

HEIRS' PROPERTY:

Policies to Preserve Wealth



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INTRODUCTION

Heirs' property is real property that has passed down to family members through inheritance, often across multiple generations. Heirs' property is marked by fractured ownership (joint ownership by a number of heirs) and title that is "clouded," meaning not clarified in public records. 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 land or home by selling or mortgaging the property, and heirs face the loss of that value and displacement.

The scope of heirs' property is significant in the United States—experts estimate that between \$32 billion and \$41 billion in wealth is held as heirs' property. Working on issues surrounding heirs' property therefore presents a significant opportunity to protect and increase the wealth of low-income families.

Heirs' property exists and persists in the United States because of particular policies and because certain groups have been excluded from participation in the legal system due to systemic discrimination. If we are to ensure that families can access the full benefits of their properties, impacted communities must be invited into the process of imagining and creating better policy, financial, legal, and other systems. Long-term solutions will require a significant investment in outreach and education, legal services, access to the courts, policy change, and sources of capital. In the near term, it is essential that state and local governments recognize the prevalence of fractured ownership and shape policies to include and protect these landowners.

Perhaps because of the massive opportunity it presents, heirs' property has garnered significant attention from funders, policymakers, and the media in recent years. From being described as the "biggest problem you've never heard of," heirs' property has

become a central discussion topic in the asset security space. A proliferation of pilot programs, law school clinics, and innovative partnerships have entered the scene and begun to generate learnings, results, and possibilities.

The community of advocates working on heirs' property has now reached a critical point, a moment when concerted action can magnify the potential gains. Coordination among direct service providers on the ground can make these individual efforts all the more impactful. In order to achieve the greatest protection of the homes, land, and life savings currently held as heirs' property, funding for targeted policy advocacy is crucial.

Because the legal landscape that impacts the security or risk of heirs' property varies so greatly in states and localities around the country, and the presence or absence of a particular kind of law makes a huge difference, grantmakers cannot achieve the maximum impact on heirs' wealth security by funding direct services alone. An awareness of the policy context, and ways funders can shape that context, is crucial.

Philanthropy has a critical role to play investing in and advancing solutions for better policies and systems. To support grantmakers, communities, and policymakers in these efforts, this paper provides an explanation of the state and local laws and policies impacting owners of heirs' property, including a short description of each law or policy, a discussion of why it matters, and recommendations for action at the state, county, or city level. These legal interventions, taken together, have the power to enable family owners to make full use of their heirs' property. Yet few, if any states, have provided the full slate of these possible protections.

What Readers Will Discover In This Paper

This report examines state and local policies that either alleviate or exacerbate risks to heirs' property owners imposed by the universe of laws that impact heirs' property owners, whether their land is urban or rural, primarily residential or used for agriculture, timber, or mineral extraction. Many legal issues apply across these contexts, but some of the laws we discuss are more important for one context or another, and we attempt to make that clear. The prevalence of agricultural or rural versus residential or urban heirs' property in a state or locality may impact which laws matter most.

We attempt to discuss both the relevant laws and policies. Some of the legal landscape we discuss here is found in statutes enacted by state legislatures, and other elements have been developed through administrative regulations, judicial proceedings, or informal policies or practices at the state or local level. Not all of what is covered here requires passing legislation. Policymakers and other stakeholders have a range of tools at their disposal.

Grantmakers can use this paper as a roadmap to chart a course forward in unlocking the wealth-building potential of heirs' property. In any given state, city, or region, assessing the strength of the various laws surveyed here will allow a funder to work with local partners to design a high-impact plan of action. Grantmakers with a national scope can build a framework for coordination and collaboration across the country on efforts with similar goals.

Laws of the U.S. territories are not discussed here, although they warrant an independent and careful review because heirs' property issues are significant in the U.S. territories. Similarly, we do not attempt a thorough review of the legal structures at play in tribal lands, due to the nation status of tribes. Heirs' property is a significant issue in Indian country, as mentioned on page 8, and a fuller exploration of the legal issues in tribal territories is much needed.

Also beyond our scope here are the many federal laws and policies impacting heirs. The successor-in-interest rule in Regulation X, under the Real Estate Settlement Procedures Act (RESPA), is extremely important in protecting heirs from preventable mortgage foreclosures.¹ Moreover, federal regulation of data brokers under the Fair Credit Reporting Act, as well as federal telemarketing rules, could play a significant role in protecting heirs' property owners from direct solicitation by abusive actors attempting to steal their home equity. Those issues should be more fully explored in other contexts.

Background And Context

As discussed in the 2023 AFN primer, heirs' property has two core features: fractionated ownership and clouded title.²

Fractionated ownership

Fractionated ownership refers to the fact that the property is owned by more than one heir, with each heir owning a percentage share of the entire property. Heirs hold their ownership interest as tenants in common, which means that all heirs must agree to any major action affecting the property; when any tenant in common dies, that person's interest passes to their direct heirs rather than to the other tenants in common.

Clouded title

The ownership status of heirs' property is often clouded, meaning that it is not officially documented. When title is clouded, the last recorded deed to the property is still in the name of the original owner, and the various co-owners who obtained their share by inheritance are not documented in public records.

Heirs' property is sometimes referred to as "tangled title." The term "tangled title" is also used to describe a broader set of challenges related to proof of land ownership, including deed theft and certain rent-to-own contracts.

Land Ownership Records 101

In the American legal system, ownership of land is recorded in public deed records maintained by each county within a state. When a property is transferred through death, the heirs must take certain actions to update the deed records to reflect the new ownership. Typically, this involves filing a lawsuit known as a probate case, asking the court to determine the identity of the heirs, permit creditors of the estate to file claims, and ultimately convey estate assets to the decedent's

heirs. When a valid will controls the passage of property, we say the decedent died testate. When there was no valid will, property passes intestate, to the heirs at law, according to the default inheritance rules within that state. In many states, these default rules provide that property passes partly to a spouse and the remaining part is divided among any children of the decedent.³ If one of those heirs died previously, their interest typically passes to their own direct heirs. With each passing generation, the number of owners can grow exponentially, and property may become highly fractionated as time goes by.

THIS REPORT IS ACCOMPANIED BY A GLOSSARY OF KEY TERMS, AVAILABLE ON [PAGE 38](#).

Prevalence Of Heirs' Property

Determining the prevalence of heirs' property is difficult because parcels of heirs' property are not labeled uniformly in public records, if at all. Sometimes county property tax assessors will update a landowner name to "heirs of" or "estate of" the former owner when they learn of a death of an owner, but the practice is not consistently applied within or among counties, and often county offices are not aware of the death. Labeling properties as heirs' property in a public domain exposes heirs to significant risk. Many investors seek to identify and target owners of heirs' property to acquire their land for significantly below its fair market value. Therefore, any action intended to make heirs' property easier to identify for research and policy purposes must be balanced against the risk of making that same information visible to predatory actors.

According to research conducted to date, the value of heirs' property in the United States is at least \$32 billion to \$41.3 billion.⁴ A nationwide analysis commissioned by Fannie Mae led to the conservative estimate of \$32 billion in heirs' property across 44 states and the District of Columbia. However, Fannie Mae noted that in some states the data it relied on

were not reliable and likely represented an undercount. Research in specific metro areas and regions has suggested that heirs' property is even more extensive.⁵

The equity held by owners of heirs' property—the wealth that is not fully accessible by families and that stands to be lost—is significant. Most fractured land is unencumbered or lightly encumbered by secured debt, because once the ownership becomes fractured or clouded, it is not possible to obtain or refinance a mortgage loan. Thus, the vast majority of heirs' property is subject to no mortgage or fairly low-balance mortgages. At the same time, the value of the land may have grown significantly over time. This untapped equity makes heirs' property a very attractive target for predatory actors, and a significant asset in need of protection to preserve and expand intergenerational wealth-building.

Who Is Impacted

Communities of Color

Heirs' property is rightly framed as a racial and economic justice issue and is a driver of the racial wealth gap. Ownership of land and homes as heirs' property can rob future generations of generational wealth transfer and economic mobility. Some studies have estimated that roughly 497,000 parcels of land, valued at nearly \$42 billion, are held as heirs' property throughout the American Southeast alone, where Jim Crow-era threats of violence and negative interactions with the legal system made intergenerational property transfers particularly inaccessible to Black landowners.⁶

An enormous amount of Black- and Latino-owned land has already been lost to vulnerabilities related to heirs' property ownership, and the risk of further land loss remains. A lack of access to, as well as exploitation at the hands of, the legal system has discouraged generations of Black families from utilizing probate or estate planning services. As a result, Black adults are more likely than their white counterparts to own land without clear legal title or to co-own land with other relatives who inherited without a will. One survey indicates that 77% of Black households do not have a will.⁷ Will making is low among Latino households

as well, and many Latino families hold land as heirs' property due to cultural factors and lack of access to information about the legal consequences.⁸ Heirs' property also occurs in the Colonias, less formal settlements along the U.S.-Mexico border where clouded titles are common.⁹

Older Adults

Older adults are also disproportionately impacted by heirs' property challenges. The majority of heirs are over age 50 when they inherit property, and a quarter are over age 61 at the moment of inheritance.¹⁰ When heirs lack the resources to complete a probate filing immediately, the challenges of owning a home as heirs' property gradually increase as the risks and property expenses grow. This is particularly true if the property tax bill skyrockets due to the loss of a homestead exemption or special senior property tax relief.¹¹ Many heirs would qualify for senior property tax discounts as well as the basic homestead exemption but do not know they need to apply.¹² Older heirs are taking on this greater burden during a time of diminished or fixed incomes; many will not have the resources to deal with the payment shock of higher property tax bills. Some older adults also take on these challenges at a time of diminished capacity, making it more difficult for them to address estate issues and more vulnerable to predation.

