Heirs' Property Research Report 2024-1

Examining the Efficacy of the Uniform Partition of Heirs' Property Act in Georgia and Alabama and Its Relevance to Kentucky

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Introduction

The Uniform Partition of Heirs Property Act (UPHPA) was drafted in 2010 by the American Bar Association's Section of Real Property, Trust and Estate Law to help heirs' property owners avoid negative outcomes associated with the partitioning or division of heirs' property. Our study examined the "efficacy" of the UPHPA by examining its application and impact on partition cases in Georgia and Alabama, and considered its potential impacts in Kentucky, a state where it has not been enacted but was introduced into the state legislature in 2021. Georgia and Alabama were early adopters of the model statute, having approved it in 2012 and 2014, respectively.

The legislation represents a demonstrative response to the precipitous loss of African American land over the course of the 20th century (Mitchell 2019)—although rural, Black land losses have been attributed to a variety of factors, including both voluntary separation and illegal takings by ruthless means (Daniel 2013; Lewan and Barclay 2001). However, many Black land rights advocates also attribute African

American rural land loss, in particular, to heirs' property ownership and the legal division of such property via court-ordered partition sales (Casagrande 1986; Craig-Taylor 2000; Chandler 2005; Mitchell 2019). Generally, partition actions involve either a division by sale (also known as statutory partition) or partition in kind in response to a partition suit. In the case of the latter, if a case involves property of sufficient size and type to be physically divided and known heirs agree on that land division, partition in kind can be an equitable and reasonable way to dissolve the tenancy. In such cases, land is also more likely to be remain in the family (Chandler 2005). However, if the property cannot be logically divided (e.g., separation of a house) or there are numerous heirs, with weak or nonexistent relations or possibly hostile relations, the process of agreeing on how the land should be subdivided may be highly contested, resulting in a stalemate. In these situations, a court would order a partition sale, resulting in monetary rather than land distributions to co-heirs or shareholders.

In some notable cases (and perhaps many not so noticeable), persons outside of a family have acquired partial interests in property from one or more of the co-heirs (any co-heir can sell his or her fractional interest but not the entire property); and that outside entity (now a shareholder) initiates the partition action, anticipating a partition sale, with the ultimate aim of acquiring the total property in a closed bidding scenario that includes only heirs and the shareholder. Apparently often, family members have been unable to outbid cash-rich interlopers, and the family is divested of the land (Rivers 2006; Chandler 2005; Baab 2011). Although most state laws governing property divisions prefer partition in kind over partition sale, far more partition sales occur because of the impracticality often involved in subdividing land with many heirs (Baab 2011). Historically, if heirs insisted on a partition in kind, the onus was placed upon those making the request to demonstrate that the land could be divided in this manner.

In 2010, the Uniform Law Commission passed the UPHPA, the first legislative effort to garner the backing of the American Bar Association. As such, it represents a comprehensive, rather than piecemeal, redress of problems associated with heirs' property partitions (Mitchell 2019). As of 2021, the UPHPA had been adopted by 18 states and the U.S. Virgin Islands (Uniform Law Commission 2010). Key provisions are: 1) a "buyout option," which means that co-heirs not wishing to sell the property can purchase the interests of those wanting to sell at a price that reflects the petitioning heirs' fractional interest in the property; 2) courts must consider both economic and noneconomic factors associated with property in determining whether property should be partitioned in kind or sold, allowing for intangible and sentimental attachments to property be presented as evidence in partition sales; and 3) if co-heirs do not choose the buyout option, the property is sold at fair market rather than discounted value.

Land lost through the partitioning process is a form of taking, even in situations where the partition suit is brought by blood kin, because these sales inevitably result in land dispossession effected via forced sales (Mitchell 2005). Thus, partition actions can be thought of as one of the variegated ways in which socially marginalized communities and families have lost land over the time. The UPHPA's primary purpose is to provide protections for families involved in partition actions, especially when those actions involve forced sales, but the Act does not supplant existing state partition laws in either Georgia or Alabama. Importantly, for the first time, legislation defines heirs' property as such,[1] but is also worth noting that before UPHPA issuance, Alabama, Georgia, and South Carolina had adopted partition reforms that allowed those heirs not requesting partition to buy out the interests of those heir(s) who did (Mitchell 2014, 2019; Pennick 2021, personal communication).

