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Lauren Hall

Ifeyinwa F. Davis

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Black Land: Research Note on the Heirs' Property to Poverty Pipeline in Louisiana*

Lauren Hall
Loyola University New Orleans College of Law

Ifeyinwa F. Davis
Louisiana Appleseed Center for Law and Justice

ABSTRACT

Successful heirs' property reform – the Uniform Partition Heirs' Property Act (UPHPA) – is widespread in the U.S. Despite these advancements, Louisiana falls behind. Louisiana is the only state in the Deep South that has not enacted legal reform to protect heirs' property owners. Heirs' property locks many Black Americans into persistent poverty and economic oppression, eliminating generations of Black American wealth. This research note describes and examines these issues. Articulating the history of systemic legal oppression of Black land ownership, this article demonstrates how the current legal state shuns Black Americans economically and socio-politically disadvantages them and examines how enacting the UPHPA could help Black Louisianans achieve economic stability.

KEYWORDS: heirs' property, poverty, race, Uniform Partition Heirs' Property Act

INTRODUCTION

The United States failed to protect Black land, creating persistent systemic discriminatory legal practices (Copeland 1984). After the Civil War, the

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federal government promised “forty acres and a mule” for formerly enslaved people, but the promised land was instead given to confederate loyalists (Pigford v. Glickman 2000). This reparation would have contributed to economic sustainability for Black Americans (Mitchell 2019). The long-term implications of this monumental failure are staggering, as such land designation would be worth 640 billion dollars today (Packman 2020). In the years following emancipation, Black Americans managed to purchase property and land from the Civil War until the end of the twentieth century, acquiring 15 million acres of land (Breland 2021). Especially in the United States South, the accumulation of Black-owned properties housed Black families and sustained livelihoods through agricultural and real estate participation (Packman 2020). Despite this achievement, many Black Americans have suffered massive involuntary land loss, attributable to threatened and actual violence, discrimination, and legal actions that often resulted in forced sales of Black-owned property (Mitchell and Powers 2022). Important to this note is involuntary land loss of familial property, or heirs’ property.

Heirs’ property is fractionated ownership of land or property due to the lack of clear title or robust estate planning to transfer ownership of property from an ancestor to a descendant. Without a legal transfer of ownership, the property is inherited by the heirs of the deceased (LA Art. 880 1982; LA Art. 888 1982). This can continue for generations creating many heirs, or co-owners (LA Art. 882 1996). Partition actions, which occur when one co-owner of the familial property decides to sell their ownership stake, often force involuntary auctions of land (LA Art. 807 1991). Partition sales force the sale of the entire property, the proceeds of which are distributed to the heirs based on their interest (LA Art. 807 1991). Partitions are responsible for the loss of generational wealth, greatly affecting communities and individuals for decades.

Land ownership is touted as a symbol of equality achievement in American society (Craig-Taylor 2000). However, the benefits of property ownership are not equally distributed across race and place. For instance, the Deep South is a notorious region of diminishing Black land ownership (Bownes and Zabawa 2019). The Deep South includes Alabama, Arkansas, Georgia, Louisiana, Mississippi, and South Carolina (Beck and Tolnay 1990). As a region with a significant history of enslaving and exploiting Black people and their labor in exchange for white economic gain, Black Americans uniquely face the oppressive effects of property ownership in the Deep South (Beck and Tolnay 1990). After emancipation, the operation of *de jure* and *de facto* discrimination resulted in legal

illiteracy and economic limitations which devastated Black land ownership (Rivers 2007). In addition to inequitable socioeconomic obstacles, owning heirs' property substantially inhibits Black Americans from building generational wealth.

Louisiana is the only state in the Deep South that has not adopted heirs' property reform. The Uniform Partition Heirs Property Act (UPHPA) provides land protections for Black Americans across the country (Mitchell and Powers 2022). In this note, we demonstrate why Louisiana must urgently adopt the UPHPA, by historically contextualizing Black property ownership and detailing how current state laws governing partitions do not provide adequate protection. Finally, we provide an understanding of the UPHPA and why Louisiana would benefit from adopting swift heirs' property reform.

