

# Racism and the Economy

focus on the **Wealth Divide**

Author: **Dania Davy, Esq.**, Director of Land Retention & Advocacy at the Federation of Southern Cooperatives/Land Assistance Fund

Title of proposal: **The Heirs Property Advocacy Institute – *Helping Heirs Property Owners Convert their Land from a Loss Liability to a Legacy through Heir-Centered Advocacy***

Landownership is important because it is a form of wealth, not just income. As such, it can provide a spur to economic development and broader investment, including the education of children. In the rural Black Belt of the South, where most African-American farms are located, land is still key to cultural and political power as well. From the visions of Thomas Jefferson and Abraham Lincoln, to Booker T. Washington and George Washington Carver, through populists and progressives of yesterday and today, widespread property ownership has promised more democracy, fuller citizenship, and a more egalitarian distribution of wealth and power.

Jess Gilbert, The Decline (And Revival?) Of Black Farmers And Rural Landowners: A Review Of The Research Literature, 1 (2001).

## OVERVIEW

Black land loss not only exacerbates widening wealth inequities, but also threatens Black landowners' critical connection to their history, culture, citizenship, and identity. Institutionalized racism in the legal system causes many Black landowners to pass away without estate plans. The land their heirs inherit, called heirs property, is significantly susceptible to loss.

Our proposed project will provide culturally-responsive advocacy training to a cohort of heirs property owners, so they can lead necessary policy reforms to promote Black land retention. Centering land retention advocacy on heirs property owner leadership will ensure the Black landowners who are the most vulnerable to land loss identify the most critical policy solutions in response to the challenges they experience. It will also ensure the public and policymakers hear

directly from heirs property owners themselves and establish a replicable model for Black landowner leadership to address the structural barriers to their land-wealth retention efforts.

## INTRODUCTION

Black Americans have the unique historical distinction of experiencing the transition from being legally classified as property, to receiving human citizenship, to acquiring property to enjoy the full benefits of that citizenship. Black landownership represents not only wealth, but also a critical connection to history, culture, and identity. In many ways, Black landownership has been a source of economic stability, as well as a symbol of political participation and more meaningful citizenship.<sup>i</sup> Many scholars have documented trends of improved political power and quality of life among land-owning Blacks, compared to Blacks who do not own land.<sup>ii</sup> Thus, the Black community collectively benefits from policies that promote Black land accumulation and retention.

Since Black landowners gain economic, political, and psychological benefits from owning land, the threat of Black land loss has extensive implications for the Black community and American society as a whole. While diverse and complex, the causes of Black land loss are fundamentally rooted in racially biased policies and the disparate impact of the entire American legal system on the Black community, both historically and in the current day.

A 1986 law review article posited that land was “the largest single equity resource in minority hands’ in the South.”<sup>iii</sup> Based on research, experience, and discussions with other experts, the Federation of Southern Cooperatives/Land Assistance Fund (“Federation”) estimates that more than 60% of Black-owned land has been inherited through state intestacy laws and is held as heirs property in tenancy-in-common.<sup>iv</sup> An estimated \$2.8 billion of Black wealth is held as heirs property. As Blacks are decreasingly farming as a major source of income, it is increasingly likely that heirs property owners may have no interest in keeping the family farm. Unfortunately, those heirs property owners who are most likely to be farming the land will almost certainly be the least likely to want to alienate their interest. At the same time, those who do not farm or have no connection to their family’s farming history may be willing to sell their interest to a non-relative, completely unaware of the potential risk of loss this sale could have on all other co-tenants.

Since the threat of Black land loss is widespread and rooted in structural racism in the legal system, our proposed project focuses on policy advocacy to be led by the Black landowners who are the most vulnerable to land and wealth loss, that is, heirs property owners. To preserve and

promote Black landownership as a key source of wealth and political equity, this proposal seeks to cultivate heirs property owners as advocates on all legislation relevant to Black land retention. The primary goal of this proposed advocacy training will be to tailor tenancy-in-common legislation to the unique needs of heirs property owners. Further, this project will establish a model by which heirs property owners can advocate for broader, more comprehensive policies to promote the preservation of Black landownership. These policy changes will promote thriving, wealthier Black communities.

