



Landmark Act in Florida Aims to Keep Land (and Wealth) in Black Families

BY: ANN CARPENTER AND SARAH STEIN

As members of the Florida Housing Coalition are well aware, land ownership and homeownership are significant contributors to the creation of wealth and thus drivers of intergenerational economic mobility. However, many Floridians who have inherited family land are unable to realize these opportunities because of the legal effect of their particular form of land ownership, often called “heirs’ property.” These land owners are more likely to lose their land through what is known as a partition sale—a sale of the property resulting from a dispute between co-owners, often ignited by an outside party with an investment interest in the land. The issues that create and are caused by heirs’ property are inextricably tied to race. Accordingly, heirs’ property disproportionately impacts lower-wealth African Americans, particularly in the Black Belt South, which includes many northern Florida counties. Heirs’ property has also contributed to the pervasive racial wealth gap in the U.S., where the Federal Reserve found that Black Families had roughly one-tenth the median wealth of White families in 2016. In a recent win for Floridians with heirs’ property, Florida has adopted the Uniform Partition of Heirs Property Act, legislation that helps protect generational wealth by providing important protections against land loss for heirs’ property owners.

On June 20, Senate Bill 580, the Uniform Partition of Heirs Property Act, was signed by Governor DeSantis. Heirs’ property is most often created when a property owner passes away intestate—that is, without a legally recognized estate

plan in place. The legal heirs of the deceased owner—who are determined by state law—become common owners by default (legally, “tenants in common”), each owning a fractional interest in the entire property. Heirs’ property can also be created when a simple will bequeaths the property equally to multiple family members. Wealthy White families are privileged in this system, where knowledge of the law and access to legal services are necessary to consolidate and retain property. In families and networks where access to legal estate planning advice is limited—disproportionately Black, Indigenous, and communities of color—heirs’ property owners can multiply quickly across generations, accumulating large numbers of owners for one tract of land, some of whom may not even know one another and many of whom may not know that they own anything at all. This ownership structure is unstable because a single heir, or in certain cases a third party who has bought the heir’s interest in the property, can demand their portion of the land’s value by asking the courts for a partition sale of the entire property.

In addition to the risk that a distant relative or an investor could force the sale of their land, heirs lack clear, marketable title, which can reduce the amount a buyer would pay for the land and prevent an owner or buyer from accessing mortgage financing. Furthermore, most loan and grant programs intended to assist low-wealth homeowners and land owners require clear title. This creates an enormous barrier for heirs’

property owners who need help repairing their homes as they age or who are trying to rebuild after a disaster strikes. The issue of heirs' property in a community often surfaces post-disaster, as many federal and state disaster assistance programs have historically required clear title. Additionally, heirs' property can even prevent owners from deriving income off their land if they cannot get the consent of other owners.

For over a century, partition sales alongside other questionable and even illegal practices, have led to the involuntary loss of family homes and family-owned land, particularly in the southeastern states served by the Federal Reserve Bank of Atlanta (Alabama, Florida, Georgia, Louisiana, Mississippi, and Tennessee). Land loss has been an ongoing issue among Black, Latinx, and Indigenous people and low-income and low-wealth populations, who have been historically targeted by speculators, government actors, and financial institutions as sources of undervalued land for development. The high incidence of heirs' property among these groups, and the often unfavorable treatment of this type of ownership by the law and the courts renders these owners particularly vulnerable to land grabs. Alarming, Black land ownership has fallen from a peak of 16 million acres in 1910 to a low of 2.3 million acres in 1992 (Bailey, Zabawa, Dyer, Barlow, & Baharanyi, 2019).