Land Appropriation in the Deep South and Central Appalachia

The Black Belt[2] region of the South and Central Appalachia are not only distinguished by their unique cultures and histories but also by their respective legacies of resource exploitation and land appropriation dating back to the colonial era. Similar to the *Who Owns Appalachia* study of the late 1970s, which found that 72 percent of lands affected by flooding in Kentucky and West Virginia at that time were owned by absentee landowners (Appalachian Land Ownership Task Force 1983), An analysis of 2012 timberland ownership data in Alabama, revealed that 70 percent of the land in Alabama is timberland, and that 62 percent of the state's privately-owned timberlands are held by absentee owners (Bailey et al 2019). Further, Bailey and others (2019) argue that the spatial concentration of these holdings in the state has had detrimental social consequences for local economies and livelihoods because absentee owners pay very low taxes. This, in turn, produces a litany of marginality markers ranging from high poverty rates, to food insecurity, to poorly performing public schools. Land owned by locals in both the Black Belt and Appalachia is also fraught with insecurities related to tenuous titles. These parcels are especially prevalent in Deep South states. For instance, Johnson Gaither (2019) calculated 1.1 million acres of heirs' property land in Alabama, Arkansas, Georgia, Louisiana, Mississippi, and South Carolina, using 2017 data from Digital Maps Products Corporation, with a value of roughly $3.1 billion dollars. Also, for the same area, Thomson (2021) estimates 642,398 million acres of heirs' property valued at $4.5 billion.

Kentucky was excluded from the Public Land Survey System that rationalized most land speculation west of the Appalachian Mountains in the late 18th century. This surveying system, designed by Thomas Jefferson, created small plots that were more affordable by low-income settlers, as well as uniform rules of surveying that made plots more readily fungible on East Coast markets. However, settlement south of the Ohio

River, in the land that is now Kentucky, was covered by older surveying systems that were notoriously patchy and contradictory in implementation. As a result, the state developed a reputation for chaotic systems of title (Linklater 2013). For instance, in explaining his family's move from Kentucky, Abraham Lincoln said it was "...partly on account of slavery, but chiefly on account of the difficulty in land titles in Kentucky" (Donald 1996, p. 23). This system favored the wealthy with access to lawyers, encouraged squatting and subsistence livelihoods, and entrenched structural tendencies towards political and economic inequality. By the late 19th century, burgeoning extractive industries in coal and timber in eastern Kentucky came into an economy without countervailing formal economies and a very weak land registration system (Eller 1982). The ensuing land grab triggered patterns of violence that were largely among local elites competing for outside land investors, but were portrayed in sensationalized national media as primitive, premodern blood "feuds." This symbolic portrayal of Appalachia as a backwards region distracted attention from the vast land transfers underway and entrenched national stereotypes about the region that stigmatized "hillbillies" as biologically degenerative (Waller 1995). Cultural stigmatization and ever deepening regional poverty combined to create a climate in which local residents' voices and claims to land equity have not been empowered (Billings et al. 1995). It should also be noted that there is a glaring gap in scholarship on Indigenous land systems in, and displacement from, Central Appalachia (Dunaway 1995).

In Central Appalachian coal counties, about one-fifth of the taxable surface land is available to local people for their own use and ownership. The rest is absentee or corporate owned. Again, these proportions are strikingly similar to those reported by Bailey et al described above (2019). In these Appalachian counties, despite the low population density, there is a chronic lack of housing (Gaventa and Horton 1984), and the frequency of heirs' property ownership appears to be high, but data on its extent is limited because of the lack of uniformity in terminology denoting heirs' property parcels across counties and the lack of consistency in reporting such properties at all (Deaton 2007). During the boom years, coal camps attracted a vibrant racial and ethnic mix, but the population is increasingly White because of the higher out migration of African Americans (Turner and Cabbell 1985; Lewis 1987). Despite all these challenges, strong cultural attachment to the land continues in communities with long histories of dependence on livelihoods based on land and natural resources (Halperin 1990; Hufford 1997).