## THE SCOPE OF BLACK LAND LOSS IN THE UNITED STATES

From Emancipation through 1910, Black landowners amassed 19 million acres of land. However, by 1992, they owned only 2.3 million acres of land, which represented a 90% decline in Black landownership in less than a 100-year period. Based on Census of Agriculture data, from 1993 to 2003, approximately 94% of Black rural landowners lost part or all their land. This disturbing decline was three times the rate of land loss for white rural landowners during the same period.<sup>v</sup> In recent years, land loss has had a unique impact on the Black community, as other communities of color have increased or at least maintained their rural landholdings.<sup>vi</sup>

In 1990, the United States House Committee on Government Operations held a hearing on the relationship between the potentially discriminatory administration of services provided by the Farmers Home Administration (FmHA) and the decline of farmers of color.<sup>vii</sup> The commission found that over a period of 67 years, the number of BIPOC-owned farms had decreased 94%. However, according to the Census of Agriculture, 11.9% of that decline came in a five-year period shortly before the hearing, between 1982 and 1987.<sup>viii</sup> While all small farmers were affected by some of these decreases in land, Black farmers' land loss was the most stark during this time period.<sup>ix</sup> The sharp decline in Black landownership during a fairly compressed time span points to policies and disparities in government assistance as critical intervention sites to prevent another period of precipitous decline in Black landownership.

Several common characteristics make Black landowners particularly vulnerable to land loss. Most of these factors are inextricably linked to the nation's history of state-sanctioned disparities in educational access, legalized racial apartheid, and ongoing racial disparities in access to credit. Sociologist Michael D. Schulman found that Black farmers "have less formal education, have lower levels of literacy, farm fewer acres, (and) own fewer acres ... than white operators."<sup>x</sup>

Structural racism and inadequate regional economic infrastructure significantly impact Black land loss. Most Black landowners are concentrated in rural areas in the South, which tend

to lack robust economic activity.<sup>xi, xii</sup> As most Black farmers reside in the South, the loss of land and farming has played a significant role in perpetuating intergenerational poverty in many southern Black communities.<sup>xiii</sup> Being located in areas with high concentrations of economically distressed populations makes it difficult for Black farmers to thrive economically, which often leads to land loss. Black landowners who survive economic threats to their land tenure encounter significant barriers to affordable, culturally appropriate legal assistance on the legal mechanisms which could be used to preserve their land ownership, including estate planning.

## THE HEIRS PROPERTY DILEMMA

Many factors drive the disparate rate of Black land loss, but very few are as well documented or reparable as the heirs property dilemma. Based on a variety of structural issues ranging from segregated and grossly disparate institutions, to race-based discriminatory practices by both individuals and local government agencies, to extensive capital inequities, rural Blacks have faced institutional barriers to legally planning the future of their land. Many Black landowners struggle to locate and access culturally appropriate legal services. These barriers to access are further exacerbated by legislation that fails to mitigate the constant threat of loss Black landowners face. These barriers are structurally supported by the existing intestacy, real property, and probate policies and practices.

When a landowner dies without an estate plan, each state's intestacy laws allow a wide range of heirs to assume an undivided interest in the real property left by the decedent<sup>xiv</sup> – hence the term “heirs property.” In many cases, these heir interests in real property are transferred by intestacy from generation to generation until these interests become increasingly smaller, often with hundreds or more heirs holding varying undivided interests in the property.<sup>xv</sup> These undivided interests are legally held in tenancy-in-common, a form of ownership which raises significant management problems. The most common problem with tenancy-in-common is that no matter how small an individual heir's interest is, any heir can force a sale of the entire property, even when that heir does not participate in the maintenance of the property.<sup>xvi</sup>

Heirs property held in the default tenancy-in-common ownership model becomes a loss liability when an individual co-tenant sells their interest to a non-related party who forces a partition sale of the entire property at which other heirs property interest holders cannot financially compete. The result is a loss of the real property to the family, usually forever. Thus, the tenancy-in-common ownership model is unstable because there is no restriction on the alienability, and the

partition remedy often creates an incentive to sell the entire property. The greater the number of co-tenants, the greater the risk of instability, because the smaller the interest an individual holds, the less that individual will be interested in maintaining the property in its entirety.<sup>xvii</sup>

