



TUSKEGEE

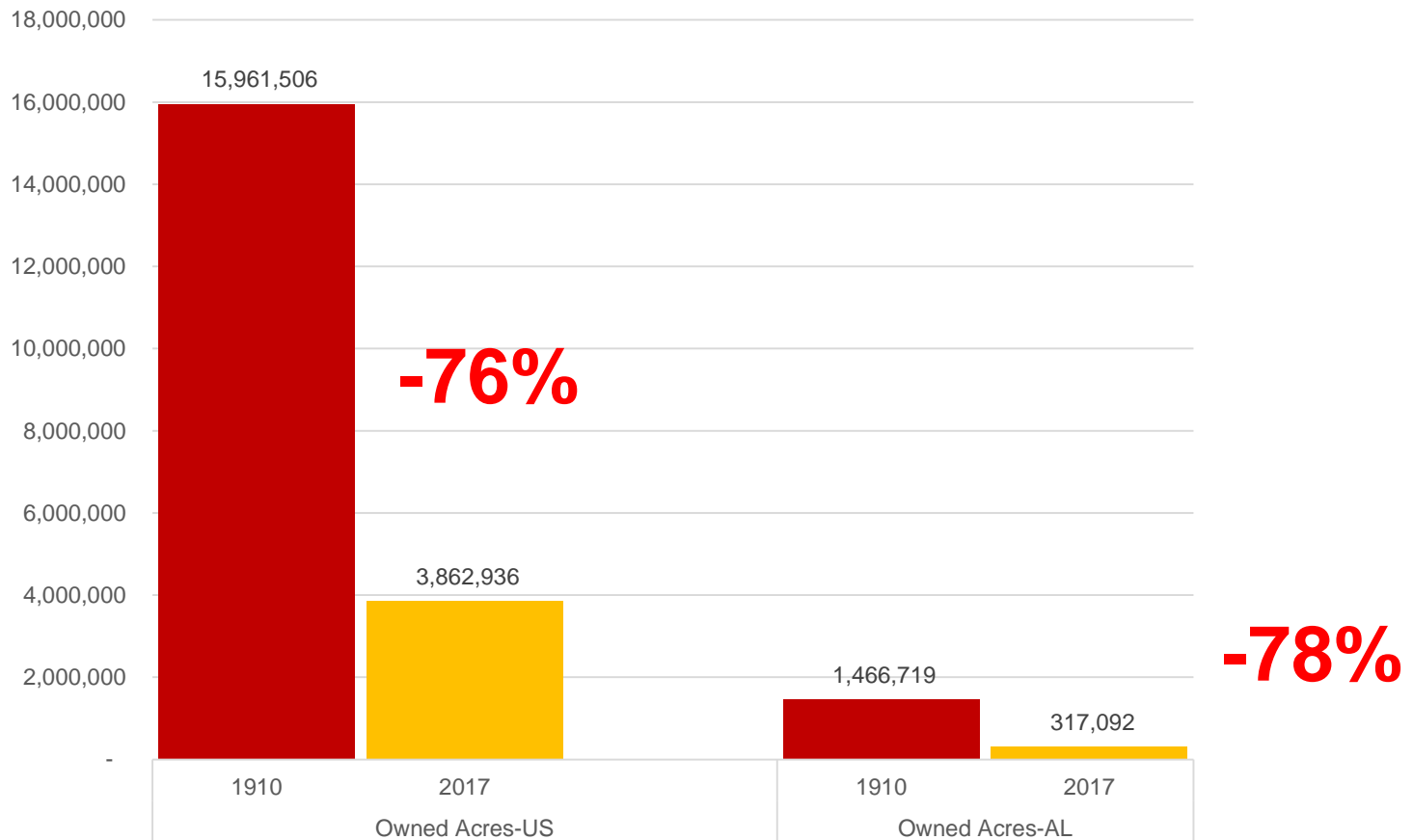
UNIVERSITY

HEIR PROPERTY

ROBERT ZABAWA, TUSKEGEE UNIVERSITY

THE SITUATION

However, landownership has been a privilege denied, stolen and lost for many rural communities in the South.



