



INNOVATIONS FOR SUCCESSFUL SOCIETIES

“A HUGE PROBLEM IN PLAIN SIGHT”: UNTANGLING HEIRS’ PROPERTY RIGHTS IN THE AMERICAN SOUTH, 2001 – 2017

SYNOPSIS

In 2005, massive hurricanes battered communities along the Gulf Coast of the United States. In the aftermath, thousands of families who lived on land passed down to them informally by parents and grandparents learned that because they lacked clear formal title to their properties, they were ineligible for disaster assistance to rebuild their homes. Related title issues in other regions kept families from developing inherited lands and allowed predatory developers to use court-ordered partition sales to grab long-held properties for pennies on the dollar. All those problems stemmed from the quirks of *heirs’ property*, a form of communal landownership that gave each relative a partial share in a property but full rights to use and enjoy it—or force its sale. Beginning in 2001, before the hurricanes magnified the crisis, a coalition of scholars, lawyers, and activists united to draft and enact new state laws that would strengthen the rights of heirs’ property owners. Advocates across the region helped affected families get public aid and build wealth. By 2017, those efforts were beginning to turn the tide, although many families remained unreached, unconvinced, or unable to agree on how to secure their land for future generations.

Gabriel Kuris drafted this case study based on interviews conducted in the states of Alabama, Georgia, Louisiana, South Carolina, and Texas in the United States in December 2017. Case published January 2018.

INTRODUCTION

It was “a huge problem hiding in plain sight,” recalled Thomas Mitchell, who in 2001 published a landmark legal study of heirs’ property in the United States and its role in the loss of black-owned rural lands during the twentieth century.¹ By the early 1900s, freed slaves and their descendants had painstakingly accumulated and developed 15 million acres of rural land, mostly in the South.² But by 2017, the 13% of Americans who were black owned only 8

million acres, 1% of the nation’s total.³ What happened to those assets?

Mitchell stumbled upon an overlooked answer in 1999, when, as a young legal scholar, he attended a conference to discuss the proposed settlement of *Pigford v. Glickman*, a federal class-action lawsuit against the US Department of Agriculture (USDA). In the unprecedented settlement, which ultimately resulted in payouts of more than \$2 billion, the department admitted to acts of systematic discrimination against

African-American farmers since 1981.⁴ The department's policies and programs had favored big, white-owned agribusinesses and deprived black smallholders of the information, loans, and subsidies they were entitled to receive.

At the conference, a group of black farmers approached Mitchell and told him about an urgent problem they faced. Through a legal process called a partition sale, they were losing land they referred to as heirs' property or heir property. (For legal terms used in this study, see text box 1.) Mitchell hadn't even heard of heirs' property, which was rarely referenced in property law scholarship. "I thought perhaps the families were uninformed and didn't understand," he said, "but I dutifully took notes. I said I would do legal research and get back to them. And I was shocked to find out those families were right."

Mitchell's study explored the problems posed by heirs' property, and he proposed solutions ranging from legislative reforms that would help landowners consolidate title to legal education and direct legal assistance for heirs' property owners. Mitchell's colleagues in the field appreciated his analysis but warned that his proposals would never get off the ground. "Almost universally, people said it was naive to believe reforms were possible," he recalled. "They

believed that no state legislature would ever respond to these disadvantaged property owners because the property owners lacked political and economic power." He recalled a state judge in Ohio who likened the pace of reform in property law to glacial change.

However, during the next decade, a broad alliance of scholars, civil society leaders, and lawyers came together to help heirs' property owners. New legal reforms, educational efforts, and direct services would begin to turn the tide against what John Pollock, founder of the Heirs' Property Retention Coalition, called "the biggest problem nobody's heard of."

THE CHALLENGE

Heirs' property is a cumbersome form of legal ownership common among American families who inherit land informally. When a landowner dies without a duly probated (legally validated) will, state law creates a *tenancy in common*, which gives each heir or holder a partial stake in the land but equal rights to its use and possession. The heirs become cotenants, akin to roommates who share access to and responsibility for a communal space however much each one uses it or takes care of it. All cotenants have full and

Box 1. A Legal Glossary

will: a legal document left by a deceased person, with orders for the disposition of owned property

heir: a person who inherits property

intestate succession: a transfer of property from a deceased person without a will

probate: to determine a will's legal validity, typically by a judicial process

title: formal legal ownership

clear title: certain and uncontested title

tenancy in common: a type of communal ownership wherein owners (cotenants) each have a partial, undivided interest in the property but equal rights of use and possession

heirs' property: a type of tenancy in common, created when multiple family members inherit real property through intestate succession or, in some cases, through a will

partition in kind: a court-ordered division of property into separate parcels apportioned among co-owners

partition by sale: a court-ordered property sale, with proceeds apportioned among co-owners

court of equity: a civil court established in certain states that is empowered to enforce nonmonetary remedies such as the forced sale or forced partition of property

equal rights whether they live on the land and pay property taxes or don't even know it exists.

Any decision involving heirs' property requires the agreement of every heir. To develop the land, harvest timber, get a home loan or mortgage secured by the property, or even access government programs like disaster assistance, all heirs must assent. As generations pass and more children and grandchildren inherit rights, the number of relatives with shares in the land—and a say in decisions—multiplies. Heirs' property owners lack clear title because their rights to the land are shared and uncertain. Those title issues deprive owned land of value and make the land harder to use and easier to lose.

Any heir who wants to leave the arrangement can ask the court to partition the property. State laws favor a partition in kind, which divides the property into proportional parcels. If the division gives any of the heirs unfair advantage, those heirs can compensate others for their losses. As a last resort, courts can order a partition by sale, whereby the property gets sold at auction and the proceeds get split among the heirs. In practice, judges typically chose partition sales because they were easier to administer and more feasible for properties contested by numerous heirs.

Throughout the twentieth century, partition sales were easy targets for savvy bidders with deep pockets. There were few rules about assessing property value, advertising the sale, or ensuring an impartial process. And auctions typically yielded sale prices that were far below market value but unaffordable to the land's occupants, who usually had limited savings and could not mortgage their property to raise funds.

Even if most of the heirs to a property opposed a sale, an unscrupulous buyer could purchase the interest of an unwitting heir—perhaps a remote relative with only a tiny stake in the property—and force a partition sale over the others' objections. The buyer could then develop the property or resell it on the market for a profit. Auburn University professor emeritus Conner Bailey said: "If a family member does it, that's a

shame. If it's some outside speculator, that's a moral outrage."

Partition sales represented an urgent threat in rapidly urbanizing areas like coastal South Carolina. The Gullah people—slave descendants who preserved West African traditions—had held property there since an 1863 land sale during the Civil War. Starting in the 1970s, developers used forced partition sales to acquire those marshy seaside lands and turn them into prime beachfront properties. "Any community you go into has a story about someone losing land due to heirs' property," said Josh Walden, legal director of the Center for Heirs' Property Preservation in Charleston, South Carolina.

Charleston probate judge Irvin Condon gave an example: "Individuals would . . . [find] a piece of property, find out who the heirs are, find an heir living in New York or Chicago or somewhere else who had no intention of coming back to Charleston, and then offer the heir, say, \$5,000 for the interest. The heir might see it as 'found money' and take the offer. Then the buyer might force the local heirs off the property through a partition or a sale."

The scale of partition sales was unknown. Each state handled partition sales differently, but cases were resolved locally and rarely appealed. Searching court records for partition sales or land records for heirs' property would be a massive challenge. "Digging around in old paper files, you just cannot get your hands around what the scope of this is!" said Craig Baab, a former senior research fellow at Alabama Appleseed, part of a nonprofit network that promotes legal reforms.

Partition sales were not the only problems associated with heirs' property. Because owners lacked clear titles, heirs' property was what Peruvian economist Hernando de Soto termed *dead capital*, difficult to develop or leverage financially.⁵ Banks were generally unwilling to underwrite mortgages for heirs' property or to accept heirs' property as collateral. Public bodies restricted their granting of loans and assistance to owner-occupied property and required proof of such ownership. Heirs' property owners were

therefore ineligible for tools like farm assistance or rural or urban development grants and only partially eligible for homeowner tax deductions and credits.

To avoid those issues, heirs' property owners could agree to a more workable arrangement, such as a land trust, a limited liability company (LLC), or an express agreement for a tenancy in common with more reasonable rules. Such changes required legal assistance and approval by all heirs, but distant heirs didn't necessarily know one another—or like one another. “Nine times out of ten, the main issue isn't the land; it's . . . unaddressed family dynamics,” said Jennie Stephens, executive director of the Center for Heirs' Property Preservation.

