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Heirs Property And The Necessary Role Of Extension In Preventing Land Loss Through Partitioning

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Cover Page Footnote

American Bar Association, Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act October 01, 2016 https://www.americanbar.org/groups/state_local_government/publications/state_local_law_news/2016-17/fall/restoring_hope_heirs_property_owners_uniform_partition_heirs_property_act/ Arkansas Code Ann. § 18-60-1001 et seq. (2017). Butler, Brett J., Wear, David N. (2023) Forest Ownership Dynamics, USDA Forest Service Research Station <https://www.srs.fs.usda.gov/futures/technical-report/06.html> Florida Statute § 64.201–14 (2020) Georgia Code Ann. § 44-6-181 et seq. (2014). Inheritance of Real Property and Partition Actions, (2023) <https://www.hg.org/legal-articles/inheritance-of-real-property-and-partition-actions-43893> Kentucky Revised Statute Annotated § 389A.030(2) (W1982) Louisiana Civil Code Ann. art. 4606 (2011). Miller, Francine (2022) Heirs' Property: Understanding the Legal Issues in Kentucky. <https://farmlandaccess.org/wp-content/uploads/2022/11/heirs-property-legal-issues-kentucky.pdf> Miller, Francine (2022) Heirs' Property: Understanding the Legal Issues in Louisiana. <https://farmlandaccess.org/wp-content/uploads/2023/02/heirs-property-legal-issues-louisiana.pdf> Miller, Francine (2022) Heirs' Property: Understanding the Legal Issues in North Carolina. <https://farmlandaccess.org/wp-content/uploads/2022/11/heirs-property-legal-issues-north-carolina.pdf> Mississippi Statute S. 2553 2020 Reg. Sess. (2020). Mitchell, T. W. (2001). From reconstruction to deconstruction: Undermining black landownership, political independence, and community through partition sales of tenancies in common. *Northwestern University Law Review*, 95(2), 505-580. <https://proxying.lib.ncsu.edu/index.php/login?url=https://www.proquest.com/scholarly-journals/reconstruction-deconstruction-undermining-black/docview/233359292/se-2> National Association of State Foresters, Timber Assurance, (2023) <https://www.stateforesters.org/timber-assurance/legality/forest-ownership-statistics/> NC. General Statute, Chapter 46A, Partitioning Partition of Heirs Property Act, Uniform Law Commission, (2023) <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-bc5d-8ea4e588371d> South Carolina Code Annotated § 15-61-310 et seq. (2018). Tennessee Code Annotated § 29-27-306–07 (2022) Uniform Law Commission, 2010 Partition of Heirs Property Act, (2023) <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d> Tidwell, Tom (2016) US Forest Service, World Conservation Congress <https://www.fs.usda.gov/speeches/state-forests-and-forestry-united-states-1> Virginia Code Annotated § 8.01-81 et seq. (2020).

Heirs Property And The Necessary Role Of Extension In Preventing Land Loss Through Partitioning

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Abstract. Land loss in the United States continues to be a threat to our inventory of natural resources. The problem of co-tenancy or heirs' property is a particular and persistent problem throughout the United States leading to fragmentation of property, and the complete loss of forest and farmland. Maintaining enough forest and farmland is essential to local, regional, and international economies. Much can be done to ameliorate the problem through education about the value of successional planning and the requirements of your state regarding the legal practice known as partitioning.

INTRODUCTION

The United States is replete with an excellent inventory of natural resources. In the western United States, much of our land and corresponding inventory of natural resources resides on public lands. Public lands can be managed, controlled, and protected as a cohesive whole in a way that private land holdings cannot. East of the Mississippi River, most land holdings are private, and the largest category of private ownership is the small family-owned farm or forest. In fact, over 83% of forest land held east of the Mississippi are in private hands, some as large as 200 million acres (Butler et al., 2023). In many regions of the country, entire industries are reliant on these small holdings to provide them with raw materials to produce products. In addition to raw materials, these lands provide us with a host of vital eco-system services like clean air and clean water and help define the character of a community. Over half of U.S. forestland is owned and managed by more than 10 million private owners. Most of this land is family-owned and the average parcel size is smaller than 25 acres (National Association of State Foresters, 2023). These owners represent a diverse group of people who have many reasons for owning their property but provide an all-important resource for the forest industry. Many of these small forest owners can be categorized legally, as among the most unstable class of owners, referred to as heirs' property owners.

One of the great challenges in the future will be to maintain our inventory of natural resources in small family forests, to meet the needs of society. This is set against a

backdrop of a U.S. population expected to approach 500 million people by 2060, with an associated forest land loss of over 37 million acres (Tidwell, 2016). One systematic cause of land loss is due to forest land holdings falling into a classification known as heirs' property or co-tenancy. The problem of heirs' property and the need for succession planning has grown exponentially in recent years and has given rise to several legal reforms within the United States, adopted by some but not all states. Heirs' property is land, owned in common, held as an undivided legal interest. All the heirs have a legal right to all the property but do not in many cases have a marketable title to the property since estate issues remain unresolved and dynamic. These lands are often passed down without a will or trust to direct or even a deed to prove ownership. If an issue arises for any of the heirs or anyone who holds an undivided interest, the state will make the choices on behalf of all the heirs.