## THE IMPACT OF PARTITION SALES

When an individual petitions a court to grant a partition of real property, almost every state's partition statute mandates "physical division of the property is the preferred remedy" instead of a partition sale.<sup>xviii</sup> These statutes tend to designate partition sales as a remedy only when it would be "inequitable" to grant a partition in kind.<sup>xix</sup> One district court in Kansas refused to order a partition sale, upholding the interest of a group of Native American respondents in real property when the proposing party sought to force a partition sale of the entire lot. The court acknowledged that fairness and equity were important considerations when determining whether a partition sale is necessary. The court factored in the cultural significance of the land for the Native American landowners and stated, "Some of the parties will receive precious little compensation for land which, if nothing else, represents their Indian heritage."<sup>xx</sup> Thus, the court considered the cultural importance of the land a reasonable factor in refusing to grant the partition sale.

In the Black community, landownership also plays a significant role in keeping Blacks rooted to their history in this country. The wealth bias and failure to recognize the equal value of noneconomic factors undermine Black landowners' attempts to retain heirs property.<sup>xxi</sup> Policymakers and courts should consider the impact of partition sales on the broader Black community, as partition sales are eroding an important aspect of Black history, culture, and wealth.

## UNIFORM PARTITION OF HEIRS PROPERTY ACT (UPHPA)

In 1980, the Emergency Land Fund, which later merged with the Federation, conducted a Congress-commissioned study on the impact of heirs property on Black rural landownership. This study produced 19 policy recommendations which served as the catalyst for significant academic, policy, and legal inquiry to further explore the role of heirs property ownership in Black rural land loss.

In 2004, to address the far-reaching legal issues created by heirs property, the Federation advocated for a uniform heirs property law to the National Bar Association (NBA). Two years later, in 2006, the NBA and Southern Poverty Law Center formed the Heir Property Retention Coalition (HPRC), which consisted of community lawyers and organizations who participated in the drafting of the Uniform Partition of Heirs Property Act (UPHPA). In 2010, the National

Conference of Commissioners on Uniform State Laws (NCCUSL) accepted the UPHPA, which was later adopted by the American Bar Association. The UPHPA has been enacted in 18 states (Alabama, Arkansas, California, Connecticut, Florida, Georgia, Hawaii, Illinois, Iowa, Mississippi, Missouri, Montana, Nevada, New Mexico, New York, South Carolina, Texas, and Virginia) and the U.S. Virgin Islands, and it has been introduced in six states (Indiana, Kentucky, Massachusetts, New Jersey, North Carolina, and Utah) and the District of Columbia.<sup>xxii</sup>

## REMAINING HEIRS PROPERTY ADVOCACY OPPORTUNITIES

The UPHPA helps prevent land loss in critical ways. First, the UPHPA provides a legislative definition of heirs property. The UPHPA's definition serves as a baseline to ensure heirs property owners receive the full benefits of legal property ownership status. For example, this definition was used in the 2018 Farm Bill to broaden access to U.S. Department of Agriculture programs and services for heirs property owners. Second, the UPHPA prevents land loss due to partition sales by requiring (i) notice to protect due process, (ii) right of first refusal for the other heirs who are not seeking the partition action, and (iii) an appraisal to determine the heirs property's fair market value.

Unfortunately, the UPHPA does not resolve key sources of vulnerability to land loss that heirs property creates. Among the heirs property advocacy opportunities that remain: The current default legal ownership model is tenancy-in-common. Tenancy-in-common may be appropriate in certain situations, but for heirs property owners, it is a largely unmanageable form of landownership requiring 100% agreement among all heirs to take certain management actions – including accessing many disaster and public benefit programs, securing many loans to generate additional wealth from the asset, or selling parts of the property at a profit without resorting to a partition sale.