Low-Income Communities

Finally, the vast majority of heirs' property owners are low income. Low-income households are more likely to find estate planning or filing a probate court action cost prohibitive. Heirs' property is prevalent in Appalachia, a predominantly White, largely rural and small-town region in the eastern United States.¹³ Although some progress has been made in the past 50 years, Appalachia remains lower income than most of the country, with per capita income levels below 75% of the U.S. average.¹⁴ The prevalence of heirs' property ownership tracks not only racial and ethnic divides, but also class, income, and cultural divides in our country.

Before European colonization, Native American tribes stewarded the more than 2.3 billion acres of land that makes up the modern United States based on values of collective tribal ownership and shared resources.¹⁵ With the encroachment westward of the American colonies, a series of policies were created by the European and then United States governments to displace tribes from the lands they had occupied, move them to reservations, and control the ways they held land within and outside of those reservations.

From the 1880s to the 1930s, known as the Allotment Era, federal policy to promote individual, rather than tribal, ownership of the land led to the dividing up of reservation land into parcels that were allotted to individual tribal members. By design, these parcels were held in trust by the federal government for the allotted beneficiaries. Allotment led to the greatest loss of Indian land after reservations had been established. Roughly 60 million acres of land were lost initially by being declared surplus lands, and roughly 30 million more were lost over time due to fractured ownership and related issues. Prior to 1910, most tribal members could not lawfully make wills, and within a few generations, the allotted lands were held by many heirs.¹⁶ Over time, this has led to significant fractionation.

The American Indian Probate Reform Act (AIPRA), which took effect in 2006, made significant strides toward creating a default system of inheritance when owners of Indian lands die without a will. However, many challenges remain to be addressed. The Indian Land Tenure Foundation has done extensive work to document the history of threats to Indian land and to set out recommendations for reform.

Why It Matters

Heirs' property owners are excluded from a variety of benefits afforded other property owners. Heirs are not able to sell the property or refinance a mortgage without the unanimous participation of all the joint owners, which can be difficult to obtain. This fact alone creates vulnerability. Aside from the inability to sell or borrow in times of distress, heirs may be unable to obtain loans or grants for home repairs or to maintain homeowners' insurance, leading to significant deterioration affecting both the residents and owners of the property and the neighborhood.¹⁷

Tax Foreclosure

Fractured ownership also puts family homes at greater risk of a property tax foreclosure. Heirs may not receive property tax bills because they are not the record owners of the property. It is not uncommon for years to pass after the death of the original owner of the home without the property taxes being paid. Heirs may not have the benefit of tax relief programs available to owner-occupants due to lack of information, inability to provide proof of ownership required by the county, or both. An analysis of state and local policies found that the majority of states surveyed have laws or policies that bar heirs from obtaining full access to property tax relief programs.¹⁸ By the time heirs realize they are behind on property taxes, a tax foreclosure may have been scheduled or conducted and options to save the home may be limited. The tax debt owed is often too high to be affordable.¹⁹

Mortgage Foreclosure

If the property is inherited subject to a mortgage, families may struggle to deal with the mortgage secured by the home. Mortgage companies sometimes refuse to accept payments from people who are not the borrower, refuse to provide information about how much is owed, and refuse to consider heirs for loan modifications or other foreclosure avoidance options. Title issues have blocked many heirs from accessing pandemic-era mortgage relief funds.²⁰ Yet when a mortgage loan gets sufficiently far behind, the heirs face the risk of losing the home and all of their equity through mortgage foreclosure.



Disaster Recovery

Heirs also face barriers to obtaining disaster recovery aid. For instance, the Washington Post has found that Federal Emergency Management Agency (FEMA) applicants in majority-Black counties were “twice as likely to be rejected because they cannot prove that they own their homes.”²¹ After Hurricane Katrina, 20,000 heirs’ property owners were denied federal disaster relief funds; subsequent disasters such as Hurricane Maria in Puerto Rico have led to thousands of households being denied access to federal assistance due to unclear title.²² Although FEMA has improved its policies around proof of ownership in recent years, implementation is still an issue, with many heirs being denied initially and having to appeal. The Community Development Block Grant Disaster Recovery Program (CDBG-DR), the other major federal program for disaster recovery, implemented by the states, still lacks a clear policy related to heir owners.

Predatory Investors

All of these problems make heirs susceptible to another risk: investors who offer to purchase the home or a partial interest in the home quickly for much less than its true value. Real estate speculators will often attempt to identify heirs’ property parcels or to locate an heir with a small percentage of ownership who is not living in the home.²³ A speculator who buys even a tiny fractional interest from an heir can file a partition lawsuit and force the sale of the home. Often the investor stands to gain a lot more than they paid for the fractional interest, while the other heirs lose home equity and, for some, the roof over their heads. Transfers of heirs’ property from longtime homeowners to speculators greatly increases the racial wealth gap, as speculators gain and heirs lose land and homes that have multiplied in value over many generations.

LEGAL INTERVENTIONS TO ADDRESS HEIRS' PROPERTY

We find it helpful to divide the legal interventions discussed here into three general categories: laws aimed at protecting heirs' property from loss, laws aimed at resolving heirs' property, and laws aimed at preventing future heirs' property from developing. Resolving heirs' property can mean documenting the legal owners of the property, creating systems in which joint owners can manage the property, or consolidating ownership in a smaller number of heirs. Preventing new heirs' property can involve estate planning outreach, effective partnerships, and probate avoidance strategies. We will explain why each of these types of legal interventions matters and why it is important to consider all three goals in order to unlock the significant wealth-retention and wealth-building potential of heirs' property. Grantmakers considering funding work in this space should be informed about all three types of legal protections in order to use their resources to achieve maximum results.

Laws Aimed At Protecting Heirs From Loss Of The Property

The first set of laws and policies discussed in this report are those designed to protect families with fractured property ownership from one of the primary harmful effects of unclear title—specifically, a greater vulnerability to home loss. These include legal interventions to prevent property tax foreclosure and access property tax relief, rules around Medicaid Estate Recovery, rules for rebuilding after a natural disaster, and laws aimed at protecting heirs from equity theft.

Laws and Policies Aimed at Preventing Property Tax Foreclosure

Problem: Tax responsibility and burden can exacerbate the likelihood of tax foreclosure and property loss for heirs.

Goal: The six policies described help address this issue by ensuring that heirs' property owners know and understand tax responsibilities, allowing heirs to obtain property tax relief, preventing heirs from losing the home to tax foreclosure, and returning surplus equity to heirs.

Who benefits most: Mostly residential heirs' property owners; tax relief may also be available for agricultural or timber land uses.

Frequency of enactment: Rare. Only a few states and localities have crafted policies to make property tax relief, foreclosure protections, and surplus equity accessible to heirs' property owners.

KEY CONSIDERATIONS

Heirs' property owners are particularly vulnerable to property tax foreclosure. Heirs typically lose the property tax relief available to owner-occupants when the prior owner dies. An analysis of state and local policies found that the majority of states surveyed have laws or policies that bar heirs from obtaining full access to property tax relief programs.²⁴ In many states, heirs' property owners cannot obtain the owner-occupant tax relief or repayment plans without completing the probate process.²⁵ Probate is expensive and time-consuming in the best circumstances, and it may be impossible if all heirs cannot be located.

Without the property tax relief that is intended for owner-occupants, the tax bill can skyrocket, leading to a tax foreclosure. Therefore, permitting flexible proof of ownership in the application for tax relief is extremely important. It is also crucial that local governments not retroactively remove a homestead exemption based on learning later of a prior owner's death, or if they do remove the exemption, allow the heirs to apply for the homestead exemption in their own name retroactively as well.²⁶

The current law in many states disadvantages heirs compared to other joint landowners. Many states provide only a fractional homestead exemption to an heir with a partial interest living in the home.²⁷ For example, if the heir living in the home owns a 25% interest in the property and other heirs own the remaining 75%, that heir-occupant might only be entitled to 25% of the usual tax relief afforded to owner-occupants.²⁸ This is true despite the fact that in many such states a fractional owner who co-owns land with a right of survivorship (common among spouses) might receive 100% of the tax benefit without having 100% ownership.²⁹ Finally, many states require that in order to qualify for property tax relief programs, all of the heirs must meet the program's qualifications

(e.g., must reside in the home, be over 65, meet the income restrictions, etc.).³⁰

Taxing authorities have an additional opportunity to protect heirs' properties from loss, by considering whether and how they reflect that land is owned by the "estate of" or "heirs of" a former owner in public records. Most local governments do update the ownership of the property in this way when they are aware that a record owner has died. Unfortunately, that information can be readily used by investors to directly target heirs for equity theft scams. Grantmakers can make a substantial impact by funding a deeper exploration into how to protect heirs from being targeted through the use of public data.