Thus, in both the Black Belt and Central Appalachia, the hegemony of powerful interests has concerted to divest, first Native individuals and cultures, and later poor and working class African Americans and Whites of lands. Again, however, there are important differences in the geography, economies, culture, and racial composition of

these respective regions, which necessarily influence how people in the different places experience such divestiture, the mechanisms each wield to restore land rights, and importantly, the means by which land held as heirs' property is transitioned to a status that makes it more attractive economically.

The UPHPA as Response to African American Land Loss

The UPHPA represents the culmination of a decades-long effort by many organizations and individuals to reverse the decline of African American-owned, rural land. Of course, the law holds this promise for people and places outside of the rural, Black Belt South and is one reason why we are keenly interested in assessing its potential in Kentucky.

Again, while Black land losses have been attributed to a number of factors, i.e., voluntary sales, adverse possession, partition sales, and tax sale (Emergency Land Fund 1980), partition sales have garnered the most attention by those advocating for Black land rights. According to the 1980 Emergency Land Fund report, "There is little, if any, dispute that a sale for partition and division is the most widely used legal method facilitating the loss of heir property" (1980, p. 273). However, neither at the time of that writing nor subsequently has the proportional influence of these four factors been determined (Casagrande 1986; Craig-Taylor 2000; Chandler 2005; Mitchell 2019). We are aware of just three studies, one from the popular press and two from the academic literature, examining partition actions involving Black-owned land. The first is the Associated Press' (AP) *Torn from the Land*, 3-part series published in December 2001 (Lewan and Barclay 2001). The larger study on which the AP's articles were based involved an extensive investigation of more than 1,000 people and thousands of court records, which, according to the authors, uncovered various kinds of takings, many of them documented in court records. However, of the many court records reviewed, the AP article mentions just 14 court-ordered partition sales. The article states that in the 1950s, there were "several" of these sales—but in recent decades such sales became "big business." But again, it is not clear from the article how often or to what extent partition sales occur.

Because of the lack of empirical evidence supporting the claim that partition sales have been a major cause of Black land loss, Mitchell (2005) directed a study of partition sales in Halifax County, NC in the early 2000s. Mitchell (2005) writes that at the time, case law was an insufficient source for the discovery of widespread forced sales of Black-owned land because many of the issues and cases affecting Black land tenure did not appear in case law. Those kinds of suits never made their way through the system to appear in case law recordings. As a result, legal scholars knew very little about the struggles with Black land takings. Mitchell's study concentrated on the Black, Tillery Farms portion of the Roanoke Farms New Deal Settlement area in Halifax County. The

team built what they called a "land registry" that tracked 201 properties associated with the Settlement using documents from the county Registry of Deeds office. Title searches on these properties were conducted to determine how many involved a forced, partition sale for a 60-year period. The analysis uncovered very few partition sales. Recognizing the limited, case study approach used employed by the study, Mitchell (2005, p. 609) concluded:

> Although there has been significant Black land loss over the course of sixty years with respect to the properties that constituted the former Tillery Farms section of the resettlement project, a review of the different types of forced sales transactions in our data set has uncovered comparatively few partition sales. Of all the various types of forced sales recorded in our data set, foreclosures are by far the most prevalent. This suggests—and I must emphasize that it simply suggests given the limited number of properties that are in our dataset—that some of those who are working to preserve Black-owned land may have overestimated the degree to which partition sales have been a source of Black land loss.

An attorney interviewed for this project also suggested that tax sales, as another form of forced sale, was probably more prevalent historically as a contributor to Black land loss: "I think a lot of what happened was probably tax sales. But I do think that there was exploitation and theft" (GA9).

A few years after Mitchell's project, the University of North Carolina's Center for Civil Rights examined more than 300 partition case files in 15 North Carolina counties[3] over eight years, 2000-2007.[4] We found no published report or article from that analysis, but internal memos on the July 9-13, 2007 field collection describes county demographics and partition actions. Findings were reported in terms of the number and percent of special proceedings files accounted for by partition actions. The number of partition actions ranges from 360 in Washington County (representing 6 percent of all special proceedings filed) to .5 percent (county or counties not specified). Tyrell County reported just 15 actions, but these comprised 19 percent of special proceedings files. Lastly, Dyer (2008) examined partition actions for a single Alabama county (Macon), as well as partition actions appearing in appellate court records for the entire state of Alabama (Dyer 2008). That effort also concluded that there was little evidence of Black land loss from partition sales.