## PROPOSED SOLUTION – HEIRS PROPERTY-OWNER LED ADVOCACY

### Institutional Capacity

The Federation is the nation's oldest and largest cooperatively owned organization serving Black farmers, cooperatives, and landowners. For more than 54 years, the Federation has provided outreach, technical assistance, and related services to Black landowners throughout the Southeast. The Federation serves its membership through regional centers which implement its five priority

areas – (i) cooperative development, (ii) heirs property/land retention, (iii) advocacy, (iv) outreach and education, and (v) development and managing a network of partners.

Through the Regional Heirs Property and Mediation Center, the Federation provides a variety of services and resources to heirs property landowners to help preserve and promote the most valuable use of land wealth for our member-landowners and their communities. These services include advocacy, developing accessible educational resources, certified mediation services, and referrals to our attorney referral networks in Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Texas.

One of the Federation’s most impactful heirs property resources is the FORWARD Annual Heirs Property Conference. The Federation targets 100 heirs property landowners and 100 practitioners for a three-day bootcamp where the staff and experts guide master classes, workshops, and networking opportunities. Among other resources, the heirs property landowners receive a comprehensive 12-month checklist which details the necessary steps to clear any title issues, create individual estate plan to prevent the ongoing fractionation of the property interests, and develop long-term, heirs property management plans. The goal is for each heirs property family to end the following year with a fully managed asset that can serve family members as a wealth-generating device.

## **HEIRS PROPERTY ADVOCACY INSTITUTE**

Given the context of both the Federation’s heirs property expertise and existing FORWARD Annual Heirs Property Conference framework, the Federation seeks to develop heirs property owners as advocates for, among other legislative opportunities, more suitable tenancy-in-common legislation at the state level. The Heirs Property Advocacy Institute would convene at the site of the FORWARD Heirs Property Conference. During this training, 10 heirs who completed the FORWARD training, would receive additional coaching to help them shape the policy agenda that best reflects the needs of heirs property owners in their respective states. Once the policy agendas are developed, the heirs would be given advocacy training in various areas such as (i) how to build rapport with elected officials, (ii) storytelling for an advocacy audience, and (iii) how to coordinate state Capitol visits to educate legislators. These heirs would be the most effective advocates on the important policy changes needed to improve their access to the untapped equity in their heirs property, as well as the management of their heirs property land wealth.

To help facilitate their efficacy as advocates and publicize and garner support for their efforts, the Federation would give the heirs property landowner advocates access to the existing Federation Conversation Podcast to help share their stories with a broader audience as part of a public education campaign. Thus, as these heirs property advocates work through their heirs property management plans, they would be able to make relevant changes to their advocacy agenda based on their successes, challenges, and responses from their co-tenants and communities.

Founded by 22 cooperatively owned businesses in 1967, the Federation is deeply committed to practices that support our member-landowners in building their own capacity to identify, articulate, and create solutions that meet their own needs. The Heirs Property Advocacy Institute would increase the total number of advocates on this significant issue, but, more importantly, it would empower heirs property owners to advocate for themselves, strengthening the impact of the advocacy work by informing it with their personal experiences as heirs property owners. By helping heirs property owners identify critical legislative intervention points and advocate for changes to the tenancy-in-common legislative default, the Federation will help grow these landowners' agency in maintaining control of this significant source of wealth within their family and the broader Black community.

## CONCLUSION

Current racial disparities in wealth were not created by, nor will they be eliminated through, a single intervention or policy. Instead, the public and policymakers must begin to understand the interplay between wealth disparities and the “larger social crises that the government must play a role in (re)shaping.”<sup>xxxiii</sup> Interventions to eliminate wealth disparities must be comprehensive, long-term, and far-reaching in scope. The most important element of a sustainable policy intervention agenda is to facilitate the leadership of the most impacted members of the community in designing strategies. Heirs property owner leadership in designing policy solutions will promote relevant improvements in tenancy-in-common and other relevant land retention policies, promote informed estate planning decision-making among heirs, and create long-term improvements in wealth inequities Black landowners experience.