Tensions over inherited land tore families apart. “I've been sued by my sisters—and I love

my sisters,” quipped Skipper StipeMaas, executive director of the Georgia Heirs Property Law Center, about her own family's struggle over heirs' property. “When it comes down to it, resolving the issue is not pretty.” (For an example of one family's attempts to resolve heirs' property issues, see text box 2.)

On a wider scale, heirs' property ownership had serious repercussions. By limiting land usage, heirs' property impeded development and further entrenched poverty. In rural areas, heirs' property worsened depopulation and drained social, financial, and political capital. Urban heirs' property that fell into disrepair depressed property values and inhibited code enforcement. StipeMaas said that heirs' property was a cause of blight, adding, “It's impacting everybody—the whole economic system.”

Box 2. One Family's Struggle with Heirs' Property

Rosalyn Larkin, a 67-year-old retiree in Montgomery, Alabama, grew up visiting rural land her grandparents shared with other relatives in Sumter County. The property was rustic; it even lacked a telephone until about 1980. The county's median annual family income was \$26,814 in 2016, the 22nd lowest of 3,142 counties and equivalent jurisdictions nationwide.¹ The county's population was three-quarters black, but Larkin pointedly called it “the kind of place where blacks still have to know how to act”—even in 2017.

Rosalyn Larkin's grandparents left wills, but the land had long been heirs' property. Her relatives had argued over what to do with the land, who could live there, and who was responsible for taxes and upkeep. “It's like a bad soap opera,” she said.

In the mid-2000s, Rosalyn Larkin and other relatives sought to clear the land's title. They found its records and traced it back to their ancestor Steve Larkin, born a slave on a North Carolina plantation in 1821. When Steve Larkin died around 1900, he left behind a family farm of 330 acres but no will. “How we held on to that land is a mystery,” Rosalyn Larkin said. Back when many other black families were being quietly dispossessed or threatened by violence, generations of Larkins kept their land as a home and as a haven for those who left.

As of 2017, with help from Alabama Appleseed, Rosalyn Larkin had managed to trace 45 living heirs. But the family tree was still incomplete and still growing, as more heirs died and their own heirs inherited even more fractured claims. “You end up finding more and more people, and at some point your head is about to explode,” said Craig Baab, a former Alabama Appleseed senior research fellow.

The land couldn't be secured until all of those heirs reached agreement—a hard task for a large and growing family. Still, Rosalyn Larkin vowed to keep trying: “We figure Steve Larkin had to go through a lot to keep this property, and it's incumbent on us not to lose it in our generation. He held on to it so long, and we can't just let it go.”

¹ US Census Bureau estimates, <https://www.census.gov/data/datasets/2016/demo/saipe/2016-state-and-county.html>.

Changes in state laws could make heirs' property ownership less burdensome, but any rearrangement of ownership rights would have winners and losers. Land laws differed in each state, reflecting centuries of jurisprudence and customs. "There are few areas of the law more local than real property, and few areas more medieval," explained Baab. State land laws derived from English common law traditions, adapted to stimulate robust property markets and to discourage the entrenchment of large estates common among monarchies like the United Kingdom.⁶ Most countries favored more-consolidated forms of communal ownership, and even most U.S. states historically showed a preference for joint tenancy, which automatically passed the interests of deceased owners to surviving cotenants. Some former English colonies in the Caribbean Sea had arrangements like heirs' property but with more safeguards against forced sales.⁷

Nevertheless, potentially millions of Americans owned family land as heirs' property. The issue was especially prevalent in places where land was inexpensive and sold infrequently, property taxes were low, and tax foreclosures were rare. Those conditions were common in an arc of rural, impoverished counties stretching from eastern Texas to southern North Carolina, called the Black Belt (text box 3). Many families in that region held heirs' property that had been passed down since the nineteenth century, when written wills were uncommon, state laws criminalized the teaching of literacy to African-Americans, and few lawyers served black clients. Beyond the Black Belt, heirs' property persisted nationwide—from Philadelphia row houses to Texan colonias (informal settlements), to valuable Hawaiian beachfront.⁸

Surveys showed that poorer and less-educated Americans, as well as African-Americans and other racial and ethnic minorities, were less likely to prepare wills than other people were.⁹ Some people neglected wills out of ignorance or inaction or because of cultural taboos around death. Others lacked reliable

access to the justice system or didn't trust lawyers. Stories of land taking by crooked lawyers circulated widely.¹⁰

Often, families intentionally kept land as heirs' property—sometimes through wills—believing the land to be a poor-man's trust that would stop relatives from squabbling, ward off outside buyers, and safeguard family land as an intergenerational haven. Families cherished otherwise undeveloped properties as places to visit the graves of beloved relatives, to host periodic reunions, to spend summer vacations, and, ultimately, to retire. Millions of African-Americans who migrated out of the South stayed connected to such family land, having been robbed of their ancestral homelands.¹¹ Bailey gave an example: "Some people who worked in the automobile industry moved down from Detroit because they've got some family land, got some kin down here, and put up a mobile home. It ain't regal, but it's safe and secure, and people take care of each other."

"The whole history of the family may be tied up in that piece of land," said John Schelhas, an anthropologist at the US Forest Service in Athens, Georgia. "When we go out and talk to people, they stress the heritage value of the land, not the monetary value. . . . If you have the land, you always have a place to stay."¹² Many landholders left family land untouched as heirs' property in order to carry out their parents' or grandparents' wishes.

Tragically, heirs' property was extremely insecure. "It is astounding," said Pollock. "People have the exact opposite idea of how it works—not simply wrong, but literally 180 degrees in the wrong direction, . . . which is a disaster."

At the turn of the millennium, heirs' property owners were fighting to preserve their land—most notably in the Carolinas. Then, in late 2005, Hurricanes Katrina and Rita slammed the Gulf Coast and opened a new battlefield. The twin hurricanes killed more than a thousand people, displaced roughly 400,000, flooded 80% of New Orleans, and left more than \$100 billion in property damage.¹³

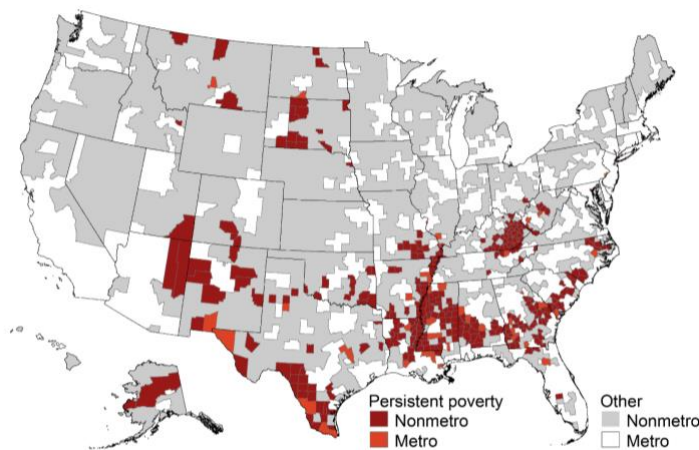
Box 3. Where Heirs' Property Is Most Prevalent

Conducting a national survey of heirs' property across the 3,142 counties and equivalent jurisdictions in the United States would be impractical—and arguably unethical. Citadel professor Faith Rivers James called a survey of heirs' property a “developer’s dream.”

However, inexpensive land, stagnant property markets, low property taxes, and low rates of will usage were common among the 353 counties that the USDA defined as having “persistent poverty, meaning that at least a fifth of residents were in poverty according to the three most recent censuses. The counties included indigenous lands, southwestern border areas, Appalachia, and a chain of southeastern rural counties nicknamed the “Black Belt.” Work on heirs' property issues focused on the Black Belt due to concerns about black land loss. Native American lands had even tougher title issues because of federal and tribal ownership structures.

Colonias—informal settlements of low-income Latin American migrants common in US southern border states—represented an area of emerging concern about heirs' property. Heather Way, a University of Texas law professor, found in a survey of 1,200 informal homesteads in Central and South Texas that 90% of families lacked wills.¹ She said: “We anticipate that as long as that cycle continues, we’re going to see 40 years from now the same issues in these largely Latino communities that have cropped up and are prevalent in older, African-American neighborhoods.”

Persistent Poverty Counties, after the 2010 Census



¹ Persistent Poverty, Economic Research Service; <https://www.ers.usda.gov/data-products/county-typology-codes/descriptions-and-maps.aspx>.