PERSPECTIVE









Heir Property

When a person dies without a will (intestate), or other type of estate plan, state law controls who can rightfully inherit and how much they can inherit. Land that is passed down to heirs (or co-tenants in common) according to state law is commonly known as heir(s) property. Heir interests are fractional because each co-owner has an individual, partial interest in the whole.

Fractional Ownership

The size of each heir's fractional ownership interest depends on several factors - How many generations removed is an heir from the deceased?; and, How many heirs can rightfully take their inheritance at a specific point in time?

IMPORTANT

**If you do not decide how you
want your estate to be
divided...**

...the State of Alabama Will!!!

If You Die Without a Will in Alabama

| If you die with: | here's what happens: |
|---|--|
| •children but no spouse | •children inherit everything |
| •spouse but no children or parents | •spouse inherits everything |
| •a spouse and children who belong to you and that spouse | •spouse inherits the first \$50,000 of your intestate property, plus 1/2 of the balance of your intestate property •children inherit remaining intestate property |
| •a spouse and children who are not that spouse's children | •spouse inherits 1/2 of the intestate property •children inherit 1/2 of the intestate property |
| •a spouse and parents | •spouse inherits the first \$100,000 of your intestate property, plus 1/2 of the balance of your intestate property •parents inherit remaining intestate property |
| •parents but no children or spouse | •parents inherit everything |
| •siblings but no children, spouse, or parents | •siblings inherit everything |

Heir Property and Land Loss

Heir property ownership is often the precursor to land loss. With each passing generation of heir property owners who die without a will or other estate plan, a new generation of heirs inherits ownership of the land. Typically, each successive generation is larger than the previous one. As a result, the next generation of landowners' ownership interests are smaller, yet the number of interest holders has increased.

Heir Property and Co-ownership

With numerous co-owners, the following can occur, which can impede proper management of the land:

- * Heirs do not live on or near the land**
- * Heirs do not live near each other**
- * Heirs do not know one another**
- * Heirs do not know how to locate one another**
- * Heirs do not have a connection to the land**

Heir Property and Management

These common situations can make it difficult, if not impossible for the land to be properly managed. Lack of a land management plan and/or improper implementation of a land management plan can lead to land loss.

In some cases, the land is being managed, but this responsibility rests in the hands of one heir, or a small group of heirs, with the other heirs enjoying an unearned benefit.

Heir Property and Management

Those few who do invest in their family's land, however, can face many obstacles to properly managing it. Without specific authorization by the other heirs, many land use decisions (i.e., harvesting timber, leasing, building a structure on the land, etc.) can be made ONLY by unanimous consent.

Example

“Johnson Estate”

- 1. 1862 – 1939**
- 2. Purchased land**
 - a. 63 acres – 1890s**
 - b. 80 acres – 1900s**
 - c. 34 acres – 1920s**
- 3. Family – 8 children**
- 4. Dies intestate**