---

<sup>i</sup> Jess Gilbert, The Decline (And Revival?) Of Black Farmers And Rural Landowners: A Review Of The Research Literature, 5 citing John Gaventa, “The Political Economy of Land Tenure: Appalachia and the Southeast.” In *Who*

# Racism and the Economy

focus on the Wealth Divide

*Owns America? Social Conflict over Property Rights*, edited by Harvey M. Jacobs, pp. 227-244. Madison, WI: University of Wisconsin Press (1998). (2001).

<sup>ii</sup> Yvonne E. Beauford, H. Max Miller, and Melvin E. Walker, Jr., "Effects of the Changing Structure of Agriculture on Nonwhite Farming in the US, the South, and Georgia: 1954-1978." *Sociological Spectrum* 4(4): 405-20 (1984); Edward J. Pennick, Land Ownership and Black Economic Development." *Black Scholar* 21(1): 43-46 (1990).

<sup>iii</sup> John G. Casagrande, Acquiring Property Through Forced Partitioning Sales: Abuses And Remedies, 27 B. C. L. Rev. 755, 756 (1986).

<sup>iv</sup> [HEIRS PROPERTY & MEDIATION CENTER | Federation Coop](#) Last Accessed October 11, 2021.

Center on Budget and Policy Priorities, *Facts About African Americans In The Food Stamp Program* 1 (2007), <http://www.cbpp.org/4-19-07fa-fact1.pdf>.

<sup>v</sup> Phyllis Craig-Taylor, African-American Farmers And the Fight For Survival: The Continuing Examination For Insights Into The Historical Genesis Of The Dilemma, 26 N.C. Cent. L.J. 21, 24 (2003).

<sup>vi</sup> Id. at 23.

<sup>vii</sup> United States House of Representatives, Committee on Government Operations. The Minority Farmer: A Disappearing American Resource—Has the Farmers Home Administration Been the Primary Catalyst? House Report Number 101-984. Washington, D.C.: US Government Printing Office, 1 (1990).

<sup>viii</sup> Id.

<sup>ix</sup> Id. At 4.

<sup>x</sup> Michael D. Schulman, "White and Non-White North Carolina Farm Operators: A Comparison." *Journal of Social and Behavioral Sciences* 35(1): 9-22, 11 (1989).

<sup>xi</sup> United States House of Representatives, Committee on Government Operations. The Minority Farmer: A Disappearing American Resource—Has the Farmers Home Administration Been the Primary Catalyst? House Report Number 101-984. Washington, D.C.: US Government Printing Office, 6 (1990).

<sup>xii</sup> Robert A. Hoppe, Herman Bluestone and Virginia K. Getz. 1986. *Social and Economic Environment of Black Farmers*, United States Department of Agriculture, Economic Research Service: Rural Development Research Report Number 61 (1986).

<sup>xiii</sup> Jess Gilbert, The Decline (And Revival?) Of Black Farmers And Rural Landowners: A Review Of The Research Literature, 1 (2001).

<sup>xiv</sup> Thomas W. Mitchell, From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, And Community Through Partition Sales of Tenancies In Common, 95 Nw. U. L. Rev. 505, 507-508 (2001).

<sup>xv</sup> Id.

<sup>xvi</sup> Id. at 508.

<sup>xvii</sup> Id. at 517.

<sup>xviii</sup> Mitchell at 513-514.

<sup>xix</sup> Id.

<sup>xx</sup> *Oyler v. United States, No. 92-2104, 1995 U.S. Dist. LEXIS 5652, 18 fn. 9 (D. Kan. Mar. 17, 1995)*.

<sup>xxi</sup> Phyllis Craig-Taylor, Through A Colored Looking Glass: A View Of Judicial Partition, Family Land Loss, And Rule Setting 78 Wash. U. L.Q. 737, 741 (2000).

<sup>xxii</sup> [Partition of Heirs Property Act - Uniform Law Commission \(uniformlaws.org\)](#) Last Accessed October 11, 2021.

<sup>xxiii</sup> Jessica A. Cohen, *The Politics Of Hunger: Ten Years Of Leftovers With Many Hungry Still Left Over: A Decade Of Donations Under The Bill Emerson Good Samaritan Food Donation Act*, 5 SEATTLE J. SOC. JUST. 483 (2006).