RECOMMENDATIONS

Funders should support groups educating on and working to pass the following key reforms where they are lacking and support direct services to ensure consistent implementation where they are in effect:

- **Access to homestead tax relief**—Provide a full homestead exemption (or equivalent tax bill discount) even for partial owners occupying heirs' property, based on flexible proof of ownership. Many states make 100% of owner-occupant tax relief available to heirs with fractional ownership interests held as tenants in common. Yet the majority of states provide only partial tax relief equal to the percentage owned by the heir occupants, even if they provide a full exemption to joint owners that hold land with a right of survivorship. Some localities allow heirs to obtain the homestead exemption based on an affidavit or other informal proof of ownership, rather than delaying this tax relief until probate has been completed.
- **Penalty elimination**—Assess no penalties against heirs who continue to receive the former owner's tax relief, and do not retroactively remove tax relief when heirs continue to receive the benefit after the prior owner's death unless heirs can also retroactively obtain the exemption in their own name. Some states have a penalty that can be assessed against heirs who unwittingly continue to receive the benefit of a homestead exemption obtained by the prior owner after that owner has died.³¹ Most states do not assess a penalty against heirs in this situation. However, a significant number of states allow local governments to retroactively adjust the tax bill going back several years when the heir was receiving the exemption in the prior owner's name.³² This is true even though the heirs cannot at that point obtain the exemption in their own name. Texas is one state where an heir can obtain the homestead exemption going back two years.³³ In Michigan, the local government may waive tax penalties upon a showing of reasonable cause for failing to pay the taxes, including serious illness or a death.³⁴ Such waivers should be automatic upon proof of the homeowner's passing.
- **Reduction of payment shock**—Consider policies to soften payment shock when properties have been subject to a valuation freeze for many years. Heirs are often subject to significant payment shock even if they do apply for the homestead in their name, because the property is usually reassessed at the current fair market value and may have been subject to a freeze going back to when the original owner purchased the home. At least one state has allowed an heir to carry over the assessed value of the prior owner under certain circumstances.³⁵ However, such laws are not without controversy, as they comparatively benefit long-time owners over recent entrants to the housing market. These carried-over assessments must be thoughtfully crafted if they are to promote equitable tax policy.

■ **Thorough noticing**—Intentionally craft notices regarding tax bills, assessments, relief, and foreclosure to reach heirs. Heirs' property owners may not receive communication about the property taxes owed or available relief or assistance.³⁶ When the tax foreclosure process begins, states vary in terms of how much diligence is required to locate heirs and serve them with notices of tax foreclosure. Localities in some states make very little effort to locate heirs.³⁷ Reasonable efforts to locate heirs should include a diligent search of available resources as well as posting notices on the property.

■ **Foreclosure avoidance options**—Provide many opportunities to avoid tax foreclosure, including repayment plans and flexible tax redemption options. State policies that prevent tax foreclosure against homeowner occupants will also help protect heir owners. Such policies include permitting payment plans, improving notice at all steps in the tax foreclosure process, and providing for a clear and accessible right of redemption.³⁸

■ **Equity access**—Make surplus equity reasonably accessible to heirs. Unduly strict requirements make it impossible for heirs to access the surplus equity in the property.³⁹ If a tax foreclosure occurs, heirs are entitled to receive the surplus equity over and above the taxes owed on the property. State laws and local practices vary considerably in the amount of proof required to establish an entitlement to surplus equity after a tax foreclosure.⁴⁰ Inadequate notice to homeowners related to the surplus funds and how to claim them and procedures requiring owners to request a fair-market sale rather than make such a sale automatic also violate landowners' constitutional rights.

■ **Effective outreach to heirs**—Local government players, including the property tax assessor, county recorder, clerks of court, and other officials, should help heirs understand the importance of proactively dealing with property taxes and applying for available help. Outreach efforts are most impactful when government and community stakeholders work together. As part of these efforts, county tax offices should think carefully about ways to provide information about likely heirs properties to trusted partners (like legal aid offices) while not making the data easily available to predatory investors.

In some jurisdictions, like Fulton County, Georgia, heirs' property owners have found themselves thousands of dollars behind in property taxes after the death of a loved one. Despite Georgia law stating that children residing in their deceased parents' home are eligible for a homestead exemption, local officials too often deny applications from heirs due to their lack of title. For homeowner Denise Reid, this exercise of bureaucratic discretion almost cost her thousands of dollars: in addition to denying her application for a homestead exemption, Fulton County retroactively removed the exemption in her parents' name from the year prior, leading to a property tax bill of almost \$5,000.

While the county tax assessor's office eventually reversed the decision denying Ms. Reid a homestead exemption, appeals processes are time-consuming and complex, particularly for low-income homeowners. The Fulton County experience underscores how local administration of property tax collection often contributes to heirs' financial insecurity and potential home loss, even when flexible proof of ownership requirements are permitted by law.⁴¹

Medicaid Estate Recovery Rules and Policies

Problem: After death, Medicaid collects against a deceased recipient's estate to recover certain costs. Due to the high costs of medical care, state Medicaid programs often place a claim on family homes to recoup Medicaid costs, causing heirs to lose their family home.

Goal: Ensure that the descendants of deceased Medicaid recipients can remain in their family home or retain their business operations and not face undue hardship.

Who benefits most: Mostly residential heirs' property owners with recent inheritance.

Frequency of enactment: Moderate.

KEY CONSIDERATIONS

■ The federal government requires states to attempt to recover costs of Medicaid services from the estates of deceased recipients in their state. At minimum, the

deceased recipient's "estate" is defined as "all real and personal property and other assets included within the individual's estate as provided in . . . state probate law."⁴² Some states, however, elect to include any real property in which the decedent held legal title or interest at the time of death. This expanded definition renders homes owned via a joint tenancy with right of survivorship, living trust, life estate, or transfer on death deed vulnerable to estate recovery.⁴³

■ The State Medicaid Manual requires states to seek recovery from estates of individuals for nursing home services, home and community-based services, and certain other services if the recipient was 55 years or older when receiving such services.⁴⁴ Some states, however, opt to collect for a variety of other services, including "doctor visits, hospital stays, scans and other medical tests."⁴⁵

■ While the State Medicaid Manual waives estate recovery in cases where it would "work an undue hardship," states are responsible for establishing procedures and standards for undue hardship waivers.⁴⁶

RECOMMENDATIONS

Funders should support groups educating on and working to pass the following key reforms where they are lacking, and to ensure consistent and complete implementation where they are in effect:

■ **Limiting the estate**—Restrict the scope of the Medicaid "estate" to the probate estate. Limiting estate recovery to assets passing through probate allows households to retain their family home through estate planning and probate avoidance tools. Additionally, states should inform potential Medicaid beneficiaries of this scope at the time of application so that families can estate plan accordingly.

■ **Limiting recoverable debt**—Limit recovery for non-mandatory services. Recovering for non-mandatory medical services such as doctor visits, hospital stays, and medical tests can greatly increase the debt owed by an estate upon death, increasing the likelihood that the decedent's family will need to sell the home to reimburse Medicaid. States should only recover for mandatory services to reduce the risk of home loss.

■ **Providing clear and accessible waivers**—Provide homestead exemptions and hardship waivers. The State Medicaid Manual suggests "special consideration" for cases in which the estate is "(1) the sole income-producing asset of survivors (where such income is limited), such as a family farm or other family business; (2) a homestead of modest value; or (3) other compelling circumstances," with "modest value" defined as "fifty percent (50%) or less of the average price of homes in the county where the homestead is located, as of the date of the beneficiary's death."⁴⁷ States should expressly adopt these standards for undue hardship, via either statute or regulations, and make such waivers easily accessible to heirs, for example by providing notices in plain language. Providing plain-language notices to heirs will ensure that families have meaningful access to the wealth- and home-saving exemption and waiver provisions states may adopt.

Disaster Relief and Recovery Program and Home Repair Program Rules

Problem: Heirs struggle to get access to programs that support recovery and rebuilding after a natural disaster.

Goal: Ensure heir owners have access to federal disaster recovery and home repair programs administered at the state and local levels and can obtain necessary permits for demolition and replacement of damaged dwellings.

Who benefits most: Residential heirs' property owners; owners of highly fractionated land with some unreachable or uncooperative heirs.

Frequency of enactment: State policies for implementing these federal programs vary widely; local policies for flexibility on permitting are very rare.

KEY CONSIDERATIONS

Another threat to stable homeownership for heirs' property owners is the inability to access financial assistance to rebuild the home after a natural disaster.⁴⁸ These programs involve federal dollars from FEMA and HUD, distributed at the state level. When natural disasters strike, heirs' property owners often find themselves unable to gain access to

critical disaster relief funds. While FEMA, since 2021, allows heirs' property owners to provide a written self-declarative statement for proof of ownership to obtain Individual Assistance (IA) recovery funds, many homeowners continue to face benefits denials because the initial application does not clearly outline the information required for these self-declarative statements of ownership. This leaves homeowners with nontraditional ownership more likely to need to appeal, a process that often requires legal or other assistance to be successful. Policy change is not the same as implementation, making it crucial to assess how rule changes are being carried out on the ground.

Additionally, no such policy exists for Community Development Block Grant Disaster Relief (CDBG-DR) funds.⁴⁹ The CDBG-DR program, administered by the Department of Housing and Urban Development (HUD), provides state and local governments with block grants to fund home repair, replacement, or relocation for disaster survivors. The CDBG-DR program, however, has not been permanently authorized by Congress, meaning that there are no standardized federal statutory and regulatory requirements for each disaster.⁵⁰ Without federal guidelines specifying the documentation states must accept for proof of ownership, state and local grantees vary in the extent to which they make CDBG-DR funds available to heirs without clear title.