The federal government released \$9 billion in funds to help property owners rebuild or relocate but rejected roughly 15% of applicants because of title issues.¹⁴ The storms served to reveal the extent of heirs' property in such cities as New Orleans and exposed informal property owners' vulnerability after a disaster. “The shockwave was what happened in New Orleans,” said Savi

Horne, head of the Land Loss Prevention Project, a nonprofit in Durham, North Carolina.

Heirs' property owners and their advocates faced three main challenges. First and most urgent, disaster victims without clear titles needed legal relief to access federal disaster aid.

Second, heirs' property owners in rapidly developing areas needed stronger protections

against predatory partition sales. The influential property developers and real estate lawyers who profited from such sales had defeated intermittent state-level efforts to pass legal protections against predatory partition sales in state legislatures and courts in the 1980s and '90s.¹⁵ Reformers had to devise a new approach.

Finally and most fundamentally, heirs' property owners everywhere needed help to secure their property and realize its value. With no viable legal or policy fix in sight, such efforts required education and outreach initiatives as well as direct legal assistance on a case-by-case basis. Lawyers and service providers had to persuade heirs' property owners that the value of clear title justified the hassle of identifying heirs and resolving disputes. Even if the problems of heirs' property ownership were manageable, they would only grow over time.

FRAMING A RESPONSE

"Heirs' property is like having a glass box with money in it," said Georgia Heirs Property Law Center director StipeMaas. "The question is how to unlock the box without breaking it—to access that capital."

Advocates for the rights of heirs' property owners took a new approach in the early 2000s that emphasized broad coalitions and coordinated action—unlike past, piecemeal efforts. Lawyers, scholars, and civil society leaders reached across state lines to share knowledge and resources, partner with major legal institutions, and lobby for bipartisan political support. Reformers also developed new arguments about the urgency of the problem and the feasibility of solutions despite lacking reliable empirical data about heirs' property ownership.

The new model brought early results in South Carolina. In 1998, the Charleston-based Coastal Community Foundation received Ford Foundation funding to hold a series of rural forums, which revealed widespread concerns about heirs' property. In 2002, the two foundations worked with the South Carolina Bar Foundation to start a project that evolved into the

Center for Heirs' Property Preservation, which incorporated in 2005 as the first nonprofit focused directly on helping heirs' property owners. "This cause is near and dear to the heart of the Charleston and legal philanthropic communities," said Faith Rivers James, who led the South Carolina Bar Foundation at the time. "Many families have lost their land because of insecure title for heirs' property." She counted her own friends and family among them.

Meanwhile, Clementa Pinckney, a respected state senator and leader of an iconic black church in Charleston, was working with the South Carolina Appleseed Legal Justice Center on a bill to grant heirs' property owners the right to buy out other co-owners to prevent partition sales. Passed in 2006, the law was the most significant heirs' property reform that had been passed in any state in decades.

Local reformers saw the value of a coalition between scholars, lawyers, and nonprofit leaders. The South Carolina Bar in 2002 adopted a resolution in support of the preservation of heirs' property. "Because of that partnership, we were working with the bar, not fighting the real estate section," said James. "That's a result of sharing information and giving everyone a seat at the table on the front end. . . . That really made the effort successful."

An opportunity for a similar partnership on a national scale had emerged in 2001, when the Associated Press published an award-winning series called *Torn from the Land*, which had been inspired by the discrimination exposed by the *Pigford* case.¹⁶ Based on hundreds of interviews in the Black Belt, the series drew national attention to black land loss. To address the issue, the Section of Real Property, Trusts and Estates Law of the American Bar Association (ABA) created a Property Preservation Task Force, led by Montana real estate lawyer David Dietrich. In 2005, Dietrich brought Mitchell on board to help develop a battle plan for reform. Mitchell looped in a young lawyer named John Pollock.

Pollock had become interested in land law as an intern at the Land Loss Prevention Project

through a fellowship that Mitchell had built up at the University of Wisconsin–Madison Land Tenure Center, although the two had not met. After graduating law school in 2005, Pollock joined the Southern Poverty Law Center in Montgomery, Alabama, where he was assigned to look into partition sales. When he grasped the national scope of the problem, he spent months researching partition-sale laws in each state. After finding that no state had a good model, Pollock cobbled together a draft model code from the best provisions he had found and reached out for feedback from experts like Mitchell. Mitchell invited Pollock to present his proposal to the ABA task force. “I actually had a concrete draft for people to look at, vetted by experts in the area,” Pollock said. “That got people interested.”

In 2006, the task force published a final report that proposed the creation of a model code on partition sales, along with a new, ABA-funded land law student clinic. If the model code failed, the plan was to lobby for reforms in a few targeted states.

The same year as the ABA task force published its report and South Carolina passed its reform, lawyers working with Katrina evacuees realized that heirs’ property laws were preventing evacuees from getting disaster aid. Katrina had disabled Louisiana Appleseed—launched shortly before the storm—but Appleseed centers in Texas, Georgia, and Alabama worked with national law firms through the Gulf Coast Recovery Project to help survivors get help and return home.¹⁷ The evacuees were spread out regionwide; Georgia alone housed nearly 100,000, most of them in Atlanta. “People found out the hard way that they owned heirs’ property,” said Sharon Hill, executive director of the Georgia Appleseed Center for Law & Justice. “And we learned that that was a bigger problem than Katrina.” The southern Appleseed centers all joined together on the Heirs’ Property Project, led by Baab in Alabama.

Baab first heard of heirs’ property from Katrina survivors in Mobile County, Alabama, where title issues were keeping 1,200 families

from receiving aid.¹⁸ Contractors there had received only a limited pot of public funds to rebuild homes, and to minimize legal risks, they prioritized evacuees with clear titles. “They didn’t say no to the people with heirs’ property,” Baab said. “They just moved them to the end of the line, and the money ran out before they got to them.” The rules stacked the deck against predominantly black heirs’ property owners, and Baab resolved to fix the problem.

In Louisiana, hurricane survivors applied for aid directly but had to prove ownership of their homes. Malcolm Meyer, author of a leading treatise on Louisiana real estate law, thought of a way to help. He was inspired by Louisiana’s unique civil code, which was rooted in Latin *natural law* rather than English *common law* like the other 49 states. Under the civil code, property automatically passes to heirs or designees. Inheritors go to court not to make the transfer but to establish their identity. “I’m a real estate lawyer trained in this tradition of natural law, and I’ve seen thousands of cases,” Meyer said. “It all gelled together in the back of my mind that . . . I can solve this.”

In the past, Louisianans had signed “heirship affidavits” for inherited property—particularly for mobile property like vehicles. “One hundred years ago this was customarily the way that people established their heirship,” Meyer noted, “before there was a code of civil procedure.” If the law were to again recognize heirship affidavits, heirs wouldn’t have to go to court to confirm their inheritance.

In 2007, Louisiana Appleseed restarted under a new executive director, Christy Kane, a friend and colleague of Meyer’s at Adams and Reese LLP. In her first week on the job, Kane heard about heirs’ property from a local Habitat for Humanity volunteer, and she reached out to Mark Moreau, codirector of Southeast Louisiana Legal Services. As she recalled, Moreau said, “If Appleseed could fix that, it would be great. It’s been around forever. It’s not just this storm, but the problem is worse now than it ever was.” Kane

asked her law firm colleagues for help, and Meyer told her about his idea.

Thus, by the mid-2000s, reformers were helping heirs' property owners get assistance and secure their land through both top-down legislative efforts and bottom-up direct services. Both efforts depended on broad interstate coalitions of lawyers, scholars, and civil society leaders backed by legal and philanthropic institutions. During the next decade, reformers drew on those resources to hurdle opposition and cover more ground than they ever expected.

GETTING DOWN TO WORK

From 2006 to 2016, efforts to help heirs' property owners proceeded simultaneously on three fronts. Louisiana pioneered the use of heirship affidavits to enable disaster victims with heirs' property to access aid. Reformers drafted the Uniform Partition of Heirs Property Act and secured its passage in key states covering most of the Black Belt. Researchers and service providers, too, helped heirs' property owners with educational efforts and legal aid.

Creating Heirship Affidavits in Louisiana and Texas

Meyer believed that most of the people in Louisiana who inherited property without a will should be able to simply present their credentials and file a sworn heirship affidavit with a local clerk instead of hiring a lawyer and appearing before a judge. Meyer reasoned that judicial appearances had been important back when many people were illiterate and lacked reliable forms of identification, but that “with other ways to prove identity and relationships, the elaborate procedures are no longer necessary.”

Meyer drafted a sample heirship affidavit that included such information as name of the deceased and name of the inheritor, property details, and an acknowledgment that a false sworn statement was a crime.

