



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

BACKGROUND

Heirs’ property is a burdensome form of communal land ownership unique to the United States, but with parallels in the Anglophone Caribbean and elsewhere. Typically formed when a landowner dies without a valid will, heirs’ property gives every descendant a *partial stake* in the land but *equal rights* to its use and possession. After multiple generations, a property may be shared by hundreds of distant relatives who may not live locally, contribute to taxes and upkeep, or even know the land exists.

Heirs’ property can’t be developed or mortgaged without the assent of all co-owners, which makes it hard for families to build wealth. And because heirs’ property owners lack clear title, they are often ineligible for private home loans and public assistance. Any one co-owner can force a court-ordered auction of the entire property through a legal process called a partition sale, which developers and other outsiders have used to acquire long-held family lands at bargain rates.

Families who inherit heirs’ property, who are disproportionately low-income and nonwhite, have struggled for generations to hold onto their lands. When twin hurricanes devastated the Gulf Coast in 2005, heirs’ property owners were unable to get disaster aid to rebuild their homes, metastasizing the crisis.

REFORM STRATEGY

In the early 2000s, a coalition of scholars, lawyers, and activists united to help heirs’

property owners. The coalition’s efforts focused on the so-called Black Belt that stretched from east Texas to the Carolinas, a rural, impoverished, and historically African-American region with a high concentration of heirs’ property.

The coalition’s work was both “bottom up” and “top down,” and the reformers encountered obstacles at both ends. At the grassroots level, service providers worked hard to earn the trust of heirs’ property holders, to alert them to the risks of heirs’ property ownership, and to persuade them that legal remedies were worth their time and energy. Meanwhile, legal experts and lawmakers drafted legislation to reform partition sales and to enable heirs’ property owners to access public assistance and private loans without clear title. Strong political opposition came from beneficiaries of the status quo as well as experts and lawmakers reluctant to tinker with longstanding legal rules.

ACTIONS TAKEN

From 2001 to 2010, legal scholars and activists worked with two national legal institutions, the American Bar Association and the Uniform Law Commission, to develop a model state law to make partition sales fairer. Provisions included a notice requirement and right of first refusal for co-owners and a requirement that courts use a multi-factor test before ordering a partition sale and ensure that sales used commercially reasonable procedures. More than 20 civil society groups formed the Heirs’ Property

Retention Coalition to coordinate efforts to support the drafting and passage of the act.

In South Carolina, the Center for Heirs' Property Preservation pioneered a direct-service model for heirs' property owners, followed later by the Georgia Heirs Property Law Center. The centers offered legal assistance, outreach services, and education in estate and financial planning. The South Carolina center found that forestry assistance helped heirs' property owners defray the expenses of landholding and incentivized them to resolve title issues.

After the 2005 hurricanes, legal experts and lawmakers in Louisiana developed "heirship affidavits" to enable those who inherit property without a will to claim title without a costly judicial process. Texas passed a similar reform in response to hurricanes there. Both reforms helped landowners without clear title to access disaster relief and loans to rebuild their homes.

RESULTS

With backing from the legal establishment and support at the local level, the Uniform

Partition of Heirs' Property Act passed in 10 states by 2017, including the bulk of the Black Belt. In early 2018, the law's immediate impact was uncertain and its long-term effect unclear, but legal experts believed that reforms and grassroots efforts had curtailed predatory partition sales.

Nearly all Louisianans who inherited property without a will could use heirship affidavits by 2017, and an estimated 30,000 had done so. Local legal aid providers used post-hurricane lessons to assist survivors of a 2016 flood, helping more than 100,000 families access disaster assistance and more than 300 get clear title to their properties.

By 2017, the two heirs' property centers had advised roughly 2,000 families and obtained clear title for nearly 200 of them. Other nonprofits, legal aid providers, and law school clinics provided legal assistance on an ad hoc basis. Nevertheless, work proceeded slowly, on a case-by-case basis, suggesting that reaching families and persuading them to take steps to protect themselves remained a significant challenge that limited wide-scale implementation.

LESSONS LEARNED

- **Land laws should reflect real-world conditions.** The uniform act made partition sales fairer by using the tools of modern real estate transactions, like listings and agents.
- **Look for simple, pragmatic reforms in a crisis.** Heirship affidavits allowed heirs' property owners to sidestep title issues to get access to government aid and private credit.
- **Changes in law are not enough; reform initiatives must engage citizens and persuade them to take steps available to them under new legal instruments.** Legal reformers and grassroots service providers coordinated efforts and shared knowledge, to the benefit of both.
- **Coalitions should be broad and coordinated.** Reformers surmounted political obstacles by partnering with both national legal institutions and local nonprofits and by reaching out early to anticipated antagonists to find common ground.

For related interviews and in-depth analysis of heirs' property reforms in the U.S. South, read the full case study: ["A Huge Problem in Plain Sight": Untangling Heirs' Property Rights in the American South, 2001-2017.](#)

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