BLACK LAND OWNERSHIP AND THE PIPELINE TO POVERTY

The History of Black Land: White Supremacy and the Struggle for Class Equity

Throughout U.S. history, property law has functioned to oppress Black Americans (Rivers 2007). Until emancipation, Black people were commodified as property and had no legal right to own land themselves (Craig-Taylor 2000). The hyper-exploitation of Black labor meant race and property were so infused that Black people could not attain any social or legal status (Harris 1993). Post-emancipation, the Ku Klux Klan (KKK) organized violent resistance movements aimed at stealing property from and oppressing Black Americans (Rivers 2007). Black people who purchased property were often forced to abandon their homes due to threats and intimidation by the KKK, such as destroying property, committing assaults and murders, and armed guerrilla warfare that killed thousands of Black Americans (Glass 2016). Black people often acquired land under the threat of violence. Due to fear of reprisal, many Black property did not record their land deeds (Breland 2021). Moreover, the government failed to guarantee Black Americans property acquisition during Reconstruction (1865-1877). By the post-Reconstruction Era, 60 percent of employed Black Americans were sharecroppers or farmers who owned their own land (Bownes and Zabawa 2019). The racist economic violence created during the Jim Crow era included cutting off Black Americans from estate planning, formal deeds, federal loans, and grants (Rivers 2007). Despite this reality, by 1910, Black people acquired more than 16 million acres of land (Bownes and Zabawa 2019).

Post-Civil War, land and kinship became defining features for Black Americans (Breland 2021). Aligning with the values of the American Dream, land ownership finally gave Black people access to economic resources, as well as refuge from bondage, isolation, and impoverishment. But because the legal system made it difficult for Black Americans to preserve land within the family, legal illiteracy and economic limitations started to obliterate Black land ownership (Rivers 2007). Segregation laws allowed banks, the Federal Housing Administration (FHA), and insurance companies to refuse loans to Black Americans (Rothstein 2017). Simply put, Black land ownership was not compatible with white supremacy (Rivers 2007).

As a consequence of the government preventing Black Americans from fully acquiring property in the mid-twentieth century free labor market, lower income statuses became a multigenerational trait for many families (Rothstein 2017). In seeking to protect their land, Black Americans were met with difficulties in accessing sufficient legal assistance. The scarcity of Black lawyers in the South during this period meant land was vulnerable to being taken by force, coercion, or denial of access to legal recordation. The lack of access to legal counsel has had lasting impacts on Black property owners (Rivers 2007). Black Americans began to acquire property as early as 1863, but no Black lawyers were admitted to the bar until 1868, at which time only three were admitted (Rivers 2007). Black Americans constituted a large population within the South, but the number of Black lawyers was severely low, therefore, many people managed property affairs without legal assistance, setting the foundation for the heirs' property issues that persist today (Rivers 2007).

The Legal and Economic Effects of Owning Dead Capital

During the Summer of 2021, Louisiana Appleseed held a panel about heirs' property, centering the experiences of several Louisiana residents. Here, it was revealed that four hundred and eighty acres of land were stripped from Trudi Stanley. Her family lived on this northern Louisiana land since the Civil War. Stanley's family informally passed the property through the generations without formal recordation. The family was unaware of the need for a clear title. Because ownership of the property was passed through dozens of heirs, the property maintained fractionalized ownership across several generations of descendants dispersed throughout the country. Although Stanley's family paid taxes on the land, without clear title or estate planning documentation, they could not protect it.

A distant relative within Stanley's family sold their interest in their property to a timber company. The timber company was then able to petition for a partition, which led to a forced sale or auction. The family who lived on the property was never given personal notice of the sale. Another relative discovered the property was for sale in the newspaper, and alerted family members living on the property. The Stanleys scrambled to accumulate over \$500,000 to buy back their land, but the timber company outbid the family at \$600,000. Trudie Stanley and her family had to vacate their land, despite their diligent fight to preserve it.