Next, Meyer and Kane found a legislative sponsor, Edwin Murray, a respected Democratic state senator from New Orleans who was a lawyer and an army veteran. Murray helped them

develop an incremental legislative strategy. The process took a decade to complete, but each bill passed the legislature unanimously despite a shift in power from Democrats to Republicans in 2010.

The issue attracted unexpected support from outside New Orleans. Kane said: “When we went to the legislature, so many legislators from rural communities elsewhere in Louisiana said: ‘We have this problem. I have this problem in my own family. We need to fix this law.’”

The legislature first passed a concurrent resolution to create a legislative study group, which included legislators from both parties as well as leading scholars and lawyers. Kane called the study group a “good way to sell it [the reform] to the legislature,” adding that the feedback from group members and open meetings helped build consensus and strengthen the proposal.

Meyer and Kane identified two potential sources of opposition: lawyers and clerks invested in existing procedures. But opposition from the legal community never materialized, perhaps because lawyers made little money from small-scale heirship matters. Clerks were warier, though, because their offices depended on revenue from filing fees. Meyer and Kane listened to their concerns. “It was not a *hard* sell, but it was a *careful* sell,” Meyer said. “You’ve got to talk to the opposition and get them on board. You do that early, and things go smoothly.”

They persuaded the clerks that the new affidavit would generate *more* revenue for their offices. After all, people who inherited property informally might be willing to pay a smaller fee to secure their property rights without the hassle and expense of court proceedings. And more secure titling might stimulate the property market, leading to more fee-generating transfers. Two compromises clinched the clerks' support: a reduction in the value of estates eligible for the affidavit and a provision allowing clerks to raise fees for successions that didn't use the affidavit—typically, more-complex matters.

The first law, which passed in 2009, applied only to properties valued at \$75,000 or less that

had been held for 25 years or more, among other restrictions. Banks and public agencies were obligated to accept the affidavit, and third parties like property buyers could rely on it if no challenges emerged after two years. It “completely simplified the whole procedure,” Meyer said. (The affidavit did not apply if the property owner had a will, which still required judicial review.)

Very few, if any, cases of fraud emerged. Meyer said title insurers reported seeing no claims stemming from the new procedure—perhaps because false affidavits could be easily challenged. Over time, as inheritors used the affidavits more and as judges applauded the change, the legislature reduced restrictions. Another reform permitted the state to disburse recovery funds to anyone who made an affidavit and provided proof of residence for at least three years. A 2014 law provided more protections to heirs’ property during partition sales. And a final reform in 2017 allowed affidavits for all real property valued at \$125,000 or less, covering most intestate successions.

Louisiana Appleseed began spreading awareness of the affidavit to thousands of Louisianans. “There is no point in changing the law if nobody knows about it,” Kane said. Louisiana Appleseed volunteers wrote a community education booklet and distributed 14,000 copies.¹⁹ They held continuing legal education classes and reached out to local religious, cultural, and community organizations. Together with Southeast Louisiana Legal Services, they offered help to homeowners denied assistance due to title issues, whose names they obtained through a federal public records request. With state support and pro bono assistance from several law firms, the two nonprofits helped more than 1,100 homeowners get clear titles.

After Hurricane Ike hit Galveston, Texas, in 2008, the Texas Senate invited Meyer and Kane to testify about Louisiana’s reforms. When Meyer asked the audience how many of them held family property without clear titles, even two members of the legislative committee raised their hands.

“Then I knew we had it,” he said. In 2009, Texas passed a law that permitted heirship affidavits as proof of eligibility for disaster assistance. The state also funded the Texas Title Project, a two-year project at the University of Texas School of Law to help hurricane victims get clear titles. In 2014, Texas passed another reform called the “transfer-on-death deed,” available in roughly half the states—to help prevent the formation of heirs’ property (text box 4).

Although heirship affidavits gave heirs’ property owners a formal way to access public aid and private credit markets, the affidavits did not resolve title issues, change the rights of other heirs, or affect partition sales.

Taking on Predatory Partition Sales

By the time the ABA Property Preservation Task Force published its final report in 2006, task force members had already been working for two years with the Joint Editorial Board for Uniform Real Property Acts of the Uniform Law Commission (ULC) to convince the commission to draft a model state statute on partition law. Established in 1892 as chief authority on model state laws, the ULC comprised judges, legislators, law professors, and other lawyers appointed by each state’s governor to harmonize legislation across state lines. “It is a very exclusive and elite organization,” Mitchell said.

A model law on partition sales coming from the commission could earn bipartisan support in many states. However, the commission accepted only a few proposals a year and usually steered clear of contentious issues. Task force members were not confident their proposal would make it, “But there still was this general sense of obligation for us to try,” Mitchell recalled. “We felt it wasn’t some fly-by-night operation submitting the proposal. After all, it was going to be the ABA.”

In February 2007, the commission accepted the proposal. “I almost fell out of my chair,” said Mitchell, a law professor at the University of Wisconsin at the time. “I just could not believe

Box 4. Transfer-on-Death Deeds

One of the reforms that can help prevent the formation of heirs' property is a transfer-on-death deed (TOD deed, or, sometimes, beneficiary deed). A TOD deed permits a property owner to specify the beneficiaries to receive title to the property owner's property upon the property owner's death—without going through a probate process. TOD deeds are alternatives to wills: simple to prepare without legal assistance and easy to formally register and to revoke if desired. TOD deeds use short, standardized forms—like heirship affidavits. TOD deeds do not clear preexisting title issues, but they do prevent further complications.

“Every state should have this in its toolbox,” said Heather Way, a law professor at the University of Texas. Way participated in a legislative working group convened by the Texas Access to Justice Commission to propose reforms to help underserved property holders. “The TOD tool jumped out to the committee as low-hanging fruit,” she said, and Texas enacted the reform in 2014.

Prior reforms included a for-sale tool that allowed those who occupied property with clouded title for a set number of years as a sole taxpayer to consolidate title by buying out other cotenants, after providing notice. However, Way said, such sales could be legally costly.

By 2017, 27 states offered TOD deeds, including the 13 states that passed the Uniform Real Property Transfer on Death Act.¹ Way suggested that states with TOD deeds should publicize them widely and consider distributing the form to home buyers with other required notices.

¹ The text of the act, along with a map of states that passed it as well as other resources, is available at <http://www.uniformlaws.org/Act.aspx?title=Real%20Property%20Transfer%20on%20Death%20Act>.

that our proposal got approved. I was aglow. This actually worked!” Two months later, the commission selected Mitchell as lead drafter of the committee, called a *reporter*. Mitchell was only the second African-American to serve in such a role. The committee's chair was Commissioner Robert McCurley, leader of the Alabama Law Institute, which drafted state laws.

Mitchell was realistic about his limitations as an outsider to the commission. “I understood that I had a certain amount of political capital but not a vast amount,” he said. The committee would potentially include observers from interest groups such as property developers. Mitchell needed more allies at the table.

Building a National Reform Movement

In 2006, Pollock saw that many of the disparate scholars and activists he had been in contact with were working alone in silos—sometimes at cross-purposes. “These groups in different states weren't talking to each other,” he

said. “So everyone was sort of reinventing the wheel.”

Drawing on his experience with civil rights activism, Pollock launched the Heirs' Property Retention Coalition, with 20 members. The Coalition never became more than a side project, unincorporated and rarely funded. But Coalition members held weekly calls, shared knowledge and resources, and came to see themselves as constituting a unified movement. “John Pollock held us together,” said Horne of the Land Loss Prevention Project.

Months after the Coalition formed, Mitchell called an early strategy session with the membership. “They first were elated,” he said. “Then I had to disabuse them that I had this massive amount of power.” He told them that he had chosen three main objectives he would fight for tooth and nail but otherwise felt that his role as reporter required him to seek compromise. Mitchell informed them that the ULC rules allowed any organization to petition to send an official observer, who could participate fully in

deliberations, and that organizations hostile to the reform effort might send such observers.

Observers from the Coalition could push harder than Mitchell on some issues and relieve him from taking on every fight.

Coalition members could also provide what Mitchell called “the key data set.” Law reforms often hinged on judicial opinions or empirical data, but partition sales were neither litigated in higher courts nor easily found among local court records. Advocates for heirs’ property owners had unique insights into how partition sales worked in practice and how they could work better.

To be effective observers, Coalition members had to attend all six meetings during the two-year period, each of which took two or three days. Venues rotated between upscale hotels in cities nationwide, making travel plans expensive. Pollock secured a crucial grant from the Southern Poverty Law Center so that he, Baab, and other Coalition members could attend. “We just threw ourselves into it without any knowledge of what we were getting into,” Pollock conceded.