To be clear, this non-exhaustive review of the partition action literature should not suggest that partition sales have played a trivial role in Black land loss, but rather that Black land disenfranchisement stems from multiple factors, many of which may be traced to tenuous land ownership. For instance, some proportion of foreclosures and tax

sales may, at their root, be attributed to lack of clear title, reflecting co-heirs' unwillingness or inability to invest in property because the future of such properties is uncertain. Still, given the dearth of documented partition actions, we questioned why the legal community chose to prioritize reform for this aspect of heirs' property ownership. An attorney with a nonprofit legal group responded that the problem of partition sales was the "lowest hanging fruit," representing a very tangible and recognizable pitfall of heirs' property ownership (GA6).

Methodology

We assessed the efficacy of the UPHPA by examining its application and impact on partition orders in Georgia and Alabama and considered its potential impacts in Kentucky. In terms of its impact in Georgia and Alabama, we employed three methodologies. First, we examined court records and decisions related to partition actions in these states; second, open-ended interviews were conducted with 15 real property attorneys, one expert on heirs' property in the South, and with two individuals familiar with titling issues involving heirs' property parcels. We interviewed 10 attorneys who practice in Georgia, four in Alabama, and two in Kentucky. We also interviewed a land rights advocate and two land titling experts.

Our review of partition actions in seven Georgia counties (Chatham, Dougherty, Washington, Twiggs, Greene, Taliaferro, Wilkinson) identified approximately 20 partition actions over the 30-year period January 1, 1990 to December 31, 2020. It should be noted that we found a few hundred court orders declaring that the report of a Special Master (a licensed attorney appointed directly by the court to carry out some action, often investigative in nature) had been accepted, but the report of the Special Master was not included or linked in the database. The majority of these court orders were in Chatham County. It is likely that some of these reports involved partition actions, but our methodology and timeline for this project did not allow us to further examine these cases.

We also identified several quiet title actions, title consolidations, and other heirs' property cases that were common or noteworthy, which provide relevant context for the project. However, these other records or actions were not searched systematically or exhaustively. The low number of partition actions found in Georgia is consistent with Mitchell's (2005) study of Halifax County, NC and Dyer's (2008) look at this issue in Alabama, although again, our Georgia search was limited to selected counties and should not be generalized to the entire state.

Using the 20 cases obtained from the GSCCCA, we calculated that there were on average 0.78 partition cases brought per year among the selected counties before the

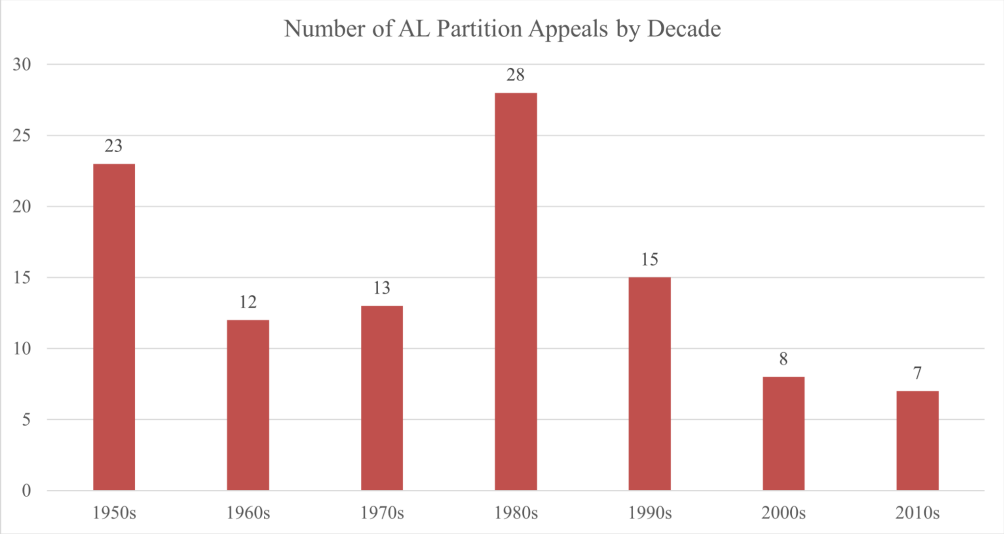
UPHPA was passed in 2012. We found two partition cases that occurred after the UPHPA (2013-2020) was passed in Georgia, making the rate drop to 0.25 partition cases per year. Inversely, before the UPHPA (2012), 55 percent of the total partition cases we found resulted in a sale, while 100 percent of the cases (two) that we found from after Georgia passed the UPHPA resulted in a sale.

