

## Why Florida Passed a Uniform Partition of Heirs Property Act<sup>1</sup>

For many lower- and middle- income families, real estate is their most valuable asset. Less affluent families with smaller estates are more likely to use a simple will or to die intestate. Often these families do not have the capacity to engage in the sophisticated estate planning necessary to ensure a smooth transfer of wealth to the next generation. If the landowner dies intestate, the real estate passes to the landowner's heirs as tenants-in-common under state law.<sup>1</sup> The Federal Reserve Bank of Atlanta reports 55% of all adults and 72% of nonwhite adults do not have a will in place, leading to future heirs' property generation. It also reports that heirs' property is disproportionately high among low-income and low-wealth households and racial and ethnic minority groups, but property owners of every race and ethnicity and all kinds of properties whether rural or urban, farm properties or residential dwellings in cities, suburbs, or rural areas.<sup>2,3</sup> For many decades, large numbers of disadvantaged families in Florida, including a disproportionate number of African American families, have had their heirs' property forcibly sold as a result of an unjust property law known as partition law.

Tenants-in-common are vulnerable because any individual tenant can force a partition. Too often, real estate speculators acquire a small share of heirs' property through the sale by an heir in order to file a partition action and force a sale. Using this tactic, a speculator can dispossess the family of their land through a forced sale and acquire the entire parcel for a price well below its fair market value, even fire sale prices, and deplete a family's inherited wealth in the process.<sup>4,5</sup> Furthermore, legal fees may consume 20 percent of the proceeds of the sale. In this manner, the transfer of wealth between generations is broken, first by lack of succession planning, second by a forced partition sale. Beneficiaries are generally real estate investors, developers, and their lawyers.<sup>4</sup>

The Uniform Partition of Heirs Property Act (UPHPA)<sup>1</sup> is a property rights law that protects all owners of heirs' property and preserves the independent right to contract. It preserves the right of a co-tenant to sell his or her interest in inherited real estate, while ensuring that the other co-tenants will have the necessary due process to prevent a forced sale. UPHPA provides a series of simple due process protections: notice, appraisal, right of first refusal, and if the other co-tenants choose not to exercise their right and a sale is required, a commercially reasonable sale supervised by the court to ensure all parties receive their fair share of the proceeds. UPHPA only applies to a small percentage of partition actions (tenancy-in-common properties) and only when there is no written agreement governing partition among the owners.

There are several other social and economic issues associated with heirs' properties in addition to the loss of intergenerational wealth among vulnerable populations<sup>4,5</sup>. These include the risk of land loss due to unpaid taxes (tax foreclosures), fines associated with nuisances, difficulty selling land, and the property has no value as collateral for conventional home mortgages or loans for farm improvement, crops, or equipment, or inability to receive loans, grants, and other federal and state assistance, which generally require a clear title. This limits heir's property owners' ability to access disaster recovery support for assistance with farming operations. Partition sales can also contribute to urban sprawl through the conversion of agricultural or forested land to uses with greater development intensity.

Currently under the 2018 Farm Bill, heirs' property owners in Florida face additional hurdles for documenting their land ownership necessary to qualify for federal programs including loans for development of dormant farmland, legal expenses incurred by heirs to clear title to property owned by a deceased relative farm loans, crop insurance and disaster aid. If Florida were to adopt the UPHPA, Florida heirs' property owners would have the same qualifying requirements for federal programs as do farmers and ranchers in the states that have enacted the UPHPA.<sup>6</sup>

Currently, 17 states and the U.S. Virgin Islands have enacted the UPHPA into law. Southern states have led the way with Alabama, Arkansas, Florida, Georgia, South Carolina, Texas and Virginia enacting UPHPA. In 2020, UPHPA bills passed in Florida and Virginia, and have been introduced in five other legislatures including in Oklahoma, Mississippi and the District of Columbia.<sup>6,7</sup> UPHPA bills ([SB 580](#) and [HB 349](#)) unanimously passed the 2020 Florida Legislature were enacted by Governor Ron DeSantis on 20 June 2020. Florida's enactment of the UPHPA will hopefully encourage other states to enact it into law.