Crafting a Uniform Act to Revamp Partition Sales

At the drafting committee’s first session, in Chicago, Coalition members initially felt a little intimidated to be seated at the table with leading authorities on real estate law. However, even when they did speak up, they weren’t sure if their points were getting across. “I started seeing that they weren’t being taken very seriously,” Mitchell said.

Through the Lawyers’ Committee for Civil Rights, Pollock contacted Gregory Peterson, a Harvard-educated real estate partner in the Boston office of a leading global law firm. Peterson agreed to represent the Coalition at the remaining meetings pro bono. “That really was a game changer,” said Mitchell. Peterson’s credibility and knowledge of real estate law and markets added weight to the Coalition’s arguments. Mitchell called him the Coalition’s “pit bull.”

Committee attendance varied from session to session but included roughly a dozen participants, including various ULC members and two ABA representatives. Some of the participants were highly skeptical of the proposed reform, like Steve Eagle, a professor at the Antonin Scalia Law School of George Mason University and a staunch critic of market regulation. Others were undecided but cautious. But some proved to be unexpected allies. Pollock said that the observer sent by the American College of Real Estate Lawyers, Gregory Stein, “was hugely supportive of us.”

Ultimately, Mitchell said, “We got about 90% of what we had hoped for.” The final act included several key protections. The act required the court appointees who conducted partition sales to be impartial and disinterested parties. Heirs gained enhanced rights to reasonable notice of the filing of a partition lawsuit, as well as a buyout option modeled partly on South Carolina’s reform. In considering whether to partition the property in kind or by sale, the court had to consider a balance of such factors as ease of division, impact of partition on property value, length of ownership or possession by cotenants, sentimental value, the property’s lawful use, and cotenants’ payment of taxes and upkeep. If the court ordered a sale, the court had to ensure the sale procedures were “commercially reasonable.” To make sure all parties received fair shares of the proceeds, a property would be duly appraised, advertised, and listed with a real estate agent.²⁰

The act “treated a partition sale like a real estate transaction,” James said, rather than an old-fashioned land auction. Perhaps most powerfully, the act gave the courts a range of factors—rather than only economic factors—to consider before ordering partition sales, and it aligned partition sales with similar procedures. “Courts in equity often consider [a range of] factors,” James said. The act did not apply if tenants in common had an explicit agreement—as frequently used for commercial properties.

At times, the drafting process was rocky. “We were still fighting this background belief that

the whole effort would be futile,” Mitchell said. “They didn’t want to promulgate a uniform act that would be dead on arrival.”

Pollock agreed: “There were a couple moments when key provisions of the act were in danger.” But the final draft left out only one major issue: court-ordered attorneys’ fees. In roughly half the states, a party that successfully petitioned for a partition sale could have attorneys’ fees taken out of the final sale price. Until the last session, the draft act had allowed the courts to award attorneys’ fees to the defending party. But many committee members felt the provision would be politically untenable, and uniform acts shied away from regulating attorneys’ fees. Baab, a former ABA lobbyist, called the issue a “hornet’s nest,” saying that statutes regarding attorneys’ fees varied widely among states. Pollock felt frustrated that he had originally sought a moderate provision that might have survived the process.

Nevertheless, in a plenary session in the summer of 2010, the assembled state delegations of the Uniform Law Commission voted unanimously to approve the Uniform Partition of Heirs Property Act.²¹ After the vote, the ULC president told Mitchell and Pollock, “We’re so glad to have you all here.”

Taking the Reform Campaign to the States

The uniform act wasn’t a law in itself; states had to enact it. But many state legislators respected ULC recommendations, many ULC commissioners were influential in their home states, and the ULC did its own lobbying coordinated by counselor Benjamin Orzeske. Mitchell, Heirs’ Property Retention Coalition members, and other advocates lobbied for passage in target states, and they secured letters of support from leading legal organizations.

In May 2011, the act passed in Nevada, where the ULC delegation held considerable sway. Next came Georgia in April 2012. Although Georgia Appleseed was not involved with drafting the act, Executive Director Hill said, “It was our job to take it across the finish line.”

Georgia Appleseed had collected compelling testimonies through its outreach programs. For example, an 83-year-old woman lost her family farm in a partition sale that raised merely \$12,000, most of which went to legal fees. “Nobody thinks that’s right, when you’ve paid the taxes your whole life,” Hill said.

ULC commissioner Edward Lindsey, majority whip of the Republican-controlled state house, sponsored the bill, and it passed both houses unanimously. “He understood the problem and said we really need to do this,” Baab said.

Next, the action moved to neighboring Alabama, where Republicans held a legislative supermajority. McCurley’s legislative clout proved helpful. Baab framed the issue as a commonsense legal fix and requested no legislative hearings. Wary that public activism would be divisive, Baab kept lobbying efforts under the radar and advised proponents to keep mum. Despite some pushback from a few local real estate lawyers, the act passed the legislature unanimously in 2014. “What resonated was that this is fundamentally a property rights issue,” Baab said. “It doesn’t matter what color you are or your political leanings.”

South Carolina was the next southern state to pass the act—in 2016. South Carolina Appleseed, the Center for Heirs’ Property Preservation, and other proponents helped overcome opposition by well-connected property developers and real estate lawyers. But state senator Pinckney did not live to see the victory. In 2015, a white supremacist opened fire in Pinckney’s church while he was conducting services, killing him along with eight others. Legislators renamed the bill in Pinckney’s memory, and the only legislator to vote against it was state senator Paul Thurmond, son of segregationist leader and US senator Strom Thurmond. The act’s passage in the birthplace of the Civil War, the home of the Gullah people who had fought dispossession for decades, marked a hard-won milestone.

Serving the Needs of Heirs' Property Owners

Even with heirship affidavits and protections against partition sales, heirs' property owners still had to secure clear titles to their land. "We realized that even if we made the partition law perfect, it couldn't fix the underlying problem," Pollock said. "All it does is stop the bleeding."

At the grassroots level, direct-assistance-efforts programs proceeded in a handful of states, aided by new estimates of the extent of heirs' property. Work included outreach and education, preventive efforts like wills clinics, estate planning, financial-literacy training, and legal assistance to help heirs' property owners resolve title issues.

At the Center for Heirs' Property Preservation in Charleston, staff held public seminars about managing heirs' property and conducted workshops about wills. They prepared family presentations to gather heirs together and present their legal options, and they trained heirs' property owners to mediate family disputes. Legal staff and volunteers helped landowners probate their estates within the state's 10-year limit, and they assisted those who missed deadlines. They also helped heirs' property owners access state and federal aid, including disaster assistance and agricultural programs.

Legal assistance often began with a family presentation. To obtain clear titles, heirs' property owners had to trace their family trees and reach out to all known heirs. Ideally, lawyers could help the heirs come to agreement outside court, covering issues like occupancy and usage and responsibility for tax payments and maintenance. Local heirs might buy out remote heirs in order to consolidate interest. If all heirs agreed, a property could be retitled into a more-secure form of property with more-suitable rules, such as a land trust or limited liability company. Tensions ran high and certain cases could take years to resolve, requiring patience and mediation skills. If necessary, the center would help clients take legal action to clear a title or fight a partition sale. In none of those cases did a family lose land.

In Georgia and Alabama, heirs' property had lower profiles. Hill, who led Georgia Appleaseed, first learned of heirs' property by working on Appleaseed's post-Katrina report in 2006. She asked local experts about the extent of heirs' property in Georgia and learned it was a pressing issue statewide. For example, the city manager of Bainbridge, Georgia, told her that one parcel in the area had more than 350 owners. The state's pro bono community couldn't handle the caseload.

Through South Carolina Appleaseed, Hill learned about the Center for Heirs' Property Preservation and called its executive director Stephens. "I was inspired by what they were doing," Hill said. "Knowing that private attorneys rarely want to do this and that we [at Georgia Appleaseed] do not do direct legal service, what if a long-term outcome of our involvement was the creation of Georgia's first independent law center focused on the legal needs of low- and moderate-income owners of heirs' property?"

Local funders were hesitant to fund a new center—especially during a recession—so Hill needed to gather evidence to support her case. She enlisted a real estate lawyer named Crystal Chastain Baker through a University of Georgia School of Law fellowship and turned to Georgia Appleaseed's Young Professionals Council, led by Jason Carter, grandson of former president Jimmy Carter. The USDA-funded extension service of the University of Georgia provided key support.