Mr. Johnson



8 Children X 13



104 X 9



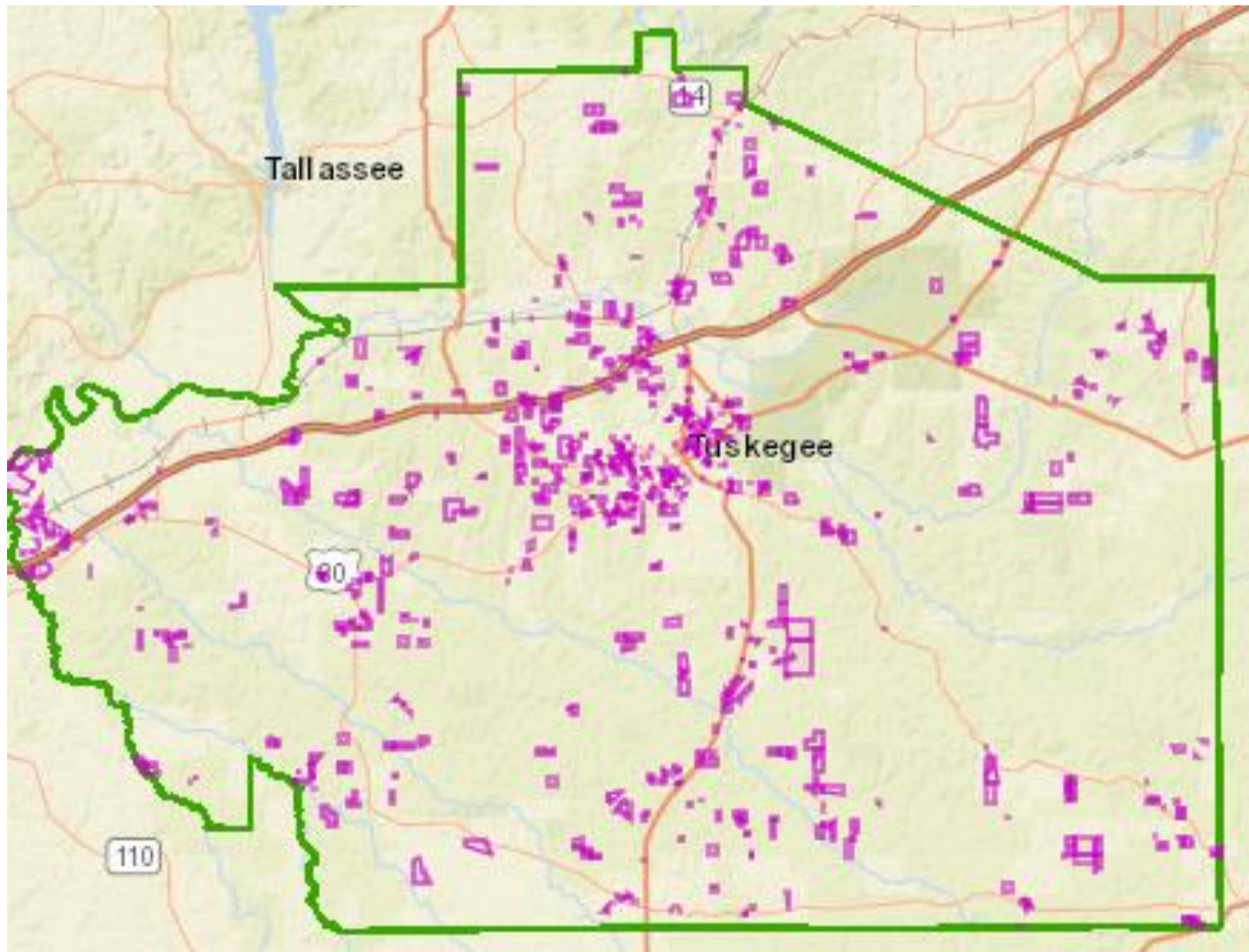
936 X 2



1,872 heirs!

Impact on personal and community wealth

Heir Property in Macon County



| Acres | Titled Property | Heir Property | P |
|--------------|----------------------------|--------------------------|----------|
| Total | 21.50 | 11.69 | 0.0001 |
| Agricultural | 31.94 | 16.00 | 0.0001 |
| Forestry | 82.54 | 57.62 | 0.0390 |
| Residential | 1.95 | 1.28 | 0.1825 |

| Land Value | Titled Property | Heir Property | P |
|-------------------|------------------------|----------------------|----------|
| Total | \$40,072 | \$23,146 | 0.0001 |
| Agricultural | \$59,390 | \$31,646 | 0.0001 |
| Forestry | \$127,311 | \$94,458 | 0.0597 |
| Residential | \$7,814 | \$3,471 | 0.0001 |

| Improvement Value | Titled Property | Heir Property | P |
|--------------------------|------------------------|----------------------|----------|
| Total | \$35,977 | \$14,510 | 0.3420 |
| Agricultural | \$23,442 | \$9,141 | 0.0001 |
| Forestry | \$12,002 | \$10,926 | 0.8569 |
| Residential | \$33,434 | \$10,189 | 0.0001 |

| Total Value | Titled Property | Heir Property | P |
|--------------------|------------------------|----------------------|----------|
| Total | \$76,103 | \$37,449 | 0.0999 |
| Agricultural | \$82,465 | \$40,306 | 0.0001 |
| Forestry | \$139,705 | \$106,180 | 0.0769 |
| Residential | \$42,142 | \$13,672 | 0.00001 |

| Taxes | Titled Property | Heir Property | P |
|--------------|----------------------------|--------------------------|----------|
| Total | \$295 | \$167 | 0.0001 |
| Agricultural | \$261 | \$151 | 0.0002 |
| Forestry | \$355 | \$241 | 0.0607 |
| Residential | \$220 | \$78 | 0.4040 |