RECOMMENDATIONS

Funders should support groups educating on and working to pass the following key reforms where they are lacking, and to ensure consistent implementation where they are in effect:

- **Clear and flexible proof**—Clarify the existing flexibility for FEMA eligibility and expand the types of documentation heir owners can show to access HUD CDBG Disaster Recovery and general CDBG home repair funds. Information about the FEMA policy change is not broadly available and heirs are often required to appeal an initial denial. State policies around CDBG Disaster Recovery vary. Texas, for instance, allows CDBG-DR applicants to access funds by certifying their ownership interest through an affidavit and alternative documentation indicating that they exercised ownership over the property when the disaster occurred.⁵¹ Louisiana's CDBG-DR program allows heirs to file an Affidavit of Death, Domicile and Heirship (ADDH) to establish their ownership.⁵² Yet many states block applicants for CDBG-DR who are not record landowners.

- **Presumption of authority**—Presume that heir owners, absent evidence indicating otherwise, have the authority to receive disaster funds, make home repairs, and manage the damaged property. Local rules related to permitting and demolition may create significant hurdles for fractional owners attempting to rebuild. Advocates have reported instances of heirs having obtained FEMA assistance to replace a mobile home but being unable to get help demolishing the destroyed mobile home or a permit to bring in the replacement. Louisiana law permits public entities to presume that a co-owner in possession of the property for more than a year has been appointed by the other co-owners to "manage, repair, reconstruct, and restore the property and to receive disaster recovery funds" in the absence of a written agreement between co-owners, though public authorities do not always take advantage of this permissible presumption.⁵³

Equity Theft Prevention Laws and Policies

Problem: Investors exploit the vulnerability created by fractured ownership and information gaps related to the fair market value of property that has been in a family for years.

Goal: Protect heirs from forced and exploitative transfers of their land; reduce the profit motive for speculators to target heirs' property.

Who benefits most: Residential and non-residential heirs' properties, both urban and rural, especially in areas where property values are increasing. Owner-occupants of residential properties are vulnerable to displacement in addition to equity loss.

Frequency of enactment: Moderate. As of this publication, the Uniform Partition of Heirs Property Act has been adopted in 23 states, the District of Columbia, and the U.S. Virgin Islands. The other key protections described below are more rare.

KEY CONSIDERATIONS

One of the most significant risks of owning heirs' property is that investors target these properties and attempt to acquire the land or home for far less than its fair market value.

One way that investors siphon wealth away from heirs is by acquiring a partial interest from one heir and then filing a partition action related to the property. A partition action is a lawsuit in which a partial owner can ask the court to divide the property (partition in kind) or to order a sale and division of the proceeds (partition by sale). The forced sale of the entire home through a partition will typically yield a below-market value price, depriving the other heirs of both the home and a great deal of home equity wealth.⁵⁴

Partition protections

The Uniform Partition of Heirs Property Act (UPHPA) is the model state law that creates a process that allows an heir to protect themselves and co-heirs from losing their home and home equity through a forced partition sale. The UPHPA establishes three key safeguards to protect heirs' property owners from the adverse effects of forced partition sales. The Act requires the cotenant pursuing partition to give notice to all other co-owners. Next, courts must order an independent appraisal to determine the property's fair market value. The law allows cotenants to object to the appraised value, at which point the court must hold a hearing to consider other evidence of value. Additionally, the Act grants cotenants an opportunity to buy out the interest of the petitioning cotenant, with 45 days to exercise this right of first refusal and another 60 days to arrange for financing.

Finally, if no cotenants choose to exercise this buyout option, courts are required to evaluate several economic and non-economic factors to determine whether to proceed with a partition-in-kind (subdividing the piece of land, if practicable) or a partition-by-sale (sale of the property and division of sale proceeds). The requirement that the court consider partition-in-kind is particularly important in the context of larger swaths of land, as it is not possible to subdivide most residential properties. If the court opts for a partition sale, the property must be sold on the open market for no less than the court-appraised value in a "commercially reasonable manner."⁵⁵

The UPHPA's requirement that the home be sold for fair market value reduces one source of potential windfall to speculators. For example, assume there are four heirs who each own one-fourth of a home that is worth \$100,000. A speculator might be able to acquire one-fourth of the home from one heir for \$1,000, even though that one-fourth interest was really worth \$25,000, because the heir is not concerned about the home or doesn't know its true value. In a state that has enacted the UPHPA, the court will require an appraisal and require that the home be sold for its fair market price of \$100,000.

The speculator will still make \$24,000 in profit when the home is sold, but the other heirs (each of whom owns one-fourth of the home) will also receive \$25,000. Without the UPHPA, the property could be sold for any price, and the speculator might arrange for an affiliated company to buy the home for \$40,000. In that case each heir would only get \$10,000, and the speculator would get \$9,000 profit initially and \$60,000 when the affiliated company later sells the home for its actual value.

The requirement that the home be sold for its fair market value reduces the profit motive for speculators.

The UPHPA has been enacted in 23 states, the District of Columbia, and the U.S. Virgin Islands.⁵⁶ It has been introduced in a number of additional states without yet being passed, including North Carolina, Michigan, and Louisiana. Some states that have not enacted the UPHPA nonetheless have laws that contain some of its features or other specific protections for heirs caught up in a partition action.⁵⁷

UPHPA 2.0: Expanded protections in states that have passed the UPHPA

Many view the UPHPA as a "necessary first step" in protecting heirs' property owners.⁵⁸

Limited data suggests that passage of the UPHPA may reduce the number of partition actions filed by investors against heirs.⁵⁹ Yet the Act has its limits. To effectively resist a partition sale, an heir who owns a fraction of the property must have the necessary resources (or access to a loan) to buy out a cotenant's interest, which is often impossible.⁶⁰

The New York legislature has made certain modifications to the UPHPA over time that provide even greater protections to heirs' property owners. These include an additional opportunity to answer if an owner defaults when first served with the lawsuit, the requirement of a court-supervised settlement conference, and authorization for the court to consider equitable factors during settlement negotiations, including how the non-heir acquired its ownership interest.⁶¹ More recently, the New York legislature updated its law to allow heirs' property owners a right of first refusal to purchase the interest offered

to a third party on the same terms and price—which is often far, far below the fair market value of that interest.⁶² The most recent New York amendment also prohibits an investor with a partial interest in heirs' property from filing a partition action.⁶³

Aston Smith, a Jamaican-born retired city truck driver, and his wife Deborah Thomas bought their Brooklyn brownstone in 1995 along with Smith's mother. One day in 2019, Smith and Thomas got a phone call out of the blue from an investor who claimed to have purchased a partial interest in the home. Smith's mother had passed away recently, and the investor had located Smith's estranged brother, living in North Carolina, and convinced him to sell his 16% interest in the home. To avoid being forced out of their home through a partition sale, Smith and Thomas bought out the investor for \$235,000, although he had paid only \$65,000 for the brother's share.⁶⁴

Deborah Harris-Wiggins, her mother Nancy, and a number of relatives have been fighting a legal battle for years to protect land that has been in their family for generations. Land in Brazos County, Texas, has soared in value in recent years. Investors look for heirs' property in public records, with the goal of acquiring real estate as cheaply as possible to resell to developers. Most of the properties being targeted in this way have been owned by Black landowners going back to just after the Civil War, when "Freedom Colonies" were formed by formerly enslaved people in Brazos County and the surrounding areas.

The efforts to gain full ownership of the land held by Harris-Wiggins and her family have involved claims of adverse possession in addition to a suit related to property tax payments. As of the publishing of a detailed investigative report on their legal saga in Texas Monthly, the ultimate outcome of their case was not yet determined. According to the report, legal reforms like the UHPA have made it more difficult for investors in Texas to pursue profit at the expense of owners of heirs' property.⁶⁵

False or fraudulent probate actions

Some investors have attempted to skirt the partition process by instead filing a fraudulent probate court action. Often, this involves telling one heir that the investor, or an attorney hired by the investor, will file the necessary probate court documents. The investor then intentionally misrepresents the facts, leaves out known heirs or fails to make any diligent search for potential heirs, and attempts to obtain a court order that deprives true heirs of their ownership interest in the property. Anecdotal evidence suggests that this scam may be growing in prevalence in states that have adopted the UHPA, in an attempt to evade its limitations.

We have not identified any state that has yet attempted to enact legislation to stop the practice of investors filing false probate actions to steal title to heirs' property. Enforcement actions by prosecutors and state attorneys general, as well as additional checks within the probate court system, could significantly alleviate this problem.

High-pressure home sales (i-buying)

Heirs' property owners are susceptible to a wide range of equity theft scams, not only ones carried out through filing for partition. In other schemes, investors may target heirs for high-pressure tactics aimed at getting the heir or heirs to sell the home to the investor in a direct, off-market sale. These schemes are often described as "we buy houses" operations, or "i-buying." Typically, the business model involves convincing a vulnerable homeowner not to list the home publicly for sale, sometimes through misrepresentations of the pros and cons of working with a realtor. Yet the "we buy houses" company's goal is to pay a deeply discounted price for the home, preying on the lack of information an heir might have about what the home is worth and taking advantage of the absence of a competitive, open-market sale. The companies using these high-pressure tactics to force an undervalued sale of the home have in many instances targeted heirs' property owners or other vulnerable homeowners who have experienced a life event that creates financial pressure to sell the home.⁶⁶

A small number of states have attempted to address the "we buy houses" business model, either by imposing licensing requirements or giving homeowners a right to cancel any purchase and

sale contract if the investor did not comply with the licensing regime. These jurisdictions include Oklahoma, Illinois, Texas, and the city of Philadelphia.⁶⁷

Deed theft

Other scammers commit outright deed theft, forging a deed to a property they have no legal right to. Heirs' properties that are not occupied are more likely to be targets for this crime, as a scammer may attempt to sell the home to a good faith purchaser who has no knowledge that the person signing the deed is not the lawful owner of the land. Deed theft garners significant attention but it is much less common than other

forms of equity theft described above. Deed theft is a crime, after all, and carries the risk of jail time. Criminal prosecution is appropriate but does not solve the expensive civil legal problem of getting the fraudulent deed voided in the public records.