First, the Young Professionals Council adapted for use in Georgia a widely distributed plain-language guide to heirs' property in Alabama, written by Auburn University scholar Janice Dyer and published through Auburn's extension service in 2008.²² Georgia Appleaseed began making community presentations around the state, because 70% of Georgian lawyers were located in metro Atlanta. And under the theme "An end to poverty begins with property rights," the team created a legal education program to enlist more real estate lawyers.

In Alabama, Dyer, Bailey, and other scholars had developed a protocol to look through property records and tax databases for red flags of heirs' property. Such records varied widely in format and accessibility, but the scholars worked with county clerks to identify indicators like parcels listed under "family of . . ." or "estate of . . ." that hadn't been transferred for more than 30 years or that had a taxpayer mailing address different from the property address.

The scholars applied the methodology to assess heirs' property in three rural Black Belt counties and estimated that heirs' property ranged from 1.1 to 4.1% of land in each county, with a property value per acre of roughly \$2,000 to \$3,000.²³ Extrapolating statewide, Bailey estimated that Alabamian heirs' property was worth \$800 million, constituting 2% of land in the state. A 2009 Southern Coalition for Social Justice survey of a rural county in North Carolina found similar results, with heirs' property constituting 2% of total acreage.²⁴

Georgia Appleseed created a legal education program to train local lawyers to search county records by using the same protocol. Hill said the project was an "easy sell to pro bono lawyers": a trained lawyer could research a parcel in 15 minutes by using online tools, and during the recession, idle associates wanted flexible pro bono assignments they could complete at their desks. In five counties, they found 1,620 parcels totaling 5,215 acres with a fair market value of \$58 million.²⁵ (A 2017 study by the USDA Forest Service and the University of Georgia found 38,120 acres of probable heirs' property in 10 counties outside metro Atlanta, occupying 11 to 25% of total Georgia land and valued at more than \$2 billion).²⁶ "If there were a way to unlock the value of these assets, think of what these families could do," said Hill.

The Babcock Foundation funded a pilot project to clear titles on 10 properties. Hill recruited pro bono attorneys, and the Young Professionals Council wrote a training manual and published it online. "We learned these cases take forever and are expensive," Hill said. "We

needed to hire dedicated staff to take on the cases—like legal aid—but raise money for the case costs."

Thus, in 2015, Georgia Appleseed helped launch the Georgia Heirs Property Law Center, which incorporated independently in 2017. Based in Athens, the Georgia center followed a model similar to that of the Center for Heirs' Property Preservation in Charleston and the two centers maintained close ties, but they differed in important ways. First, clients of the Georgia center did not have to commit to property preservation, whereas clients of the Charleston center signed a (largely symbolic) contract to partially reimburse the center if they sold their properties within five years. Second, the Georgia center had a sliding fee scale to help defray costs, whereas the Charleston center charged no fees. Third, the Georgia center had six lawyers and took cases statewide, whereas the Charleston center had only one full-time lawyer and a limited territory. Fourth, the Georgia center accepted diverse clients of low and moderate income, whereas the Charleston center served low-income African-Americans almost exclusively. "Heirs' property runs in any kind of family you can imagine and every socioeconomic class," said StipeMaas.

Georgia center staff used online databases and subscription-based search programs to help clients trace missing heirs. They dealt with land issues like retitling and conservation easements. And they litigated a range of actions—from quieting of title to adverse possession. Case resolution varied widely, taking anywhere from an hour to many years.

Other organizations provided legal aid for heirs' property owners among other clients, including Heirs' Property Retention Coalition members like the Land Loss Prevention Project, the Southern Coalition for Social Justice, and the Federation of Southern Cooperatives. In 2009, the Coalition received a small ABA grant to develop a shared-resources library of legal templates and educational materials. "Partition law is somewhat state specific, but in general, the

underlying issues are the same everywhere,” Pollock said. Partners like the Lawyers’ Committee for Civil Rights Under Law, the Harvard Mediation Program, and various nonprofits in North Carolina contributed training programs to help organizations offer direct assistance to heirs’ property owners. Working together, the Coalition produced a guide on available legal options, and Pollock maintained a website and a referral network of lawyers who took on heirs’ property cases. Various law school clinics and legal aid providers also helped heirs’ property owners on an ad hoc basis.

OVERCOMING OBSTACLES

Service providers encountered what Horne called “psychological barriers.” Heirs’ property owners were often hard to reach, distrustful of lawyers, and secretive about their families’ title issues. “People think it’s only them, and there’s a lot of shame in it,” said StipeMaas. She said she found clients to be more forthcoming when she told them about her own struggle with heirs’ property in her family, growing up “land rich but cash poor” in the town of Dixie in southwestern Georgia. “I saw the immediate financial and emotional impact to my own family of having heirs’ property,” she said.

The Center for Heirs’ Property Preservation learned early to reach out to potential clients through gatekeepers—trustworthy intermediaries like social and community leaders. Heirs’ property owners tended to associate unsolicited letters or canvassing with predatory developers.

The center built a community presence through participation in county fairs and festivals as well as presentations at schools, churches, and community organizations. The center guarded its reputation carefully and accepted pro bono help only from local lawyers and firms with trusted reputations. “If folks don’t trust you, they won’t necessarily tell you they don’t trust you,” said Walden, the center’s legal director. Circumspect community members would simply disengage.

Heirs’ property owners often preferred to let sleeping dogs lie rather than go through the hassle

of clearing title. Approaching family members about title issues could even backfire. Flying rumors about a potential sale or a change to communal land could put family members on guard and spark threats or legal actions. “That is always a risk with heirs’ property,” Pollock said. “You either leave it alone and hope nothing bad happens, or you deal with it, at which point you can make something bad happen.”

Through their education and outreach, service providers tried to counter myths about heirs’ property, including the rumor that occupants were protected from forced sale if they paid property taxes. They also learned to patiently support clients’ working through family and financial issues rather than rush toward legal remedies. Stephens said the Center for Heirs’ Property Preservation had evolved into “a social service agency that uses law and forestry as our tools. Our greatest challenge is getting landowners to recognize what they own and to learn how to manage it.” She added: “What we found was that the sustainable-forestry program was the carrot to resolve heirs’ property. . . . The possible income to be generated from practicing forestry gets them in the door.”

In the fertile Black Belt, untended land defaulted to woodland that contained valuable timber. Professionally managed forests could reliably generate income, with little effort from landowners. David Bourgeois, a forester at the center, called coastal South Carolina “some of the best timber-growing land in the country,” adding that many of the heirs’ property in the region is “located where it’s great for growing trees but a little too wet to grow crops and a little too wet . . . to put houses on.”

However, Bourgeois noted, “Landowners historically didn’t have access to forestry and didn’t understand the value of what they had in their backyard.” In the past, many timber companies and government forestry programs had discriminated against black landowners, which was one of the issues in *Pigford*. Landowners without clear titles couldn’t receive USDA cost-share assistance to manage forestry’s

high up-front costs and long wait times. Timber harvesters preferred large properties so they could reduce the costs of transporting equipment, and reputable mills rejected timber without clear title so they could minimize legal risks.

Thus, heirs' property owners "tend to get taken advantage of," said Forest Service researcher Schelhas. They often sold their timber opportunistically, when offered a onetime informal cash payment by an interested harvester. A baseline survey by Schelhas and his colleagues found only a tenth of heirs' property owners made a profit from their land.

"Almost nine times out of ten, if you do a landowner visit, they'll tell you a story of how someone bought their timber and they didn't get the true value," said Bourgeois.

In 2012, a social enterprise called the United States Endowment for Forestry and Communities—endowed by a trade dispute settlement with Canadian softwood suppliers—sponsored three pilot projects to help the Center for Heirs' Property Preservation and other organizations assist heirs' property owners to grow timber. The center was the only pilot project to combine legal and forestry services under one roof.

The center's forestry program helped heirs' property owners see their lands as assets rather than liabilities. Not only did landowners with clear titles earn more money from their timber, but they also could earn more revenue from government assistance programs and professional forestry practices. For example, Bourgeois estimated that an unmanaged local forest harvested after 30 years might generate roughly \$33 per acre per year in revenue. On the other hand, an intensively managed forest could easily generate 10 times that amount—without much effort from the landowner. "It's not like winning the lottery," Bourgeois conceded, but it defrayed the costs of property taxes and maintenance.

The center helped clients manage their forests, get clear titles, and market their timber. For example, staff taught clients how to implement so-called "extended practices" like

drip irrigation or wildlife habitat rehabilitation, which were subsidized by government subsidies. Another important topic covered how to work with surveyors, consultants, and harvesters. The center helped clients with small estates cluster together by coordinating timber harvests to achieve economies of scale.