Legally this situation most often arises as the result of an untimely or premature death, a lack of forethought about the property upon death, a lack of financial resources to plan with an experienced attorney, or a lack of confidence with the legal system. It should be noted that within minority communities, and more specifically in the African American community, these problems can be particularly exacerbated by a culture of mistrust created through generations of bad experiences with a legal system that did not afford them equitable access or legal protections (Mitchell, 2001).

Another challenge associated with an heir's property is its vulnerability to a legal procedure known as partitioning.

How does partitioning work, and what triggers it? If a working landowner, let us call him John Jones, dies without a will or trust, the real estate passes to Mr. Smith's heirs, and they become tenants-in-common under state law. They all own all the land together in common. If left as an heir's property, when one heir dies, their children become heirs to the property. One only must fill out a family tree for one or two generations to see how this can create hundreds of heirs with ownership claims to the property. This tenancy-in-common is problematic because any individual heir can force a partition through the legal system and in many cases the sale of all the property. This can happen when the court or arbiter determines it is too complex to divide the property equally—for example, with a structure in the middle of the property, or when there are too many heirs to identify and divide the property up in sizes that have any reasonable value. A real estate developer can seize on this opportunity to acquire a small share of an heir's property, with the goal of filing a partition action with the courts and forcing a sale of all the property. He then bids, buys, and acquires the entire property. Using this tactic, an investor can sometimes acquire the entire parcel for a price well below its fair market value and in so doing deplete a family's probable inherited wealth. Any heir can petition the court to divide the interests in the property, without permission from the other heirs. This happens in two ways: one is called partition in kind, in which each heir gets an equal and proportional piece of the property divided; the other is called partition by sale, which happens when it is too complex for the court to figure out an equitable distribution (Inheritance of Real Property and Partition Actions, 2023).

One remedy to ameliorate this problem was to produce a model law that states could adopt and use. In 2010 the Uniform Law Commission created the Uniform Partition of Heirs Property Act (UPHPA) and offered the model law to all the United States (American Bar Association, 2016). The UPHPA is helpful as it makes three major changes to partition law. First, if a co-tenant petitions the court to order a partition sale, the co-tenants that did not want the sale must be given the opportunity to buy out the co-tenant that petitioned the court for partition and establish a fractional ownership interest price to be paid out. Secondly, if a buyout does not resolve the partition action, then a court may proceed to decide whether to order partition in kind or partition by sale. Under UPHPA there is a preference given to partition in kind. The court will consider both economic and non-economic factors. Among those non-economic factors are sentimental, cultural, or historic value, and whether a co-tenant could be made homeless through the sale of the property. These non-economic factors tip the scale in favor of partition in kind as opposed to partition by sale. Lastly, when a partition by sale is the best remedy, UPHPA calls for an "open market sale" under which the court appoints a

disinterested real estate broker to list the property for sale at a value determined by the court via best commercial real estate practices. This process differs from selling land at auction and typically yields higher returns for all the heirs in a partition case (Partition of Heirs Property Act, Uniform Law Commission, 2023).

METHODS AND MEASURES AND RESULTS

To better understand the scope of the problem, a simple landowner survey was delivered in person among land-owning persons. The survey was administered at three landowner meetings in rural eastern North Carolina. This area is sometimes referred to as a "wood basket" within North Carolina. It has a sparse population and most of the forested land is held in private ownership and managed for forestry. The Uniform Partition of Heirs Property Act has not been passed in North Carolina. The area provides all the requisite raw material within 10 to 20 miles of mills that provide lumber, pulp, and other biomass materials for the economy both here and overseas. The arrangement is so attractive that two mills have moved into the center of this area, one from Austria, and the other from Oregon. A second assessment of 10 southern states was conducted to see which states were more vulnerable through partitioning of an heir's property by examining which states had passed the Uniform Partition of Heirs Property Act, and which had not. The results are as follows.

LANDOWNER SURVEY

There were two questions asked; the first asked if they knew what partitioning was, as relates to heirs' property. The second question asked if they had a succession plan for their property that included a will or a trust. The answers demonstrate how vulnerable forestry landowners are to falling into co-tenancy and potentially partitioning. The survey with an **N of 94** revealed that **58.5%** of landowners had no knowledge of the practice of partitioning. The second question revealed surprisingly that **40.4%** of landowners had no succession plan, will, or trust. When coupled with the reality that many states, including North Carolina, have not passed the Unified Partitioning Heirs Property Act, it speaks to serious and ongoing vulnerabilities for forest land loss, and a long-term threat to the industry itself.