New York enacted additional protections for victims of deed theft in 2023 and again in 2024, including giving prosecutors the ability to flag properties that are impacted, halting any eviction when the property is involved in a deed theft investigation, and criminalizing deed theft. The crime of deed theft in New York includes the use of misrepresentations and deceptive business practices to acquire an interest in property.⁶⁸

RECOMMENDATIONS

Funders should support groups educating on and working to pass the following key reforms where they are lacking, and support direct services to ensure consistent and complete implementation where they are in effect:

- UPHPA—Passage of the Uniform Partition of Heirs Property Act or ensuring the existing law contains all of its key protections. At a minimum, the three core protections of the UPHPA should be in effect: a preference for partition in kind, requirement to conduct an appraisal and sell the home for fair market value, and an option for heirs to buy out the party filing the partition action. In states enacting the law now, the strongest version of the UPHPA should be passed, including the features described in the next bullet.
- UPHPA 2.0—Enhanced protections in states that have already passed the UPHPA or equivalent protections. This should include an additional opportunity to answer if an heir defaults when first served with the lawsuit, the requirement of a court-supervised settlement conference, authorization for the court to consider equitable factors such as how the non-heir acquired its ownership interest, and allowing heirs' property owners to buy out a speculator by paying what the speculator paid to acquire its fractional interest and barring investors from commencing a partition action on heirs' property.⁶⁹
- Probate fraud prosecution and court protections—Exploration of the best ways to deter and detect fraudulent probate filings orchestrated by investors is needed, especially if strong partition protections lead to an uptick in this practice.
- Right of rescission for high-pressure sale contracts—Allow sellers to back out of home sale contracts entered into without the property being listed publicly for sale and with a grossly inadequate sale price. Licensing regimes and do-not-contact registries may also help alleviate this problem, in addition to informational campaigns to advise heirs regarding the potential value of their home and the risks of signing a purchase and sale contract without getting independent advice.
- Prevent and police deed fraud—Deterrence of deed fraud by devoting significant resources to prosecuting deed fraud; create automatic delays of eviction and presumptions of deed invalidity when a deed fraud investigation is pursued.

Laws Aimed At Facilitating Resolution Of Heirs' Property

Having considered protections aimed at preventing loss of the land or equity, we turn next to laws that help to clarify and consolidate legal ownership so that heirs will be able to sell or mortgage the home in the future. The following types of laws and policies can help facilitate the proof of ownership and consolidation of ownership when title has become unclear or fractured over time.

Laws That Make Probate Easier or Less Expensive

Problem: The probate process is often time-consuming, expensive, and complex for heirs to navigate.

Goal: Reduce the cost, time, and complexity of traditional probate processes to increase uptake.

Who benefits most: Residential and non-residential heirs' property owners; owners of first- or second-generation heirs' property. (These measures are not sufficient to address highly fractionated land.)

Frequency of enactment: State and local policies vary widely. A number of states do not permit any fee waivers for probate actions.

KEY CONSIDERATIONS

Simplified probate process

Some states have implemented a variety of simplified probate processes to make probate more accessible to low- and middle-income families.

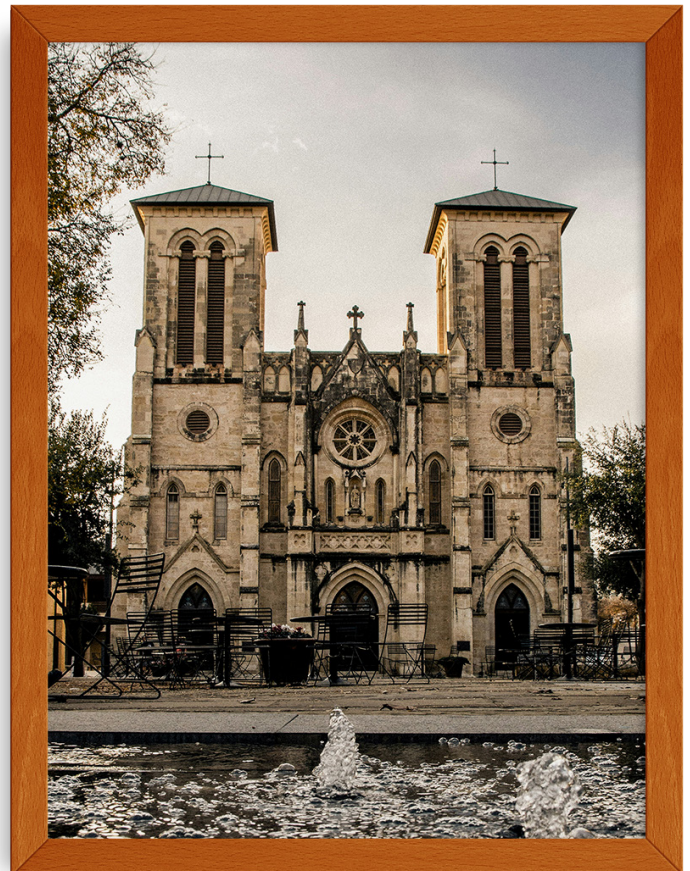
States need simple procedures that apply both where there is a will and where there is not. This simplified, or summary, probate process is typically permitted so long as the estate's value does not exceed a specified amount. For instance, in Texas, a small estate affidavit may be filed to avoid probate when there is no will, provided that the estate's value (excluding homestead and exempt property) does not exceed

\$75,000.⁷⁰ Texas has another simple procedure, called a muniment of title, as an alternative to formal probate where there is a will.

Many simplified probate processes, however, have other restrictions. Some, for instance, provide a simplified process only for specific family members. In North Carolina, the process is not available unless the heir is a surviving spouse.⁷¹

Another common limitation is on the type of property distributed. For instance, Alabama's summary distribution process only applies to personal property and cannot be used to pass down real estate.⁷² By contrast, in Georgia, any heir may petition for an order that no administration is necessary, provided the petition includes the signatures of all heirs.⁷³

Simplified probate processes still require either agreement from, or notice to, all heirs at law. Therefore, identifying and tracking down heirs is still a major barrier.





Reduced probate costs

A smaller number of states and localities have looked at reducing probate costs or permitting filing fee waivers for low-income petitioners. Estate administration frequently costs hundreds or thousands of dollars in filing fees and service costs, discouraging families from beginning or completing the probate process and reducing the impact of will preparation.⁷⁴ Some localities do not allow poverty-based fee waivers for probate filings because the projected court costs rely on these fees and fee waivers are only granted in cases where the costs can be shifted from one party to another.⁷⁵

By supporting efforts to reduce filing fees and allow fee waivers, grantmakers can significantly reduce the barriers to filing probate. Importantly, probate fees should reflect not only the value of the estate, taking into account liens on the assets, but also the ability of an heir to pay.⁷⁶

RECOMMENDATIONS

Funders should support groups educating on and working to pass the following key reforms where they are lacking, and support direct services to ensure consistent and complete implementation where they are in effect:

- **Streamlining**—Broaden eligibility for simple or streamlined probate processes. This should include allowing real estate to be among the permissible estate assets, permitting any heir to use the streamlined process, and ensuring that any value cap on the probate estate is sufficiently generous to cover most low- to moderate-value properties in the state (and adjusts with inflation).
- **Cost**—Make probate filings cheaper or free. Probate filing fees should be reduced across the board or should be adjusted or waived based on the income level of the filing party. Given the fact that the state controls this singular means of documenting ownership of land, governments should not allow probate court costs to be a barrier to access.

Documenting ownership Without Probate: Heirship Affidavits

Problem: The probate process is often difficult or impossible for heirs to utilize.

Goal: Increase the utilization of heirship affidavits as sufficient proof of ownership of the property, making probate unnecessary.

Who benefits most: Residential and non-residential heirs' property owners.

Frequency of enactment: Rare in statute or regulation; practical usage varies.

KEY CONSIDERATIONS

An heirship affidavit is a sworn statement identifying the heirs who inherited a piece of real property. Heirship affidavits, also known as affidavits of descent, are often recorded in the real property records to document the new owners of the property. Heirship affidavits are most commonly accepted to prove the ownership status of land when the decedent died intestate, without a will. If there was a will, usually it must be admitted to probate and found valid by the probate court. For families who have inherited an interest in land without a will, an heirship affidavit can be a way of documenting their ownership interest without the need to file a probate court action.

RECOMMENDATIONS

Funders should support groups educating on and working to pass the following key reforms where they are lacking, and support direct services to ensure consistent and complete implementation where they are in effect:

- **Basic proof**—Funders should promote efforts to encourage widespread acceptance of heirship affidavits for use in homestead exemptions, home repair, and disaster relief programs. This has become the norm in several states, but other states have been slow to catch on.
- **Marketable title**—Funders should support efforts to investigate different ways to allow heirship affidavits to establish marketable title. This issue requires greater study to determine what safeguards are needed in the process.

The use and acceptance of heirship affidavits varies and has not been closely studied. Texas and Louisiana provide for heirship affidavits in state statutes, and the State Bar of Georgia has promulgated state Title Standards establishing an industry norm that heirship affidavits may result in insurable title for an intestate death at least three years in the past.⁷⁷ However, in the vast majority of states, there is no uniform or clear rule regarding the effectiveness of heirship affidavits. Funding is needed to further investigate the uses and impact of heirship affidavits around the country.