Local Community: Southern Improvement Company “Harris Barrett”

- 1. Founded 1900**
- 2. 4,500 acres**
- 3. 65 families**
- 4. Saw mill**
- 5. Grist mill**
- 6. Blacksmith**
- 7. Cotton gin**
- 8. Brickmaking**
- 9. School**

Harris Barrett School 1909



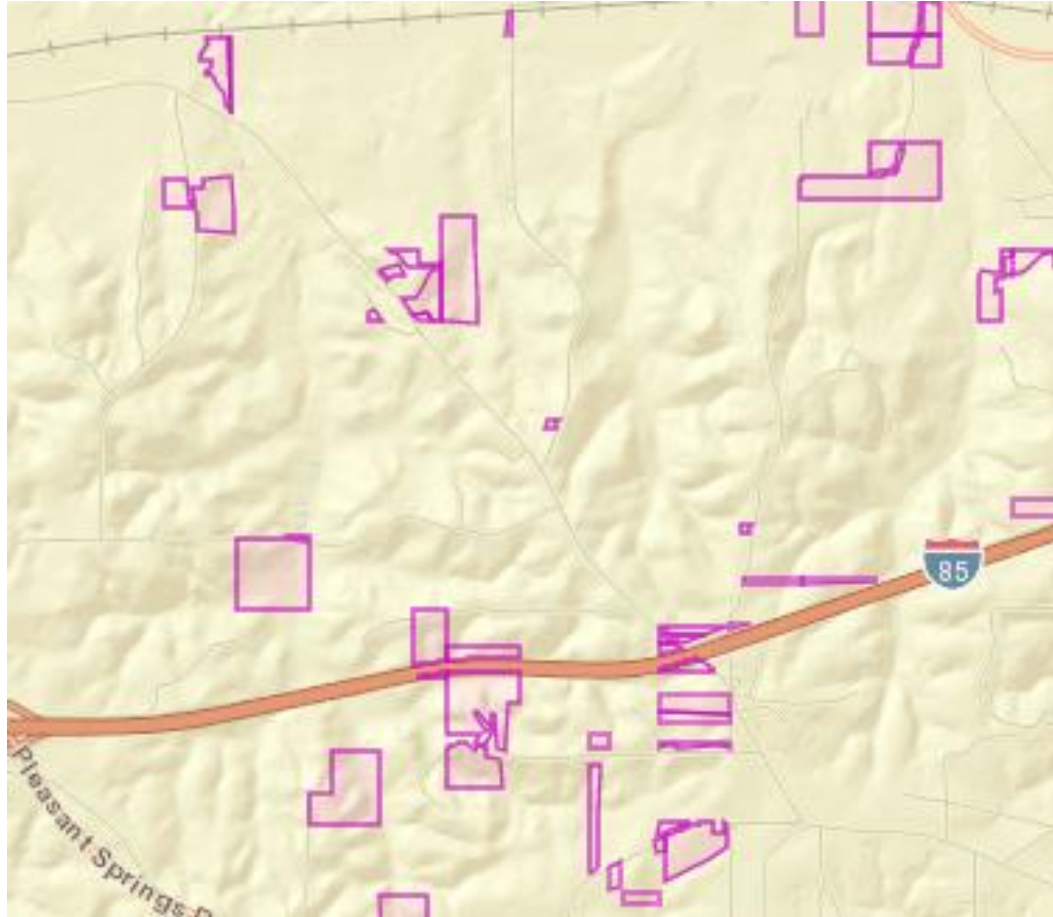
Harris Barrett School 2009



Harris Barrett School 2009



Heir Property Near Harris Barrett



Heir Property Near Harris Barrett

| Parcels # | Owners # | Acres # | Land Value \$ | Improvement Value \$ | Total Value \$ | Taxes \$ |
|----------------------|---------------------|--------------------|------------------------------|-------------------------------------|-------------------------------|---------------------|
| 52 | 43 | 757.4 | 1,758,400 | 307,100 | 2,050,520 | 8,164 |
| | Average | 17.6 | \$2,322 | \$405 | \$2,707 | \$190 |