Alabama court records

Again, the intent of the UPHPA is to counteract abusive land sales. One way to assess this is to examine the partition sales rate (partition sales/total partition actions) in the period before and after the UPHPA was adopted in the respective states. Our search for partition actions in Westlaw yielded 106 cases on appeal in Alabama from 1950 to 2020. Only three of the cases occurred after the UPHPA's passage in Alabama (2014). Further, none of the post-UPHPA opinions reference the UPHPA, nor do the courts rely on any of its provisions to make these decisions. However, we can make some preliminary observations. In Alabama, from 2015 to 2020 there were on average 0.5 partition cases brought on appeal, down from a rate of 1.58 partition appeals per year from 1950 to 2014. However, it should be noted that from 2000-2014 (the 15 years preceding the UPHPA's passage in Alabama), the rate of partition appeals was by that time down to 1.0 partition appeals annually, which suggests the UPHPA may not be the sole cause of the reduction in partition appeals.

Thirty-three percent (33 percent) of post-UPHPA partition appeals ended in a judicial sale (one out of three cases), compared to roughly 52 percent of pre-UPHPA partition appeals (~54/103). While the dataset for post-UPHPA cases is fairly small (three cases), these data may suggest that the UPHPA has contributed to fewer judicial sales of jointly owned land in Alabama, or at least may have resulted in more firm settlements of partition suits at the trial level, removing the likelihood of appeal for those trial judgments. More research should be done to ensure these results are truly beneficial to the communities the UPHPA aims to help.

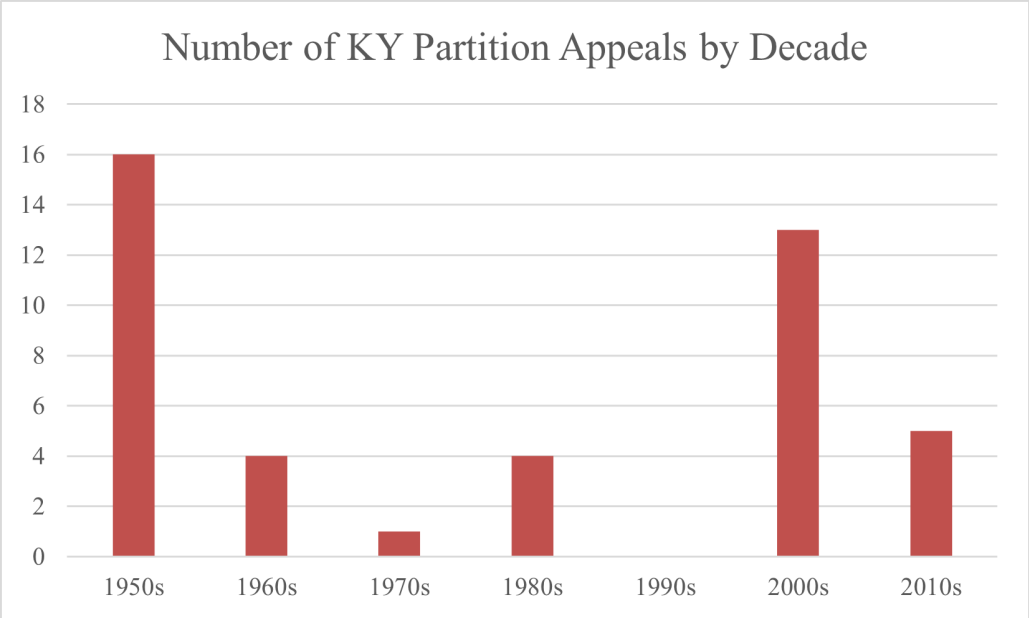
Figure 1. Number of Alabama Partition Appeals by Decade