Insurable title

Whether an heirship affidavit can be used to prove ownership for an application for the property tax homestead exemption, disaster relief, or a home repair grant is a different question from whether it can result in “marketable” or “insurable” title. “Marketable title” means that a title insurance company deems the proof of ownership sufficient to support a title insurance policy, which is necessary to sell or mortgage the property. In most states, title insurers make those determinations regarding heirship affidavits on a case-by-case basis. Factors such as the number of heirs, value of the property, and net worth of the person signing the affidavit are often considered.

Greater uniformity and transparency regarding heirship affidavit practices is an important step to helping heirs' property owners document their ownership interest and eventually consolidate that ownership in a smaller number of heirs.

Laws That Get Around Gridlock and Address the Need for Unanimity

Problem: Heirs generally must reach unanimous agreement to use or manage the real estate; achieving unanimity may be impossible with highly fractionated land.

Goal: Allow heirs to take certain actions without the agreement of 100% of heirs.

Who benefits most: Owners of highly fractionated land.

Frequency of enactment: Rare. A few states have some rules permitting use or sale with less than 100% of heirs in agreement, but none have a comprehensive law on this point.

KEY CONSIDERATIONS

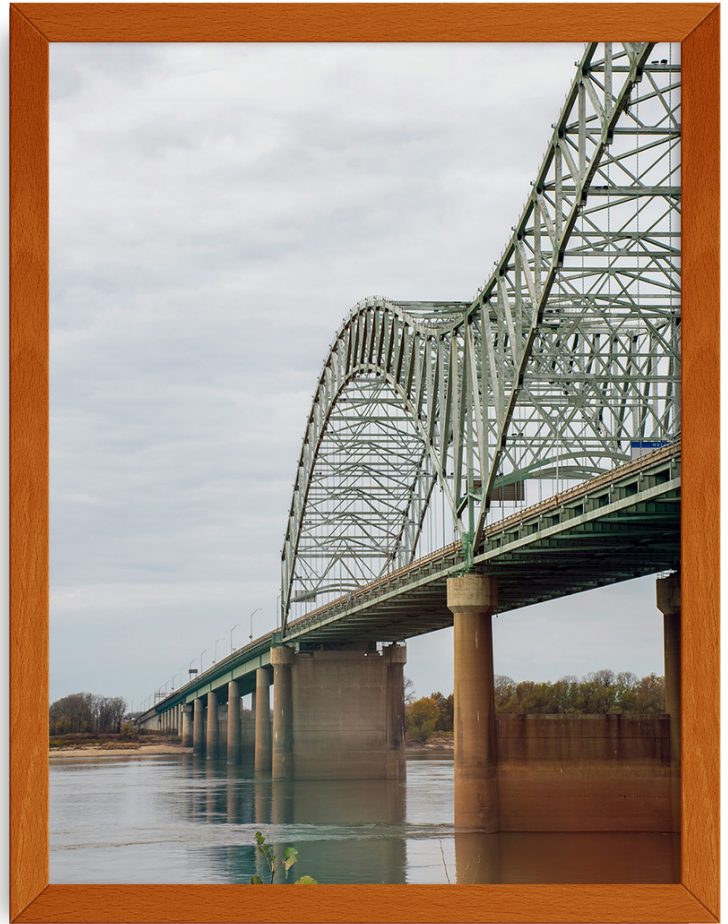
Use of the land without unanimous consent

A few states have adopted laws aimed at getting past the problem of unanimity, allowing less than 100% of heirs to use the land in certain ways in limited circumstances. For example, Arkansas allows heirs with a total of at least 60% ownership of a property to sell timber from the land.⁷⁸ West Virginia allows fewer than 100% of heirs to lease the mineral rights, and certain other states also allow leasing of mineral rights without unanimous consent among heirs.

Accessing USDA farm-support programs can also be challenging for owners of highly fractionated land. USDA recently changed its policy to allow heirs with a partial interest to apply for a farm number, but certain USDA programs, even those that are grant-based, are not uniformly accessible to heirs.

RECOMMENDATION

Greater study—Funders should support groups working to investigate the pros and cons of laws that allow for action by fewer than 100% of heirs. This issue requires balancing the need for ease of use with preventing fraud or wrongdoing. Ability to act without 100% consent may be more important for use of the property (particularly with timber, mineral rights, and agricultural land), modification of mortgages loan to prevent foreclosure, and access to funding for necessary home repairs. Selling a home or obtaining a new mortgage (other than for necessary repairs) may pose greater risks and less necessity.



The Uniform Laws Commission attempted to craft a uniform “tenant in common” act that would enable less than 100% of heirs to use, sell, or mortgage land in certain circumstances.⁷⁹ However, the committee tabled its proposal when a number of advocates and industry stakeholders expressed concern that it did not adequately address the risks of harm to heirs’ property owners.

Laws That Allow Heirs to Consolidate Title

Problem: Some heirs' properties are highly fractionated, with certain heirs unreachable, uninterested, or uncooperative. One heir may maintain the property for years, carrying all of the costs, and obtain no greater rights in the property.

Goal: Allow one heir who is actively maintaining or occupying the property to become the sole owner, eliminating the interests of other heirs.

Who benefits most: Occupant-heirs of highly fractionated land; heirs who are dealing with absent or uncooperative co-heirs.

Frequency of enactment: Moderate; some states allow through case law.

KEY CONSIDERATIONS

Adverse possession

An occupant-heir in some states might cure fractional ownership by asserting full ownership of the property through the doctrine of adverse possession. Adverse possession is a legal doctrine whereby a person in possession of land can acquire clear title. Typically, an individual's possession of the land must be hostile (i.e., infringing on the rights of the actual owner), open, continuous, exclusive, actual, and notorious. An occupant-heir will often not meet the traditional requirements of adverse possession because one heir's possession is generally assumed to not infringe upon the rights of other co-owners—it is not considered "hostile" for purposes of adverse possession. However, in some states, an occupant-heir can overcome this presumption. Most laws require an heir to take certain steps to constitute an "ouster" of other heirs in order to start a clock running to eliminate the interests of such inactive heirs.

RECOMMENDATION

Greater study—Funders should support groups working with impacted communities to investigate the best ways to address highly fractured ownership by allowing heirs who are actively stewarding the land to cut off the rights of co-heirs who are not. Few states have acted to cut off the rights of absent co-heirs, but the most progress has been made in the area of adverse possession. If the heir who is maintaining the property provides some form of notice to co-heirs of the fact that their rights may be cut off, then after a certain period of time, the active heir can become the sole owner.

In Texas, for instance, a cotenant heir may make a claim of adverse possession against cotenant heirs after adequate notice, an affidavit of heirship and adverse possession, and a continuous 10-year period of possession.⁸⁰ Similarly, in New York, a cotenant's possession is presumed to be non-hostile until either "ten years of continuous exclusive occupancy" or ouster of the cotenant, at which point the period for adverse possession will start.⁸¹

Forced sale statutes

Texas law also allows an occupant-heir to forcibly purchase another co-owner's interest, allowing for the consolidation of ownership. An occupant-heir may petition a court to force the sale of another co-owner's interest, provided that 1) the petitioner has paid the defendant's share of the property taxes for any three years in a five-year period, 2) the petitioner has previously demanded reimbursement, and 3) the defendant has not reimbursed more than half the total amount paid by the petitioner on the defendant's behalf.⁸² For unknown defendants, the occupant-heir must demand reimbursement by publication once a week for four consecutive weeks, with the last petition occurring 30 days before the petitioner files for a forced sale.⁸³ The court can then order a sale of the defendant's interest at the fair market value (determined by a court-appointed independent appraiser) minus the amount owed to plaintiff for taxes.

Statutes of limitations for probate

Some have advocated for using a statute of limitations on opening probate to cut off the rights of absent heirs that have not taken action to protect their rights in the property.⁸⁴ Although a number of states currently require a probate action to be filed within a certain time period, the implications of failing to do so are unclear. No state has taken dramatic action to cut off the rights of absentee or non-cooperative heirs. Yet in the context of highly fractured ownership, some argue that taking statutes of limitations a step further would yield benefits outweighing any potential harms.⁸⁵

Funding to Assist Heirs in Carrying Out Joint Management of Fractionated Land

Problem: Highly fractured ownership makes it difficult to steward non-residential land.

Goal: Facilitate the joint management of fractionated land through an agreement or the transfer of multiple heirs' interest into a corporate entity.

Who benefits most: Agricultural, timber, and mineral heirs' property owners; owners of highly fractionated land.

Frequency of enactment: Moderate.



KEY CONSIDERATIONS

Particularly in the agricultural context, properties that are already held as heirs' property are sometimes transferred to a cooperative or other entity or are operated through a tenant-in-common agreement.

Some heirs, particularly those stewarding agricultural, timber, or mineral property, may find it more appealing or practical to own and manage family property collectively. In these instances, families will benefit from legal structures and default rules that permit efficient decision-making, clearly allocate responsibilities and obligations, and shield the ownership interests of family members.

Absent changes to the default rules underlying tenancies in common, which provide few provisions governing co-heir management of property, families need to proactively develop an ownership structure to collectively own their land. This could be a tenancy-in-common agreement, which is a contract between cotenants to govern their shared ownership of a property. Alternatively, families could register as one of several types of business associations, though the liability and tax implications of each entity will vary. Transfers to corporate entities such as a partnership, limited liability company, or cooperative, unlike cotenancy agreements, also result in reducing the number of owners and preventing future fractionation.⁸⁶

RECOMMENDATION

Funding—Grantmakers should support programs that assist with family mediations, formation of corporate entities to hold family land, and drafting of tenant in common agreements. These situations require individual counseling and negotiation among family members in order to address the specific concerns and questions of heirs.