The scope and scale of heirs' property ownership is unknown, although reliable estimates exist. A comprehensive 1980 report by the Emergency Land Fund estimated 41 percent of Black-owned land is held as heirs' property (Emergency Land Fund, 1984; Johnson Gaither, 2016) in the Black Belt South, including several Panhandle Counties within that region. A more recent estimate suggests that 1.6 million acres in this region worth \$6.6 billion is held as heirs' property (Bailey et al., 2019). These figures show little sign of reversal, as only 20 percent of Black adults have a will in place (Mitchell, 2016), which could prevent the formation of heirs' property. Other studies have found heirs' property to be prevalent among other populations and in regions with limited access to and trust in the legal systems, such as among poor White families in Appalachia (Deaton, Baxter, & Bratt, 2009), among Latinx families in the Texas Colonias (Ward, Souza, Giusti, & Larson, 2011), and in Native communities (Kunesh, 2018).

The Uniform Law Commission (ULC), led by Law Professor Thomas Mitchell, created the Uniform Partition of Heirs Property Act in 2010, understanding that partition laws have been a driver of involuntary land loss. Mitchell began pushing for legal reform to address heirs' property ownership in 2001 when he wrote an article in the *Northwestern Law Review* detailing the role that heirs property ownership has played in Black Americans land loss since Reconstruction. In that article he proposed legislative interventions to reduce loss (Mitchell, 2001). Mitchell recalls that, at the time, critics of his article insisted no state would pass such laws. Since then, Mitchell worked to garner the attention of the Uniform Law Commission, led the drafting of a uniform act within that commission himself, and—with the help of advocates and local coalitions—ushered the resulting act into law across 17 states and the U.S. Virgin Islands.

The Act includes three significant areas of reform. First, the Act provides a sort of right of first refusal in which heirs who wish to retain the land are able to buy out the fractional interests of heirs that wish to sell. Second, if the buyout is not the preferred remedy, the court must consider not only economic but also social, cultural, and historic value of the land in the ultimate decision to sell or parcel out the property. The third and final area of reform pertains to cases where parceling out the property is not possible and a sale is necessary. The Act stipulates that an open

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market sale occur, in direct response to the frequent use of partition actions by land speculators to undervalue land in service of their own interests. An open market sale is more likely to result in a higher sales price that benefits the heirs.

The UHPA is not a silver bullet, but it is an important step in preventing land loss and providing due process for landowners who have inherited property intestate or otherwise own land via tenancy in common. Other reforms and resources are also needed to prevent the formation of heirs' property and to properly address the clouded title issues that prevent heirs from deriving income or fair market value from their assets. Our colleagues in the community of advocates, service providers, and scholars that has tackled the issue of heirs' property for decades have identified a number of additional strategies, such as providing resources to facilitate estate planning, subsidizing legal services to clear title on existing heirs' properties, and organizing technical assistance to provide heirs' property owners with the tools they need to resolve title issues and improve or produce income on their land. Many heirs' property owners do not know that they can begin the process themselves by creating a family tree to identify all heirs who may have a stake in the property.

In addition, effective intervention requires greater record keeping and inventories of heirs' property. Recently, the Federal Reserve Bank of Atlanta found that up to 11 percent of residential

parcels in rural areas of our district are known heirs' property, with the numbers likely much higher due to the lack of reliable data. However, current administrative practices render heirs' property very difficult to track, as county tax assessors and other entities often do not record this information. Thus, estimates are difficult and greater understanding is needed of where to direct resources. A better understanding of the location and frequency of these properties and the demographic composition of neighborhoods with disproportionately high concentrations of heirs' property, would allow stakeholders to better track activity and advocate for resources.

Given the known prevalence of heirs' property, particularly among Black Florida families, and the recent surge in attention to racial injustice, we see Florida's passing of the Uniform Partition of Heirs Property Act as a timely opportunity. Movements like Black Lives Matter have shined a light on deep structural barriers in our society that have long prevented Black Americans from obtaining economic equity, resulting in the significant wealth gaps we see today. While this legislation will not resolve that racial wealth gap on its own, it is one of many necessary steps in what Atlanta Fed President Raphael Bostic has noted as a moral and economic imperative to end racism. For many families, this law will begin to balance the scales, preventing the loss of their land through partition sales and preserving the promise of intergenerational wealth that it represents.



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