As indicated, Alabama has had a buyout option since 1979 (AL Code § 35-6-100), predating the UPHPA. The pre-existing Alabama option allowed both petitioning and non-petitioning parties the chance to buy the interests of those bringing a sale, which differs from the UPHPA buyout provision, where this option accrues only to defendants in these cases, i.e., those not initiating a partition sale. The 1979 buyout option for both plaintiffs and defendants may be one reason why there was an increase in the number of partition appeals after the law was enacted. It is unclear from the text of the opinions if this is directly related, although 33 percent of the post-1979 opinions reference the buyout statute. More research should be conducted to uncover 1) whether the "boom" in partition actions in Alabama in the 1980s is directly correlated with the passage of AL Code § 35-6-100 (1975) and 2) how the UPHPA meaningfully differs from and improves upon this legislation and other pre-UPHPA buyout options so that the UPHPA is designed to discourage partition sales.

Kentucky Court Records

Figure 2. Number of Kentucky Partition Appeals by Decade



Kentucky had 43 partition cases in WestLaw, significantly fewer than Alabama. This may be due to the phenomenon we have heard from interviewees in Kentucky where extractive industries (coal, oil, gas, etc.) tend to lease rather than partition land to gain access to subsurface minerals. Alongside this, Kentucky may have fewer partition actions on appeal because attorneys there are purportedly reluctant to oppose large extractive companies. Additionally, we noted that Kentucky appellate opinions were more likely to be unpublished (meaning they are official court rulings but do not have precedential effect on future court proceedings) compared to Alabama opinions. Without further research it is difficult to say if this phenomenon has any effect on heirs' property partitions in Kentucky, but could possibly hinder the state's lower courts' ability to be consistent in applying partition law. This would be consistent with another observation made in our research: that Kentucky courts have different understandings regarding presumptions made in partition suits. In Alabama, Georgia, and some of Kentucky, land is presumed to be divisible, and it is generally the burden of the one bringing the request for sale to prove it cannot be equitably divided (and thus should be sold). However, in some Kentucky courts, the presumption is backwards, such that indivisibility is presumed, and it is up to the one who seeks to prevent the sale or to partition in kind to show that the land can be equitably divided.

In both Kentucky and Alabama, the majority of included partition actions were initially brought by a member or members of the family that primarily owned the land

(74 percent of Alabama cases and 83 percent of Kentucky cases). However, in Kentucky, 10 percent of partition cases on appeal were brought by companies or corporations (often mining operations) — compared to only four percent of Alabama cases being brought by companies. Considering that the purpose of the UPHPA (and Alabama's 1975 buyout option) is to prevent third parties from taking land from families, it seems clear that the UPHPA is not enough on its own to fix the issue of land loss through heirs' property, since it can still happen without a large corporation being involved. Though, the UPHPA may also be acting as a deterrent, in that we may be seeing more partition actions brought by companies in Alabama today were it not for the UPHPA. If so, this highlights the importance of legislation like the UPHPA in places like Kentucky.

In both states, most complainants were requesting partition sales rather than partition in kind (76 percent in Alabama and 68 percent in Kentucky). However, in Kentucky, a much higher percentage of complainants than in Alabama (24 percent in Kentucky but six percent in Alabama) requested only partition in kind.

When parcel size was listed in Kentucky opinions, which was rare, the parcels were often under 100 acres, while most Alabama parcels were in the hundreds of acres in size. Court data does not, and would not be expected to, illuminate why this is the case, though this factor may be interesting and important for future heir property research. Combining the parcel size difference and disparity between preferences for sale or partition in kind, the data may suggest that people in Alabama are shifting away from very large, primarily agricultural or timber land and have less interest than those in Kentucky in staying tied to family land. This could imply that the UPHPA might be more utilized and welcome in Kentucky, since more people seem to be interested in maintaining familial land ownership. While not the focus of this study, further research on the locations of heirs' property in different regions of Kentucky with differing economies and histories of land loss would likely be fruitful.