Laws Aimed At Preventing The Creation Of New Heirs' Property

Finally, generational wealth building requires an emphasis on preventing heirs' property. The following kinds of legal tools and statutes can help to prevent fractured ownership from occurring or growing.

Transfer on Death Deeds and Enhanced Life Estate Deeds

Problem: The probate process is often time-consuming, expensive, and complex for heirs to navigate.

Goal: Enabling families to transfer real property without the need for probate.

Who benefits most: Residential and agricultural property owners.

Frequency of enactment: Substantial. Currently, 31 states and the District of Columbia have enacted a statute authorizing some form of TODD. Lady Bird deeds (also called enhanced life estate deeds) are currently in use in Texas, Florida, Michigan, Vermont, and West Virginia.⁸⁷

KEY CONSIDERATIONS

A transfer on death deed (TODD) is a simpler, less expensive way of transferring home ownership and avoiding probate, particularly when the home is the primary asset in the estate. Known in some states as a beneficiary deed, a TODD transfers an interest in property to a specified beneficiary when the owner

dies.⁸⁸ A TODD simplifies transfer of ownership to heirs because it is effective without a will or any probate court filing, which can be expensive, public, and lengthy. Most jurisdictions allowing TODDs provide a simple TODD form. If a property owner records a TODD in the deed records and dies, the specified beneficiary becomes the record owner of the property upon death. Sometimes an affidavit or confirming deed is recorded in the deed records to reflect that the transfer has been effectuated. In contrast, if an owner dies without a TODD, and the land passes pursuant to a will or the intestate rules, a probate court filing is often needed to document the heirs' ownership interest. There are some state-by-state variations in TODD statutes.

In states without a statute authorizing TODDs, property owners sometimes utilize enhanced life estate deeds, also called "Lady Bird deeds," as another alternative for avoiding probate costs. Enhanced life estate deeds allow the current property owner to grant a remainder interest to a beneficiary, who then inherits the property upon the owner's death. With an enhanced life estate deed, the grantor maintains control over the property during their life, allowing them to lease, mortgage, sell, or otherwise manage the property without the remainder beneficiary's consent. The grantor's ability to divest the grantee by executing another conveyance during their life distinguishes an enhanced life estate deed from a traditional life estate deed.

However, as some legal scholars have noted, Lady Bird deeds give rise to some uncertainty because they are not authorized by statute.⁸⁹ Some elder law and probate experts have pushed for enactment of the Uniform Real Property Transfer on Death Act, currently enacted by 21 U.S. states and territories, to eliminate the ambiguities that may exist with a non-statutory Lady Bird deed.⁹⁰

RECOMMENDATIONS

Funders should support groups educating on and working to pass the following key reforms where they are lacking, and support direct services to ensure consistent and complete implementation where they are in effect:

■ TODDs—Authorize and promote the utilization of TODDs. In states that have not enacted a TODD statute, this should be a top priority. In states that already allow TODDs, efforts to raise awareness and increase utilization are key.

■ Contingent beneficiaries—Ensure that authorizing statutes permit TODDs to include contingent beneficiaries. It is particularly important that the authorizing statute permits a TODD to include contingent beneficiaries, so that if the primary grantee dies before the grantor, the land can pass to a different heir. Otherwise, the TODD fails when the grantee dies, and the property passes through intestate law.⁹¹

Simplified, Affordable Trusts

Problem: The typical probate process is often time-consuming, expensive, and complex for heirs to navigate.

Goal: Transferring real property without the need for probate.

Who benefits most: Residential and agricultural property owners, particularly in states where probate costs are high, where TODDs are not an available tool, or where the estate assets exceed a single piece of real estate.

Frequency of enactment: Living trusts are permitted in all states, though they are particularly common in states such as California, where probate costs are often prohibitive to low-income families.



KEY CONSIDERATIONS

Establishing a living trust or “inter vivos” trust is another method of estate planning.

A living trust is a legal instrument that enables an individual to transfer ownership of their assets to a trust account.⁹² An individual—the grantor—designates a trustee to manage the assets of the trust on behalf of the trust beneficiaries. In the trust agreement, the grantor may outline trustee duties, the trust’s purpose, the trust’s assets, and the trust’s designated beneficiaries. A living trust may be revocable (meaning the grantor can maintain control over the trust) or irrevocable (meaning it cannot be changed or terminated by the grantor absent certain conditions).⁹³

Since the grantor transfers ownership of their assets to the trust, trust assets can be distributed to beneficiaries upon the grantor’s death without the need for a probate court filing. Additionally, irrevocable trusts may protect assets from creditors and state and local estate taxes, though the extent of this benefit will vary by state.⁹⁴

Living trusts may be an attractive option for families wishing to maintain communal ownership of their property, but establishing and maintaining such a trust is often expensive. Families looking to set up a trust will typically require the help of an attorney, and the National Council on Aging estimates that the cost will range from \$1,500 to \$3,000. Families will also be responsible for ongoing costs to maintain the trust after it is set up. Even with the help of an online service, which may run from \$139 to \$440, maintenance costs can increase the eventual cost of a trust to up to \$7,000.⁹⁵ These maintenance costs include title transfer, trust registration, accounting, and trustee fees, as well as tax planning and appraisal costs. As a result, living trusts may make more sense for people with a significant number of valuable assets.

RECOMMENDATION

Streamlining and cost reduction—Funders should support groups working to investigate whether streamlining the trust creation and maintenance process might be a useful tool in preventing heirs’ property.

Simplified Intestate Succession and Spousal Preference

Problem: Default inheritance laws lead to a high degree of fractionation over time.

Goal: Create less fracturing when an inherited property passes through intestate succession.

Who needs it: Residential and agricultural property owners.

Frequency of enactment: Rare. Few states have focused intentionally on reducing fractionation.

KEY CONSIDERATIONS

The default rules for inheritance of property when a person dies without a valid will are determined by state law and vary significantly. So-called intestate succession laws can lead to significant fractionation.

Default rules for spouses

Many states provide a default rule that passes a portion of the estate property to a spouse and divides the remaining portion among any children of the decedent. However, other states pass property only to the spouse when there is a surviving spouse, rather than dividing it among a spouse and children.

In a similar vein, some states provide that spouses who jointly own property are automatically assumed to own that real property with a right of survivorship, meaning that the interest of the spouse who dies first passes automatically to the other spouse by operation of law, without passing through the probate estate. This legal framework is called “tenancy by the entirety.”

In other states, a married couple has no such presumption, and the deed vesting them with

ownership of the property must include the words “with right of survivorship” for the land to pass automatically to the survivor upon the death of one spouse.

Joint tenants versus tenants in common

Another way to reduce fractionation would be to default to a system where heirs inherit land as joint tenants with right of survivorship rather than as tenants in common. This would mean that if four siblings inherited a plot of land from their father, then when one sibling dies, her interest would pass to the remaining three siblings, rather than to her spouse or children.



RECOMMENDATION

Exploration with impacted communities—Funders should support groups working to investigate possible default inheritance rules, with the active participation of impacted groups. Since most default inheritance laws have been on the books for many decades and were not crafted with the involvement of marginalized communities, it is worth reexamining these default rules to ask whether they are serving the interests of all constituents.

Funding and Resources for Estate Planning and Outreach

Problem: Lack of access and low uptake for estate planning among low-income homeowners and homeowners of color, leading to the prevalence of heirs' property.

Goal: Encouraging widespread uptake of estate planning tools.

Who benefits most: All property owners.

Frequency of enactment: Moderate. Many initiatives have been undertaken by a range of stakeholders.

KEY CONSIDERATIONS

One crucial type of policy intervention to prevent future heirs' property is the authorization of funding and use of public spaces to promote estate planning. A number of partnerships have arisen around the country in recent years with this goal in mind.

Public-sector funding

In Philadelphia, the Tangled Title Fund (TTF) awards low-income residents up to \$4,000 to cover administrative, legal, and other costs associated with obtaining legal title to their home. The TTF is administered by Philadelphia VIP, a legal services organization, and is funded through the city's Division of Housing and Community Development (DHCD).⁹⁶

In the District of Columbia, the Heirs' Property Assistance Program (HPAP), launched in 2023, provides funding for low-income individuals or families with a "potential legal claim to residential real estate in the District of Columbia that is currently in probate or has an unclear legal title due to the death of the former owner." The program is administered by two legal services organizations—the DC Affordable Law Firm and Legal Counsel for the Elderly—which provide legal representation and technical assistance to heirs, as well as engaging in community outreach.⁹⁷



Philanthropy-led partnerships

In Florida, Duval County has allocated \$400,000 in State Housing Initiatives Partnership (SHIP) funds to address heirs' property issues. This includes funding to clear title issues on an heirs' property, file probate petitions, and assist residents with estate planning services. SHIP funding is derived from Florida's 1992 William E. Sadowski Act, which creates a dedicated source of revenue for housing from taxes on real estate transfers.⁹⁸

A number of grantmakers have begun to fund heirs' property prevention and resolution in certain jurisdictions. Many of these initiatives have taken the form of one-time grants to direct services providers.⁹⁹ The Federal Home Loan Bank of Atlanta announced in 2022 that it would award \$1 million in heirs' property grants to nonprofits around the country.¹⁰⁰ The creation of dedicated law school clinics to

address heirs' property is another approach. In 2023, JPMorganChase and the Robert Wood Foundation gifted a total of \$900,000 to Howard University School of Law's Estate Planning and heirs' property Legal Clinic.¹⁰¹ Other initiatives support a mixture of direct services and research and policy efforts. For example, in 2024, JPMorganChase announced a total of \$9.6 million in philanthropic contributions to initiatives to address heirs' property in Georgia; Jacksonville, FL; New York; Pittsburgh; and Washington, DC.¹⁰²



RECOMMENDATIONS

Funders should support groups and efforts working towards:

- Public-sector funding devoted to heirs' property' prevention and resolution—In order to scale up the availability of estate planning services, public dollars and public forums are key.
- Private-sector and philanthropic initiatives should build bridges among various stakeholders to address the estate planning gap—Collaborations between private funders, direct services agencies, legal aid programs, local governments, and national nonprofits that provide technical support and training have generated significant progress.