This Louisiana tragedy is not unique. Black land in Louisiana is threatened by the laws that govern heirs' property. Court-mandated partitions of inherited property significantly reduced Black land ownership within families, and as a result, decreased Black generational wealth (Breland 2021). As exemplified by the Stanley family's story, experiencing involuntary land loss can harm familial relationships, destroy connections to home, and contribute to the cyclical nature of poverty.

Partition laws contribute to the ongoing systematic discrimination towards Black Americans, preventing the acquisition of generational wealth and economic power (Bailey et al. 2019). In the South, an estimated 1.6 million acres of heirs' property exists, worth nearly 6.6 billion dollars across nine states and 364 counties (Bailey et al. 2019). Heirs' property is considered dead capital, i.e., the land cannot be exchanged for financial capital, therefore the 6.6 billion dollars in land is meaningfully inaccessible (Bailey et al. 2019). With dead capital, banks refuse to lend to property owners without a marketable title. A lack of documentation renders heirs' property incompatible with economic systems that prioritize clearly defined private property rights (Johnson Gaither and Zarnoch 2017). As a result, heirs' property cannot be used as collateral for loans to improve, establish, and expand a business or home life (Bailey et al. 2019). Owning land is an essential measurement of socioeconomic status, but owning dead capital like heirs' property makes families vulnerable to the laws that strip generational wealth, causing further displacement and impoverishment due to involuntary land loss.

The most pronounced hemorrhaging of Black land loss began in the last quarter of the twentieth century and the first part of the twenty-first century (Breland 2021). A significant proportion of Black land loss is a direct result of partitions. Corporations and land speculators initiate legal actions with the sole purpose of acquiring Black owned property against the wishes of Black landowners (Breland 2021). These outside entities capitalize on heirs' property by purchasing interests in the property and

later buying the land at a sheriff's auction, typically below market value (Craig-Taylor 2000). Presently, lawful discrimination against Black landowners has led to urban migration, foreclosures, and Black land loss (Rothstein 2017). These impacts are greatly felt in Black agriculture. Currently, Black farmers represent less than two percent of all farmers and about half a percent of landowners in agriculture (Bownes and Zabawa 2019).

The long-term and persistent disconnection from economic opportunities contributed to financial and legal illiteracy that foments ongoing heirs' property issues (Rothstein 2017). Heirs' property prevents land from fully being utilized and leaves families vulnerable to land loss (Bownes and Zabawa 2019). The continued use of systematic discrimination greatly contributed to generational poverty by limiting capital and economic opportunities for heirs' property owners. This inimitable system now begs the question: will the law continue blindly adhering to the exclusionary system or realign to neutralize the disadvantages that exist in property laws (Rivers 2007)?

THE LOUISIANA UNIFORM PARTITION HEIRS' PROPERTY ACT

The Louisiana Law Institute is proposing a new bill to the state legislature: the Louisiana Uniform Partition of Heirs' Property Act (Scalise and Braun 2022). The UPHPA reforms racially inequitable and discriminatory heirs' property laws (Mitchell 2019). As of 2023, 23 states have enacted the UPHPA (Uniform Law Commission 2023). The UPHPA requires the court to determine whether property that is the subject of a partition qualifies as heirs' property. If so, the partition action will follow UPHPA guidelines unless all co-tenants agree otherwise. The UPHPA provides five pillars of reform:

- (1) Enhanced notice provisions, including notice by posting on the property if notice by publication is requested (UPHPA Section 4).
- (2) Independent appraisal of the property, unless all the owners indivision agree to another method of determining value (UPHPA Section 6).
- (3) One-way co-tenant buyout provision based on the remedies requested, including reasonable time periods for potential buyer to arrange financing (UPHPA Section 7).
- (4) Enhanced preference for partition-in-kind resolutions (UPHPA Sections 8 and 9).