Since we are using appellate data gathered from WestLaw, there are certain important limitations to our findings. First, by only looking at cases on appeal, we inherently shine more light on people and families who are 1) in more contentious situations, which may make the problem of land loss appear worse than it is, and 2) financially able to acquire counsel and with enough time to litigate — and indeed prolong — a dispute. Thus it is likely with this analysis we missed a great deal of heirs' property owners who were not able or willing to take their cases to the appeals stage, which is generally the lower-income and underprivileged group of people we are interested in and which the UPHPA is designed to assist. Additionally, appellate cases often have less detail in them surrounding the parcel of land itself, often omitting even basic information such as acreage. Finally, it is a long-standing judicial practice that

appellate courts give deference to trial courts' decisions, assuming the judge acted reasonably and decided fairly, unless the evidence is clearly to the contrary. This makes using exclusively appellate data difficult since the appellate court will usually not go into the minute details of the trial court's decision to order partition, sale, etc. except to say that the trial court's decision was not "clearly erroneous" or an "abuse of discretion."

Attorney interviews

We spoke with attorneys affiliated with both for-profit and nonprofit organizations in both Alabama and Georgia. All interviews were conducted remotely using either a teleconference platform or telephone. Attorneys interviewed in Georgia worked mostly with clients who either lived in rural areas of the state or owned land in these areas. In some cases clients lived in and around metro Atlanta, but their properties were typically in rural areas of the state's Piedmont or Coastal Plain. Alabama attorneys were located in rural counties in the middle of the state and mostly served clients from these areas. Two Georgia attorneys mentioned that women are more likely to seek resolution for title issues. A metro Atlanta attorney also remarked on the relatively high number of retired, middle-income, educated Black women seeking services with the attorney's firm, and another south Georgia attorney also mentioned that more clients seeking these services were women, although not necessarily well-off. Typically, these families own smaller parcels ranging from 10 to several hundred acres. In both Alabama and Georgia, virtually all clients with heirs' property cases were African American although attorneys representing not-for-profit organizations said that a small number of their clients were white. Most of the attorneys we spoke with had been addressing heirs' property cases for several decades. Half of the attorneys had filed at least one partition action, but the number of such actions typically ranged from one to three. Just two attorneys had filed multiple partition actions.

In Kentucky, we interviewed five attorneys with expertise in Appalachia. Three are practicing attorneys with nonprofit organizations. One is in private practice but has done extensive pro bono work for nonprofits. One is a law professor not based in Kentucky but is an expert on rural development and Appalachia. A majority of the work done by the four Kentucky attorneys we interviewed has involved environmental law in Appalachia, especially related to coal, oil, and gas extraction. Two of these attorneys mentioned the historical exploitation of heirs' property owners by coal company "land men," trying to obtain land to mine, but in total, the Kentucky interviewees had encountered three partition actions in their careers, which range from 15 to 40 years. Each of these partition action cases described by the attorneys, however, had been brought by coal companies against heirs' property-owning families.

Attorney Opinions on UPHPA Efficacy

The attorneys we interviewed had varying levels of familiarity with the UPHPA, ranging from those who were aware of it but had not litigated a case involving the law to those who had either used it in a case or had strong opinions about its impact on partition law. Nearly all attorneys stressed that the UPHPA has been a necessary first step in redressing immediate problems encountered by heirs' property owners contending with partition suits from land predatory speculators/developers. That the law defined heirs' property was thought to be a great advance in property law and efforts to advocate for limited resource land owners. According to one respondent: "I think that the legislative definition within the UPHPA gave an actual starting point for ensuring that future farm bills will have a place for heir property owners…. So now we have some language that we can use in our advocacy efforts to address some of the other issues beyond partition sales…." (GA6) — and this definition has the added benefit of defining both the rights and responsibilities of the tenants involved (GA6).

