Residential heirs' property owners	Rare	
Reduction of payment shock	Reduce payment shock for heirs	Residential heirs' property owners	Rare	
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	
Foreclosure avoidance options	Allow heirs to enter affordable tax repayment plans	Residential heirs' property owners	Moderate	
Access to surplus equity	Give heirs access to surplus home equity after a property tax foreclosure	Residential heirs' property owners	Moderate	
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	

POLICY	GOAL	WHO BENEFITS MOST	FREQUENCY OF ENACTMENT	STATUS
Medicaid Estate Recovery Policies				
Limiting the estate	Do not collect against homes transferred through TODDs	Residential, first-generation heirs	Moderate	
Limiting recoverable debt	Avoid estate recovery whenever possible	Residential, first-generation heirs	Moderate	
Clear and accessible waivers	Avoid estate recovery whenever possible	Residential, first-generation heirs	Rare	
Disaster Relief And Home Repair Assistance				
Clear and flexible proof	Allow heirs' property owners to prove ownership with affidavits	Residential, owners of highly fractionated land	Rare	
Presumption of authority	Allow one active heir to authorize demolition and replacement, authorize repairs, and receive disaster aid	Residential, owners of highly fractionated land	Rare	

POLICY	GOAL	WHO BENEFITS MOST	FREQUENCY OF 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	
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	
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	
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	
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	

POLICY	GOAL	WHO BENEFITS MOST	FREQUENCY OF ENACTMENT	STATUS
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- or second-generation heirs	Moderate	
Probate fee waivers	Make probate affordable and allow fee waivers for low-income filers	First- or second-generation heirs	Moderate	
Documenting Ownership Without Probate				
Heirship affidavits	Allow heirs to use heirship affidavits to get property tax relief, home repairs, and disaster relief	First- or second-generation heirs	Moderate	
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	
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	

POLICY	GOAL	WHO BENEFITS MOST	FREQUENCY OF ENACTMENT	STATUS
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	Low-income homeowners for whom real estate is the sole asset	Common; enacted in at least 31 states plus DC	
Contingent Beneficiaries in TODDs	Allow property owners to convey the property upon death without the risk that the TODD fails to take effect	Low-income homeowners for whom real estate is the sole asset	Common	
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	
Public-private partnerships	Increase philanthropic resources for estate planning	All property owners and heirs	Moderate	

ISSUES FOR FURTHER STUDY

In addition to investing in groups working to educate on and enact the policies listed above, grantmakers should support additional study and investigation into issues like:

Laws designed to address gridlock and get around the need for unanimity.

This includes laws allowing heirs to use the land and draw income from the land with less than 100% of heirs agreeing. Difficult questions arise about what kinds of activities should be permitted, what percentage of heirs should have to agree, and whether to exclude only heirs that cannot be located or also heirs who do not agree.

Laws limiting the rights of absent or inactive heirs. This could include statutes of limitations on probate filings or other laws that may cut off the rights of heirs who do not initiate or respond to a probate filing. This might also involve addressing unknown heirs and heirs who cannot be located after a diligent search.

Streamlined default inheritance rules.

This could involve intestate inheritance laws that default to a smaller number of heirs at law or convey property to heirs with the right of survivorship. It could also involve spousal right of inheritance such as tenancy by the entirety.

Streamlining and reducing the costs of trust creation and maintenance.

This could involve investigation of whether streamlining the trust creation and maintenance process might be a useful tool in preventing heirs' property.

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