- (5) Open market listing and sale by default, with other methods permissible only when the court finds it would be economically advantageous to the owners indivision as a group (UPHPA Section 10).

The UPHPA represents the most comprehensive partition law reform. It establishes hierarchies of remedies that are designed to help heirs' property owners preserve their real estate wealth (Mitchell 2019).

The intent of the Louisiana UPHPA is to adopt the core components of the UPHPA to become compatible with other provisions of Louisiana's current property law (Scalise and Braun 2022). In existing Louisiana law, if a co-owner petitions for a partition and owns *less* than 15-20 percent of interest in the property, then the co-owners have the right to buy the *pro rata share* of the petitioning co-owners share at the price determined by the court appointed appraiser (LA §1113 2014). If a co-owner petitions for a partition and owns *more* than 15-20 percent, co-owners are afforded no right to purchase, and the property is sold at auction. While Louisiana will have a buyout provision like the UPHPA in section 7, it remains questionable if Louisiana will keep the pro rata share provision as in La. Rev. Stat 9:1113.

Buyout provisions are expensive and burdensome. There may be lack of communication and agreement among heirs to a property. Similarly, heirs may be unable to afford to purchase the accumulation of shares to protect their property. It is important to note that even if the pro rata share were to continue with the Louisiana UPHPA, this remedy will still disincentivize those wishing for a partition because it allows any co-owner to stop a partition sale from occurring through a buy-out. The UPHPA recognizes that a partition by sale will be the most equitable remedy in some partition actions. The UPHPA seeks to ensure that any partition sale will yield sales prices that maximize economic return for heirs' property owners. In the past, courts considered evidence of the fair market value without considering that state laws require property be sold under forced sale conditions, thus, yielding sale prices considerably below the fair market value. With the intention of maximizing economic wealth from partitions, the UPHPA seeks to prevent families from losing generational wealth (Mitchell 2019).

Louisiana's current draft of the law includes open market sales and court-appointed independent, state-licensed real estate brokers and appraisers to consider property values, ensuring a sale of the property in accordance with fair market rates (Scalise and Braun 2022). If the broker does not obtain an appraisal within a reasonable time, an outside offer to

purchase the property may be approved by the court. The offer must be at a price no lower than previously determined. The court may also approve the highest outstanding offer, redetermine the value of the property, order that the property continue to be offered for additional time, or order that the property be sold at auction (Scalise and Braun 2022).

Louisiana is on track to implement heirs' property reform. Although the last state in the Deep South to put forth efforts to protect Black landownership, there is still hope for Black Louisianans under the adopted UHPA. As we build bridges for property justice in Louisiana, we must always repair the issues at their root. For southern states, this frequently begins with heirs' property.

CONCLUSION

Land is often the greatest asset within Black American families. Black Americans in the twentieth century owned more land than their ancestors, but the security of their property ownership has diminished due to persistent discriminatory practices. Owning heirs' property is a social fact for many Black American families, especially in the South. Because of the racist history of property law, generations of Black land ownership have been plagued by heirs' property consequences. Fractionated ownership between heirs creates opportunities for forced sales of familial property, putting Black American landowners at risk of involuntary land loss. Louisiana's laws allow for partitions, which extinguish ownership rights and deplete Black land ownership. Partitions result in complete economic deprivation and community dispersion. Without intervention, Louisiana will continue to face cultural disintegration in Black American communities.

Moreover, losing familial property thwarts generational wealth for Black Americans. By enacting the UHPA, Louisiana will be moving toward preserving Black land ownership. The UHPA created an appropriate reform to eradicate the systemic inequities inherent in heirs' property regimes. Protecting heirs' property by enacting the UHPA gives Black Louisianans the long overdue economic safety and sustainability needed to provide for future generations. Adoption of the UHPA protects Black familial property and safeguards Black American wealth.

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