When the center served as a matchmaker to connect clients with private services and government partners were grateful as well to build those relationships. "We enabled these partners to interact with landowners they couldn't easily reach before because they didn't have the trust of these communities," Stephens said.

The Georgia center also found that concrete needs motivated clients to seek assistance, and it formed partnerships with foresters and other service providers. Often, clients merely wanted to fix their roofs or heating systems and had to get a clear title to access bank loans or government aid. StipeMaas worked with nonprofit and USDA partners to develop a landowner's academy, inspired by her own mother's hardships in managing the family farm after her father died suddenly. Geared toward rural properties of 10 or more acres, the six-session program covered topics like legal issues, farm management, and government grants and programs.

Louisiana Appleseed and Southeast Louisiana Legal Services encountered the flip side of the issue. Legal reforms that helped heirs' property owners access disaster aid and other assistance lowered owners' incentive to seek clear titles. Kane feared such efforts "unintentionally put a Band-Aid on the problem." On the other hand, disaster victims understandably had more-urgent concerns than title issues.

Service providers also found that title clearing involved substantial nonlegal costs such as payments to surveyors, special masters, title abstractors, and title insurance. Centers tried to arrange discount or pro bono rates with such professionals and had considered hiring in-house staff. Pro bono lawyers who took on title-clearing cases didn't cover those costs, which could amount to thousands of dollars.

ASSESSING RESULTS

From 2005 to 2017, the Center for Heirs' Property Preservation advised 1,734 families, including 414 clients for direct legal services, 639 served in wills clinics, and 151 titles cleared. The center's forestry work from 2013 to 2017 helped 64 families develop forest management plans, of whom 23 had realized \$1.3 million total in timber sales. The center also helped 89 families secure public forestry assistance. "It's such a great model," said Charleston probate judge Tamara Curry. "The Center for Heirs' Property definitely helps, because any of these individuals [served] may have some land wealth but not enough cash to get proper title to their real estate."

From 2015 to 2017, the Georgia Heirs Property Law Center closed 88 matters, consulted with a further, 45 potential clients, and had 70 open matters. The Georgia center also completed 81 community outreach programs and conducted two wills clinics.

In Louisiana, Meyer estimated that more than 30,000 Louisianans had filed heirship affidavits and that the procedure had cut court processing time by two-thirds, based on his conversations with lawyers and clerks statewide.

Victims of the 2016 Baton Rouge floods and Hurricane Harvey in Texas in 2017 benefited from post-Katrina reforms, which eased assistance to those with clouded titles. Louisiana Appleseed and Southeast Louisiana Legal Services collaborated with local law schools and nonprofits on an unprecedented effort called Flood Proof that assisted more than 100,000 households in accessing disaster assistance. Unlike after Katrina, "We were ready to go," Kane said. By 2017, the project had helped 305 families get clear titles and had assisted other families with legal services, filing fees, and the tracing of heirs. With help from the ABA Center for Innovation, Stanford Law School students developed a smartphone application to expedite triage and document collection.

In 2017, Texas became the 10th and most-populous state to pass the Uniform Partition of

Heirs Property Act. The legislation passed after repeated attempts and dogged lobbying efforts by the ULC, the Heirs' Property Retention Coalition, and local activists. Both Mitchell and Baab testified on behalf of the law shortly before Mitchell became interim dean of Texas A&M University's School of Law. Mitchell said that the act's passage in Georgia, Alabama, and South Carolina had helped sway hesitant legislators.

Lobbying by civil society groups had helped the act pass in Arkansas and New Mexico. In Hawaii and Montana, local constituents had pushed it forward. An influential ULC commissioner proved decisive in Connecticut, as in Nevada. In 2018, lobbyists planned to target other states—like West Virginia—as well as the District of Columbia.

The act's troubles in other southern states showed the importance of coalition building. In Mississippi, the act languished without local organized support. In North Carolina, Horne said the act faced "strident opposition" from the real estate bar. In Florida, influential property developers opposed the act. As for Louisiana, Meyer and other experts said they believed that the 2014 legal reforms and unique protections afforded by the civil code had made the act redundant there.

As of 2017, advocates couldn't yet measure the act's impact because of the slow pace of legal actions. Surely, increased attention to unfair partition sales drawn by civic groups and the media helped deter abuses. The Coalition had collected anecdotal evidence suggesting that the act had made partition sales fairer. Walden said the act was "a good thing" and "did about as much as you can do while still considering the rights of all who own an interest in the property," although he acknowledged that it "made the procedures for forcing a partition sale more complex and more costly."

Some lawyers in Georgia and South Carolina said the act made partition sales more onerous for the courts and that they were considering legal or legislative challenges. Charleston master in equity

Box 5. Communal Property Issues in Post-Hurricane Barbuda

In 2017, Hurricane Irma devastated Barbuda, destroying more than 90% of the Caribbean island's buildings and infrastructure. All residents—roughly 1,600 people—were evacuated to Antigua, the larger and far more populous island in the nation of Antigua and Barbuda. The cost of rebuilding the shattered island spurred new efforts to institute a system of formal individual land ownership on Barbuda parallel to the freehold tenure system on Antigua. However, a 2007 law had formally recognized Barbuda's centuries-old system of communal landownership, under which Barbudans were co-tenants of shared estates, like heirs' property owners in the U.S. (but with more protections against court-ordered partitions).

A 2017 law passed after Irma allowed Barbudans to receive freehold titles to their home plots. The government argued that the reform would give survivors the collateral they needed to secure home loans from the private sector for reconstruction, but opponents called it a land grab that would threaten local heritage for the enrichment of foreign owners. As of early 2018, the choice of land tenure system was still mired in dispute.

Mikell Scarborough, who oversaw partition cases, said he hadn't yet completed any cases under the new rules but was concerned that the new process was "very confusing" and that its complexity might increase legal costs. "The judiciary are trying to educate the bar about the statute and its requirements," he said.

Charleston probate judges Condon and Curry said they appreciated that the reforms gave judges a freer hand to make partition sales fairer for all parties. Curry, president of the National College of Probate Judges, said: "If anything, people want additional protections, so I think that [the act] is helpful. I remember when there wasn't that protection."

"We don't see any complaints" about the act, said Condon. "That may indicate it's working."

Nevertheless, partition sales represented only one thread in the tangle of heirs' property issues. Mitchell cautioned that the uniform act wasn't a "silver bullet."

Baab, who led heirs' property workshops in all 67 counties in Alabama with USDA support, warned, "You still have tens of thousands of people out there with this land problem, and more likely than not, they're going to lose their land sooner or later."

More and more public and academic institutions were showing interest in heirs'

property, as demonstrated by a daylong conference held at the Federal Reserve Bank of Atlanta in 2017. Leading property law textbooks, which previously had not covered heirs' property, included a section on the issue and on reform efforts. Researchers were exploring new ways to measure heirs' property such as using geospatial data. Others were drawing connections with topics like family decision making, coastal resilience, and even forest fires.

Heirs' property issues resonated globally as well. For example, after a catastrophic 2017 hurricane, co-owners of communal lands in Barbuda faced problems getting clear titles and accessing reconstruction loans, resulting in a controversial land reform (text box 5).²⁷

REFLECTIONS

The heirs' property reform movement yielded several lessons about changing long-standing laws in the face of political obstacles. Dean Thomas Mitchell said: "The law is always amenable to change. No matter how bleak things seem . . . there's always hope." However, he added, "You can't just have a legal strategy; you have to have a multifaceted strategy."

Heirs'-property-reform advocates pursued both legal reforms and direct assistance in collaboration with local grassroots activists as well

as major legal institutions like the American Bar Association and the Uniform Law Commission. “We really benefited from combining a bottom-up and a top-down approach,” Mitchell said.

Christy Kane, executive director of Louisiana Appleseed, discussed the importance of reaching out early to potential antagonists to learn their needs—and their objections. With broad coalitions and early buy-in from institutional partners, reforms passed with bipartisan support.

Attorney John Pollock stressed how reformers used powerful testimonies to overcome their lack of quantitative data. “It came down to practitioners with substantial experience saying, ‘I know this to be true; I have talked to too many families,’” he said.

Mitchell acknowledged a fortunate alignment of opportunities—like rising interest in black land loss after the *Pigford* lawsuit. Pollock agreed: “I wish I could say we had methodically planned this whole movement, but it didn’t happen that way. It was very much a perfect storm. . . . No matter how well you plan, you need some things to break the right way for any movement to be successful.”