In 2023, the Los Angeles Department of Consumer and Business Affairs Center for Financial Empowerment launched its Leaving a Legacy program.¹⁰³ A partnership between the county government and two legal services providers—Bet Tzedek and St. John's Community Health Legal Services Program—the program aims to preserve intergenerational wealth for Los Angeles residents with low to moderate income residing in the highest-need neighborhoods. Eligible individuals receive free legal services to address various issues, including but not limited to drafting a will, creating a trust, resolving tangled titles, and creating powers of attorney.¹⁰⁴

CONCLUSION

These legal interventions, taken together, have the power to enable family owners to make full use of their heirs' property. Yet few, if any, states have provided the full slate of possible protections.

The challenges presented by heirs' property are many and complex. In some instances, fractured ownership has developed over many generations. In others, the heirs' property status is more recent. But in any of these situations, the owners are at greater risk of losing the property and the accumulated equity that could otherwise be passed down for generations.

This reality calls for concerted action on multiple fronts: protecting heirs from home loss, resolving and clarifying fractured ownership, and preventing future heirs' property from developing. Enacting these kinds of laws at the state level is extremely important. In addition, local governments and community stakeholders can play a key role through enhanced outreach about property tax relief, disaster aid for heirs, the risk of equity theft scams, and the need for proactive estate planning. These legal and policy strategies, deployed together, can make a meaningful difference. For grantmakers serious about eliminating the racial wealth gap, addressing heirs' property is a necessary step.

The legal landscape that has led to the levels of fractured ownership we see today was created by intentional policies and by

excluding landowners of color from fair participation in the legal system. The risks and gaps embedded in this system can only be properly addressed through their inclusion in the process and a recognition of the dignity and strength of these landowners. With greater awareness, appropriate resources, and the involvement of impacted communities, the wealth-building potential of heirs' property can be unlocked. It is merely a question of our commitment to the goal.



EXECUTIVE SUMMARY

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 should 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 include notes or plans for education or improvement in the state.

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.

GLOSSARY OF KEY TERMS

TERMS	DEFINITION
Heirs' property	Land that has passed down to multiple family members through inheritance, often across multiple generations.
Tangled title	Another term for heirs' property, more commonly used in urban areas; may also describe other challenging situations related to ownership of real property, such as forged deeds or land contracts.
Fractionated land	Land held by multiple owners.
Fractionation	Status of land being held by many owners as tenants in common.
Highly fractionated land	There is no numerical threshold broadly agreed to among experts, but typically land becomes highly fractionated when multiple generations have passed without probate. This may involve situations with 10 or more heirs, or even hundreds of heirs.
Clouded title	Ownership is not reflected in the public deed records.
Record owner	Ownership is not reflected in the public deed records. Ownership is not reflected in the public deed records.
Deed records	Public registry of land ownership maintained at the county level.
Decedent	Person who has died; typically used to describe the last property owner of record, whose heirs inherited their interest in the property.
Probate law	The law that governs inheritance within a state.
Probate court	The court that has jurisdiction over probate actions.
Will	A legally binding instrument to devise property to one's heirs.
Trust	A legal instrument to convey ownership of property to specified beneficiaries upon death or incapacity.
Testate	Decedent died with a valid will.
Intestate	Decedent died without a valid will.

TERMS	DEFINITION
Partition	Legal action to divide or force a sale of land owned by more than one owner as tenants in common.
Partition-in-kind	Partition of a property by dividing the land physically.
Partition-by-sale	Partition of a property by selling the property and dividing the sale proceeds.
Tenancy in common Joint tenancy with right of survivorship	Ownership by multiple owners without right of survivorship; each owner's share passes to their own heirs rather than to the remaining original co-owner.
Joint tenancy with right of survivorship	Ownership by multiple owners where the interest of the decedent passes to the other original co-owner(s) by operation of law (outside of the probate estate).
Colonias	Areas near the border with Mexico where informal land tenure has been more common.
Homestead exemption	A reduction in the property tax bill for owner occupants.
Affidavit of Death, Domicile and Heirship	Sworn attestation permitted in Louisiana for heirs to establish an ownership interest in order to obtain disaster relief.
Affidavit of heirship/ affidavit of descent	Common term for a sworn attestation describing the heirs of a decedent; may be recorded in the deed records.
Tenancy in common agreement	A contract which enables co-tenants to steward land through agreed-upon methods and means.
Transfer on Death Deed (TODD)	Also known as a beneficiary deed, this type of deed allows an owner of real property to designate a beneficiary to receive the land automatically upon their death; a TODD can be revoked or modified up until the grantor's death.
Lady Bird Deed	Also known as an enhanced life estate deed, this is similar to a TODD but exists in common law rather than being authorized by statute. The term "Lady Bird" was once thought to refer to former first lady Lady Bird Johnson, but in fact the name Lady Bird was used in an example invented by a real property expert explaining this kind of deed; there is no historical connection to the first lady.

ENDNOTES

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57. See, e.g., Vermont, 12 V.S.A. 5174 et seq.; Tenn. Code Ann. §§ 29-27-308 to 310.
58. Taylor et al., Examining the Efficacy of the Uniform Partition of Heirs' Property Act.
59. Taylor et al., Examining the Efficacy of the Uniform Partition of Heirs' Property Act.
60. Avanthi Cole, "For the 'Wealthy and Legally Savvy': The Weaknesses of the Uniform Partition of Heirs' Property Act as Applied to Low-Income Black Heirs' Property Owners, *Columbia Journal of Race and Law* 11 (2021): 343–72. Some states, despite the discretion afforded courts in the UHPA, may have stronger preferences for partitions in kind. Virginia law, for instance, strongly favors partitions in kind over partition sales, requiring courts to conclude "first . . . that the partition cannot be conveniently made [and] [s]econd, . . . that sale is in best interest of the parties." *Sensabaugh v. Sensabaugh*, 232 Va. 250, 258–59 (1986). Additionally, Virginia's UHPA applies to all partition actions, not only those defined as "heirs' property" under the Act. Va. Code Ann. § 8.01-81 (West).
61. New York Real Prop. Actions L. § 993.
62. New York Senate Bill 8306, subpart BB (2024).
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67. Okla. HB 1148 (eff. Nov. 1, 2021); 225 ILCS 454/1-10 (effective Aug. 9, 2019); Tex. Occu. Code Ann. 1101.0045; and Philadelphia City Council, Bill No. 200544 (Signed by the Mayor Dec. 1, 2020), <https://phila.legistar.com/Legislation-Detail.aspx?ID=4662611&GUID=6938C87C-76E9-409A-9F06-EC1A0871E841&Options=ID%7cText%7c&Search=&FullText=1>.
68. New York Senate Bill 6577, signed into law on Nov. 14, 2023, <https://www.nysenate.gov/legislation/bills/2023/S6577>.
69. See New York Real Prop. Actions L. § 993 and N.Y. Senate Bill 8306 subpart (BB) (2024).
70. Tex. Est. Code Ann. § 205.001 (West).
71. See, e.g., N.C. Gen. Stat. Ann. § 28A-28-6.
72. Ala. Code § 43-2-692.
73. Ga. Code Ann. § 53-2-40 (West).
74. Ryan Briggs, "Philly's New Register of Wills Wants to Help Families Transfer Inherited Properties," *WHYY* (May 29, 2019), <https://whyy.org/articles/phillys-new-register-of-wills-wants-to-fight-fees-that-lock-people-out-of-homeownership/>.
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76. States such as New York, where probate filing fees are based on the gross value of an estate, may also neglect to consider the expenses, liens, and other debts associated with a house, making probate inaccessible for asset-rich but income-poor households. See Marco Poggio, "How Court Fees Can Keep Poor NYers from Inheriting Homes," *Law360* (Feb. 2, 2024).
77. See Tex. Est. Code Ann. §§ 203.001-.002 (West); La. Code. Civ. Proc. arts. 2821–2822; Georgia Title Standards (a non-statutory, non-regulatory industry standard), State Bar of Georgia, <https://gabarsections.org/title-standards-2018/>.
78. Ar. Code 15-32-501.
79. Uniform Law Commission, Tenants in Common Transactions Act, Discussion Draft 2023, <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=baa5bde4-d2a6-4c48-bfa5-4f723caa8ba0&LibraryFolderKey=&DefaultView=&5a583082-7c67-452b-9777-e4bdf7e1c729=eyJsaWYyXJ5ZW50cnkiOiJmNzAxYTRlQ0k1MjVlTQ5NTMmYTk2Yi0wMTMmEyMjZiN2l1fQ%3D%3D>.
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