The following maps show the distribution and concentration of heirs' properties. Known residential heirs' property is as high as 11% of parcels in counties in the Southeast; however, exact quantities are unknown due to lack of data.<sup>8</sup>

### Phase 1 Heirs Property Analysis: 90th Percentile by Census Tract

SVI variables: poverty, per capita income, no high school diploma, and minority status

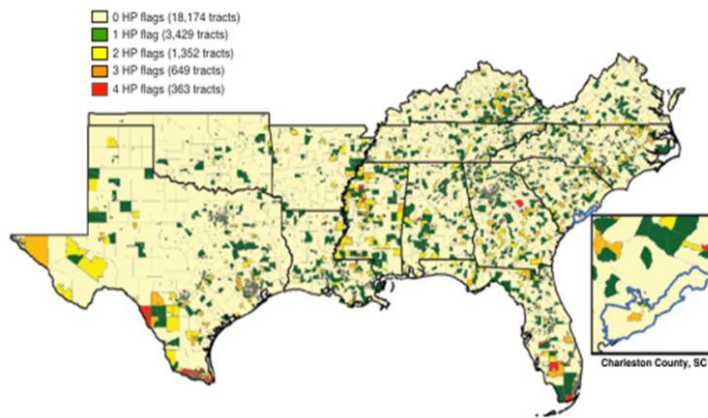
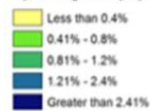


Figure C.3—Initial regional heirs property analysis (census-tract scale).

From: “Identifying Potential Heirs Properties in the Southeastern United States”, USDA Forest Service, e-General Technical Report SRS-225, September 2017, <https://tinyurl.com/yy2x9jo2>

### Percentage of Residential Heirs’ Properties by County in the Southeast

Percentage of properties owned by heirs, tenants in common, and estates as a percentage of all properties



Note: No data were available for Miami-Dade County.  
Source: CoreLogic Property Deeds Database, 2015

From: “Understanding Heirs’ Properties in the Southeast”, Federal Reserve Bank of Atlanta,<sup>9</sup> <https://tinyurl.com/y4d99xh5>.

<sup>1</sup> Uniform Law Commission, The Uniform Partition of Heirs Property Act, A Summary, <https://tinyurl.com/y6zw4gtg>

<sup>2</sup> “What is Heirs’ Property?”, Federal Reserve Bank of Atlanta, <https://tinyurl.com/y32s2xmw>

<sup>3</sup> “Reforming Property Law to Address Devastating Land Loss,” Thomas W. Mitchell, 66 Alabama Law Review 1 (2014), University of Wisconsin Law School, Legal Studies Research Paper No. 1329, <http://ssrn.com/abstract=1527038>.

<sup>4</sup> “Forced Sale Risk: Class, Race, and the “Double Discount,” Thomas W. Mitchell, Florida State University Law Review, Vol. 37, 2010, University of Wisconsin Law School, Legal Studies Research Paper No. 1102, <http://ssrn.com/abstract=1527038>.

<sup>5</sup> “From Reconstruction to Deconstruction: Undermining Black Ownership, Political Independence, and Community through Partition Sales of Tenancy in Common Property,” Thomas W. Mitchell, University of Wisconsin Law School, Legal Studies Research Paper No. 1106, <http://ssrn.com/abstract=1544380>

<sup>6</sup> Personal correspondence from Thomas W. Mitchell, Texas A&M University School of Law, January 8 and 17, 2020.

<sup>7</sup> “Historic Partition Law Reform: A Game Changer for Heirs’ Property Owners” Thomas W. Mitchell, Texas A&M University School of Law Legal Studies Research Paper No. 19-27, <https://ssrn.com/abstract=3403088>

<sup>8</sup> “Identifying Potential Heirs Properties in the Southeastern United States”, USDA Forest Service, e-General Technical Report SRS-225, September 2017, <https://tinyurl.com/yy2x9jo2>

<sup>9</sup> “Understanding Heirs’ Properties in the Southeast,” Federal Reserve Bank of Atlanta, <https://tinyurl.com/y4d99xh5>