Jennie Stephens, executive director of the Center for Heirs’ Property Preservation, emphasized that organizations should build trust

in their communities and be clear about the services they offer, adding that it was important to share the credit and spread the model. Both she and Skipper StipeMaas, executive director of the Georgia Heirs Property Law Center, perceived a nationwide need for heirs’ property centers and hoped other states would copy the model.

Various reformers were working on ways to help heirs’ property owners on a larger scale. Several southern universities were working to coordinate assistance efforts like law school clinics. Legislators and scholars had proposed legal and policy reforms, including tax relief for heirs’ property owners, changes in adverse-possession law to give more rights to long-term occupants, intestacy law reforms, more-aggressive public land takings, and stricter enforcement of local codes. Of course, all of those reforms had drawbacks and potential objections.

In the meantime, each family had to work at its own pace to resolve latent issues and reach agreement in order to secure land for future generations. StipeMaas said she found significance in the twists and turns of each case. “That’s one reason I love land,” she said. “You peel back the dreams, the aspirations, the hate, the love; every parcel is a novel.”

References

- ¹ Thomas Mitchell, From Reconstruction to Deconstruction: Undermining Black Ownership, Political Independence, and Community through Partition Sales of Tenancy in Common. *Northwestern University Law Review* 2001; 95:505-580. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1544380.
- ² Leah Douglas, African Americans Have Lost Untold Acres of Land over the Last Century. *The Nation*, June 26, 2017.
- ³ Antonio Moore, Who Owns Almost All America's Land? Inequality.org, February 15, 2016.
- ⁴ Tadlock Cowan and Jody Feder, The *Pigford* Cases: USDA Settlement of Discrimination Suits by Black Farmers. Congressional Research Service, May 29, 2013.
- ⁵ Hernando de Soto, *The Mystery of Capital: Why Capitalism Triumphs in the West and Fails Everywhere Else*. New York: Basic Books, 2000, p. 6.
- ⁶ Faith Rivers James, Inequity in Equity: The Tragedy of Tenancy in Common for Heirs' Property Owners Facing Partition in Equity. *Temple Political & Civil Rights Law Review* 17(1), 2007–08.
- ⁷ Thomas Mitchell, From Reconstruction to Deconstruction.
- ⁸ Cassandra Johnson Gaither, "Have Not Our Weary Feet Come to the Place for Which Our Fathers Sighed?": Heirs' Property in the Southern United States. USDA US Forest Service, October 2016. Elizabeth Weise, Mark Zuckerberg Drops Suits to Force Sale of Hawaiian Lands. *USA Today*, January 27, 2017; <https://www.usatoday.com/story/tech/news/2017/01/27/zuckerberg-drops-kauai-land-suits-hawaii-quiet-title/97152332/>.
- ⁹ Jeffrey M. Jones, Majority in U.S. Do Not Have a Will, Gallup, May 18, 2016; <http://news.gallup.com/poll/191651/majority-not.aspx>.
- ¹⁰ Todd Lewan and Dolores Barclay, Torn from the Land. Associated Press, December 2, 2001. <http://theauthenticvoice.org/mainstories/tornfromtheland/>.
- ¹¹ Carol Stack, *Call to Home: African Americans Reclaim the Rural South*. New York: Basic Books, 1996.
- ¹² Selections from Schelhas's interviews are available in "Sunshine, Sweat, and Tears": African-American Ties to Land and Forests in the South," USDA US Forest Service, 2017; <https://www.fs.usda.gov/treearch/pubs/54140>.
- ¹³ Peter Whoriskey , Katrina Displaced 400,000, Study Says, *Washington Post*, June 7, 2006; <http://www.washingtonpost.com/wp-dyn/content/article/2006/06/06/AR2006060601729.html>.
- ¹⁴ Malcolm A. Meyer, Louisiana Heirship Property: Solutions for Establishing Record Title. *Louisiana Bar Journal* 55, 328, February/March 2008.
- ¹⁵ Thomas W. Mitchell, Reforming Property Law to Address Devastating Land Loss. *Alabama Law Review* 201466(1): 1-61; <https://www.law.ua.edu/pubs/lrarticles/Volume%2066/Issue%201/Mitchell.pdf>.
- ¹⁶ Todd Lewan and Dolores Barclay, Torn from the Land.
- ¹⁷ The results of the project are available at <https://www.texasappleseed.org/sites/default/files/25-HurricaneProjectPublication.pdf>.
- ¹⁸ Donna Reynolds, Alabama Extension Working with Property Issues. Southeast Farm Press, September 10, 2007; <http://www.southeastfarmpress.com/alabama-extension-working-property-issues>.
- ¹⁹ The booklet is available free online at <https://louisianaappleseed.org/wp-content/uploads/2016/03/Protect-Your-Property-2017-Web-1.pdf>.
- ²⁰ The act is covered in more detail in Thomas W. Mitchell, Reforming Property Law to Address Devastating Land Loss.
- ²¹ The text of the act, along with a map of states that passed it as well as other resources, is available at <http://www.uniformlaws.org/Act.aspx?title=Partition%20of%20Heirs%20Property%20Act>.
- ²² The Alabama guide is available free at <https://store.aces.edu/ItemDetail.aspx?ProductID=13396>.
- ²³ Janice F. Dyer, Conner Bailey, and Nhung Van Tran, Ownership Characteristics of Heir Property in a Black Belt County: A Quantitative Approach. *Southern Rural Sociology* 2009;24(2):192-217.
- ²⁴ Southern Coalition for Social Justice, Fair Housing and Heirs' Property in Orange County, North Carolina, 2009.
- ²⁵ Georgia Appleseed Center for Law & Justice, *Unlocking Heir Property Ownership: Assessing the Impact on Low and Mid-Income Georgians and Their Communities*, 2013; <http://www.gaappleseed.org/media/docs/unlocking-heir-property.pdf>.
- ²⁶ Scott Pippin and Shana Jones, Georgia's Heirs Property: Assessing the Impact of Locked Wealth," Georgia Institute of Community Housing Retreat, February 22, 2017; http://www.fcs.uga.edu/docs/GICH_Heirs_Property_Prezi_2.pdf.
- ²⁷ Ann M. Simmons, Plans to Rebuild Hurricane-Ravaged Barbuda Reignite a Decades-Old Land Dispute. *Los Angeles Times*, October 11, 2017; <http://www.latimes.com/world/global-development/la-fg-barbuda-land-dispute-20171009-story.html>



Innovations for Successful Societies makes its case studies and other publications available to all at no cost, under the guidelines of the Terms of Use listed below. The ISS Web repository is intended to serve as an idea bank, enabling practitioners and scholars to evaluate the pros and cons of different reform strategies and weigh the effects of context. ISS welcomes readers' feedback, including suggestions of additional topics and questions to be considered, corrections, and how case studies are being used: iss@princeton.edu.

Terms of Use

Before using any materials downloaded from the Innovations for Successful Societies website, users must read and accept the terms on which we make these items available. The terms constitute a legal agreement between any person who seeks to use information available at successfulsocieties.princeton.edu and Princeton University.

In downloading or otherwise employing this information, users indicate that:

- a. They understand that the materials downloaded from the website are protected under United States Copyright Law (Title 17, United States Code). This work is licensed under the [Creative Commons Attribution-NonCommercial-NoDerivatives 4.0 International License](http://creativecommons.org/licenses/by-nc-nd/4.0/). To view a copy of this license, visit <http://creativecommons.org/licenses/by-nc-nd/4.0/>.
- b. They will use the material only for educational, scholarly, and other noncommercial purposes.
- c. They will not sell, transfer, assign, license, lease, or otherwise convey any portion of this information to any third party. Republication or display on a third party's website requires the express written permission of the Princeton University Innovations for Successful Societies program or the Princeton University Library.
- d. They understand that the quotes used in the case study reflect the interviewees' personal points of view. Although all efforts have been made to ensure the accuracy of the information collected, Princeton University does not warrant the accuracy, completeness, timeliness, or other characteristics of any material available online.
- e. They acknowledge that the content and/or format of the archive and the site may be revised, updated or otherwise modified from time to time.
- f. They accept that access to and use of the archive are at their own risk. They shall not hold Princeton University liable for any loss or damages resulting from the use of information in the archive. Princeton University assumes no liability for any errors or omissions with respect to the functioning of the archive.
- g. In all publications, presentations or other communications that incorporate or otherwise rely on information from this archive, they will acknowledge that such information was obtained through the Innovations for Successful Societies website. Our status (and that of any identified contributors) as the authors of material must always be acknowledged and a full credit given as follows:
Author(s) or Editor(s) if listed, Full title, Year of publication,
Innovations for Successful Societies, Princeton University,
<http://successfulsocieties.princeton.edu/>