Land Loss

Tax Sales

From Non-payment of Taxes:

- Taxes due in October
- Delinquent after December 31st
- Tax sales in April
 - Auction to highest bidder receives a tax lien certificate
 - After 3 years owns the property (land, house)
 - Up to 3 years, owner has chance to buy back the tax deed by paying past taxes plus interest, 12%

Partition Sales

Partition sales are a common way African-American landowners have lost, and continue to lose, their land. A partition sale is a court-ordered sale of land. With a partition sale, the highest bidder becomes the owner. The proceeds from the sale are then distributed among all the co-owners of the property according to the size of their fractional interest.

Partition Sales

Partition sales can lead to land loss because:

- It is often difficult for heir property owners to outbid land speculators and developers who may bid at the sale.**
- An interest holder in heir property does not need to obtain the consent of the other heirs before seeking the partition sale of the family land.**

Uniform Partition of Heirs Property Act of 2010

The Uniform Partition of Heirs Property Act (UPHPA) helps to solve the problem while preserving a co-tenant's right to sell his or her share of property. It is important to note that the act only applies to heirs' property – one or more co-tenants must have received his or her property interest from a relative – and only when there is no written agreement governing partition among the owners. If both of those conditions exist, the act requires certain protections when a co-tenant files for a partition order:

Uniform Partition of Heirs Property Act

- 1. The co-tenant requesting the partition must give notice to all of the other co-tenants.**
- 2. The court must order an independent appraisal to determine the property's fair market value as a single parcel. If any co-tenant objects to the appraised value, the court must hold a hearing to consider other evidence**

Uniform Partition of Heirs Property Act

- 3. Any co-tenant (except the co-tenant(s) requesting partition-by-sale) may buy the interest of the co-tenant seeking partition for a proportional share of the court-determined fair market value. The co-tenants have 45 days to exercise their right of first refusal, and if exercised, another 60 days in which to arrange for financing. If more than one co-tenant elects to buy the shares of the co-tenant(s) seeking partition, the court will pro-rate the sellers' shares among the buyers according to their existing fractional ownership percentages**

Uniform Partition of Heirs Property Act

- 4. If no co-tenant elects to purchase shares from the co-tenant(s) seeking partition, the court must order a partition-in-kind, unless the court determines that partition-in-kind will result in great prejudice to the co-tenants as a group. UHPHA specifies the factors a court must consider when determining whether partition-in-kind is appropriate.**

Uniform Partition of Heirs Property Act

- 5. If partition-in-kind is inappropriate and the court orders a partition-by-sale, the property must be offered for sale on the open market at a price no lower than the court-determined value for a reasonable period of time and in a commercially reasonable manner. If an open market sale is unsuccessful or the court determines that a sale by sealed bids or by auction would be more economically advantageous for the co-tenants as a group, the court may order a sale by one of those methods.**

Uniform Partition of Heirs Property Act (2010) - Enacted

- Nevada - 2011
- Georgia - 2012
- Montana - 2013
- Alabama - 2014
- Connecticut - 2015
- Arkansas - 2015
- Hawaii - 2016
- South Carolina - 2016
- Texas - 2017
- New Mexico - 2017
- Iowa - 2018
- Missouri - 2019
- Illinois - 2019
- Virgin Islands - 2019

<https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d>

Uniform Partition of Heirs Property Act (2010) Introduced in 2019

- Oklahoma
- Kansas
- New York
- Virginia
- Nebraska
- Massachusetts
- Mississippi
- West Virginia
- Indiana
- Washington, DC

2018 Farm Bill

- State has adopted the UPHPA
- Co-tenants collectively account for 51% of land held in common

**REMEDY:
ESTATE PLAN**

A WILL

REMEMBER...

**If you do not decide how you
want your estate to be
divided...**

...the State of Alabama Will!!!

CONTACT

Federation of Southern
Cooperatives
Regional Heirs Property and
Mediation Center

<https://www.federation.coop>

404-765-0991

THANK YOU