STATE PARTITION LAW COMPARISON

An examination of the laws of 10 southern states with significant private forest holdings reveals that among these 10 southern states, only five have passed the UPHPA: Arkansas, Florida, Georgia, Mississippi, and South Carolina (Ark. Code 2017) (Florida Statute 2020) (Georgia Code Ann. 2014) (Mississippi Statute 2020) (S.C. Code 2018); and five have

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Table 1. National Survey UPHPA

States that have passed UPHPA	States that have not passed UPHPA	States where UPHPA is on the ballot
Hawaii, California, Montana, Nevada, Utah, New Mexico, Texas, Arkansas, Missouri, Iowa, Illinois, Mississippi, Alabama, Florida, Georgia, South Carolina, Virginia, Maryland, Connecticut, New York.	Maine, Vermont, New Hampshire, Pennsylvania, West Virginia, North Carolina, Louisiana, Delaware, Rhode Island, Tennessee, Ohio, Indiana, Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Nebraska, Kansas, Oklahoma, Colorado, Wyoming, Oregon, Arizona, Alaska.	Massachusetts (HD 79) New Jersey (S 860) Kentucky (SB 86) Idaho (S 1090) Washington (SB 5005)
*U.S. Virgin Islands, and the District of Columbia		

(Uniform Law Commission 2023)

not: North Carolina, Kentucky, Louisiana, Tennessee, Virginia (N.C. General Statute, Chapter 46A 2023) (Kentucky Stat. Ann. 1982) (Louisiana Civil Code 2011) (Tenn. Code Ann. 2022) (VA Code Ann. 2020). It should be noted that Tennessee and Virginia, while not having passed the law in its complete form, added significant provisions to strengthen existing partitioning law with provisions consistent with UPHPA (Tenn. Code Ann.2022) (VA Code Ann.2020). North Carolina had anticipated a vote on adding the UPHPA, but it did not make it the floor for a vote in the last legislative session (Miller, 2022). Kentucky introduced the UPHPA in 2021 but it failed to make it into law (Miller, 2022). Louisiana has elected to form a study commission, and to attempt to craft a Louisiana version of the bill at a future date (Miller, 2022).

DISCUSSION

This research shows the current vulnerabilities that landowners have through a lack of succession planning. It also demonstrates that this is exacerbated by a legal architecture in many states that fosters land loss through partitioning. With unresolved title issues, each successive generation adds more legal heirs to the undivided ownership of the land without being known or recorded on the title. If the probate process never occurs, owner land records will never reflect the next generation of owners. The legal claims to a share of the property can climb into the hundreds, many not knowing they have any legal interest in the property. As noted previously, the problem is more prevalent and persistent among African American landowners, who historically have

had less trust in the legal system and therefore inadvertently have created a climate where heirs' property succession can flourish. The problem is compounded as generational wealth is diminished and, in many cases, lost altogether. This unstable form of ownership can cause these lands to go into disrepair and lack management of any kind. They often become nuisance property and contribute little or nothing to help the tax base in the communities they are situated in. Additionally, these property owners are often not able to sell timber, secure loans, partake in government programs designed to improve the profitability and stewardship of the property, and they are often ineligible for FEMA-funded disaster relief programs.

CONCLUSION

Forest land loss through a lack of adequate succession planning continues to be a serious and prolific problem, which if left unaddressed will continue to remove forested land from our inventory and impact local and regional industries. Succession planning may be as important of a message for the Extension professional and others involved in land loss prevention as any best management practice or cost share program. While advocating for a particular law like the UPHPA may be beyond the scope of what is appropriate for an Extension professional, educating on the vulnerabilities of current law is not. Educating on what the law does, and what the vulnerabilities are, without proper succession planning should become normative practice in advising landowners about their property. Even if a landowner, for personal or cultural reasons, wanted to leave a property with a co-tenancy arrangement, they would be well-advised to articulate it and to provide some protections for the heirs through a legal instrument to prevent the courts from partitioning the property. Perhaps the most compelling argument to make for doing proper succession planning for landowners is to remind them that without proper legal preparations, the government will ultimately step in and make the decisions for your heirs and your property.

IMPLICATIONS FOR EXTENSION PROGRAMS

Extension professionals are connected to the landowner community both quantitatively and qualitatively across all 50 states in a way that no other national organization is. While Extension continues to do the work of assisting landowners in finding ways to make farm and forestry more efficient and effective, more should be done to preserve the actual inventory of lands on which these programs are predicated. Every Extension office should have resources available, and training on succession planning, heirs' property prevention, and remediation. Simple understanding of the vulnerabilities of this type of ownership for forest and farm

owners, coupled with identified resources in the community to work on succession planning, dispute resolution, and will and trust services would go a long way to preserving and protecting these vital resources for future generations. Youth development programs such as 4-H may be uniquely positioned to be an excellent conduit for succession planning, as their work is preparing the next generation of landowners to succeed. With thoughtful programming, it could provide a very safe, family-oriented and cross-generational space for discussions on forest and farmland succession to take place in meaningful ways.

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