

Heirs' Property in North Carolina

We would advise that the Uniform Partition of Heirs' Property Act be enacted in North Carolina. This specific law will protect heirs' property owners from involuntary land loss. An estimated one-third of all land owned by African American families is heirs' property, putting minority communities at disproportionate risk for housing and economic instability.

The Problem with Heirs' Property

When a landowner dies without a will, the property is passed along to their next of kin and becomes classified as "heirs' property". If there are multiple heirs, they become tenants in common. Under tenancy in common, each co-tenant has an undivided interest in the entire property, regardless of the portion of their share. Each co-tenant can utilize the entire property as they see fit, assuming it does not directly force other co-tenants from the property. Any co-tenant can also partition and sell their share of the property (Mitchell et al., 610). Real estate investors often take advantage of this and buy a share of the land with the intent of seeking a forced partition sale (Mitchell, et al., 612). As a result, heirs' property is frequently forcibly sold below market price to speculating developers.

History of African American Land Ownership

Pew Research found African American families who lived on rural farms in 1910 owned between 16 and 19 million acres of land (Pew, 2019). The U.S. Department of Agriculture showed African American farmers owned 3.9 million acres in 2017 (Gaither, 2019). Those numbers dropped to 2.5 million acres by 2019 (Pew, 2019).

After the Civil War, land offered an opportunity for economic stability and upward mobility that could be passed down through generations of African American families. 50% of heirs' property owners in the south are African American, many of whom are descendants of slaves and sharecroppers. The U.S. Agriculture Census found that 80% of black-owned farmland has disappeared in the South since 1969, half of which was lost through partition sales (Douglas, 2017).

Prevalence of Heirs' Property in North Carolina

Heirs' property loss is especially prevalent among minority families in North Carolina. Approximately 81% of black landowners do not create wills which make their descendants disproportionately susceptible to forced sale of the property (Douglas, 2017). Figure 1 demonstrates that

15,088 acres of land qualify as heirs' property in Wake, Orange and Durham counties. This land is valued at a total of 504.9 million dollars. A study on 10 southern counties estimated one-third of all land owned by African Americans was held as heirs' property (United States Department of Agriculture 12).

Counties	Setting	Population, 2017	Population Density sq.mi	African American, 2016 (percent)	Heirs' Property Acres	% of Land Classified as Heirs' Property	Value of all heirs' property (\$ million)	Value per acre (\$)
Wake, NC	Metro	1,072,203	1,251	20.6	8,713	1.6	454.9	52,207
Orange, NC	Metro	144,946	363	11.5	5,623	2.2	34.9	6,201
Durham, NC	Metro	311,640	183	37.6	752	0.4	16.0	21,318
Total		1,528,789	N/A	N/A	15,088	4.2	504.9	N/A

Figure 1

Heirs' Property Breakdown in North Carolina Counties (Gaither, 2019)

Housing Law in North Carolina

There is no law in North Carolina to protect its residents from gentrification. North Carolina abides by the State Fair Housing Act, the state-adopted version of the Federal Fair Housing Act. The Federal Fair Housing Act enforces anti-discriminatory practices including, but not limited to, race, gender, and religion in all housing issues including property sales and rentals. This act assists people when they search for housing but does little once the gentrification process begins to dislocate them from their properties. North Carolina does not have a law to aid communities affected by gentrification. Lack of regulation manifests itself in communities being priced out of their homes by rising values and property taxes, without support, resulting in an increase in homelessness and economic instability (Eberlin, 2018).

The Uniform Partition of Heirs' Property Act

The Uniform Partition of Heirs' Property Act attempts to address a problem faced by many middle- to low-income families who own property: the dispossession of their land through a forced sale (Uniform Law Commission, 2019). Rural African American landowners are disproportionately affected by land dispossession. For many families, real estate is their single most valuable asset (Uniform Law Commission, 2019).

The Uniform Partition of Heirs' Property Act 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: notice, appraisal, and right of first refusal (Uniform Law Commission, 2019). If the other co-tenants do not exercise their right to purchase the property from the seller, the court must order a partition-in-kind (property divided into proportional shares). If not feasible, a commercially reasonable sale for fair market value must be utilized (Uniform Law Commission, 2019). The act only takes effect when 1) one or more co-tenants received the property, and 2) no written

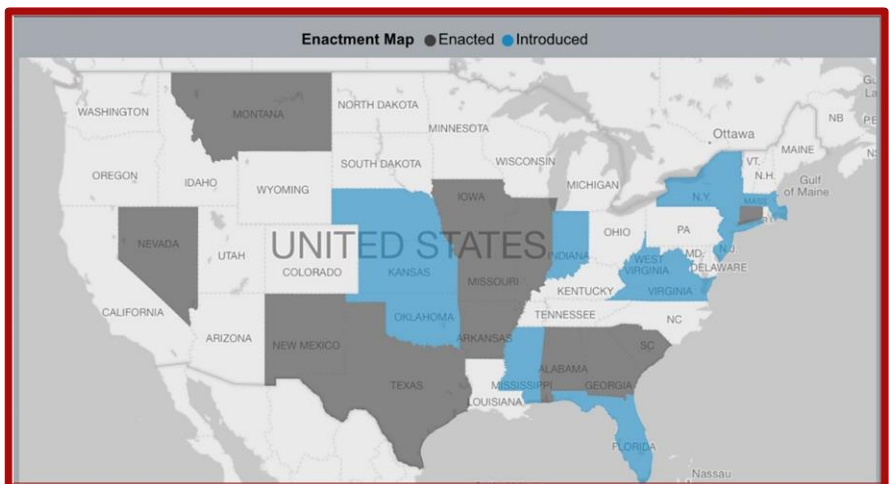


Figure 2

States that have enacted the Uniform Partition of Heirs' Act (Uniform Law Commission, 2019)

2) no written

agreement governing partition exists. As shown in Figure 2, 14 states, including South Carolina, have enacted the Uniform Partition of Heirs' Property Act since its first inception by the states in 2011 (AmericanBAR, 2016).

Policy Options

Enacting the Uniform Partition of Heirs' Property Act is a strategy to avoid unfair land dispossession for co-tenants. The rate of intestacy, a landowner who dies without a will, among African Americans is more than double the rate of intestacy among white Americans. Only 20% percent of African Americans have wills (AmericanBAR, 2016). The Uniform Partition of Heirs' Property Act directly solves this issue by requiring that there be no written agreement governing partition for landowners to benefit from the act. The act allows courts to determine the partition or sale of the property, providing a fair distribution of wealth between the tenants.

Community Land Trusts serve as another option to promote affordable housing. Community Land Trusts are nonprofit organizations that own government-subsidized or donated land and commit to using it for low-income family housing. The land remains owned by the Community Land Trust and if a family chooses to move, the home is sold back to the Community Land Trust. This program ensures wealthier investors cannot buy the land below market price and then sell or develop it for a large profit. Community Land Trusts do require significant funding making them costly programs to implement (National Low Income Housing Coalition, 2019). Community Land Trusts, however, do nothing to protect those who inherit land as heirs' property.



Policy Recommendation

We would advise that the Uniform Partition of Heirs' Property Act be enacted in North Carolina. Other affordable housing initiatives can help protect historically African American families from gentrification, but none effectively prevent the forced sale of heirs' property. The law has been enacted in 14 states since its inception in 2011. South Carolina, Georgia, and Alabama, states that fall within the same region as North Carolina, have all passed the law (Uniform Law Commission, 2019). Both predominantly blue and red states have enacted the legislation, demonstrating bipartisan support for the Uniform Partition of Heirs' Property Act.

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