In terms of the law's fundamental aim (i.e., discouraging predatory partition actions), an Alabama attorney who had represented clients who had brought such suits, believed strongly that the law had been extremely effective. The attorney handled 15 to 20 such cases in a typical 10-year period before the Act was adopted, but this part of the firm's business had declined notably since the law went into effect in Alabama:

> Let me let me go back 15, 20 years ago, I would have a lot of people come in, and say, you know, I just bought out one or two heirs of this 100-acre parcel--I'm gonna force it to be sold and buy everybody out. And a lot of people were doing that. There was a lot of interest in that. But with this new Act, it looks to me that that has really slowed down, because it's really hard to maybe to buy or force a family to sell, if only one or two of 'em want to do that…. Because under this new Act, it's so hard to get it to the point where the judge says it's gotta be sold on the courthouse steps….These speculators, real estate agents, other people who are looking to make a quick buck--I'm not seeing them going and trying to find a brother or sister who lives in another state and say, hey, I want to buy you're interested in your farm anymore. So I really think it's done well in addressing family farms type stuff from being sold as much as they used to be (Interview AL2).

The same attorney also described what he believed to be a successful outcome of the UPHPA's application to a partition action handled by the attorney's firm. In this instance, there were 35 heirs, and 25 of them wanted the roughly 100 acres of land to be sold.[5] The property was advertised in a local paper and sold at a courthouse sale, but several people bid on the property which raised its price to approximate market value.

The property sold for $1,500 per acre, yielding approximately $150,000. Divided among 35 family members, each would receive $4,285.71 before court and attorney costs, which suggests that the individual takeaway was not substantial. Another Alabama attorney felt strongly that one of the shortcomings of the UPHPA was the fact that the law allows attorney fees for both the plaintiff and defendants to be subtracted from proceeds of land sales before these are distributed to the litigants. The attorney remarked that in instances where the court ruled in favor of the plaintiff, this stipulation was especially insulting to the defendants because they essentially had to pay costs for someone who was instrumental in divesting them of their property and heritage (AL3).

One of the strongest critiques of the legislation is that it does not alter tenancy in common as the default for intestacy ownership. That is, real property continues to be classed as heirs' property when someone dies without a will, and this perpetuates tenuous ownership, which again diminishes owners' ability to actualize wealth. Although reduced, the specter of partition remains. Several attorneys also questioned whether the law's buyout option could potentially alienate families from land. They pointed out that in cases where family members initiate a partition action against other blood relatives, non-petitioning family members can exercise the right to purchase the interests of the petitioning relative, possibly resulting in the loss of land for those who initiated the suit in an effort to consolidate and secure their land interests. A metro Atlanta attorney representing clients with rural land proceeded carefully in applying the law to avoid statutory partition by sale complaints: "I'll ask for a partition in kind, but I will not ask for a statutory partition in an heirs' property action….there's parts of the law that I'll use that are applicable, but there's parts of it that I'll stay away from too because they have a double edged sword, we'll call it…." (GA10). However, an Alabama attorney pointed out the financial burdens placed on families when attempting physical or equitable partition:

> The new statute, really, to me doesn't look like it's an improvement over the previous law….I mean, in terms of the trouble it's going to be in the expense and the time it's going to take, looks like it'll be about the same--it does give some additional protection to the heirs and sorta spells out the right of the of the family members to buy the property if they wish to. But I can't really tell where it's an improvement over the previous law, frankly…. You know, in theory, it all sounds good. But it's just totally unworkable, due to the expense of it. And plus, you know, let's say, let's say you're doing a partition where you're actually going to divide the land. Okay, not only do you have the legal expenses, but somebody has got to hire a surveyor, to certify this property into ever, how many parcels of equal value or equal acreage. And so if everybody is getting a piece of land, there's no pool of money with which to pay these expenses. So it's got to come

> out of somebody's pocket. So, who's gonna pay that? If the person initiating the lawsuit has to pay all that, then, you know, it's not worth it for them.
>
> When the partition of heirs Act came out, I was really excited because I thought, okay, somebody came out with a way to simplify this process to really help these families. And then when I started reading through it, I was a little disappointed because it looked like it was still extremely complicated. It gives extra rights to heirs in this situation, but I thought they really already had all those rights, frankly.[6] But, um, so I didn't see that it was much of an improvement for the situations that we have, that confront us on a weekly basis….So I would say that the impact on the ground to what we deal with on a day-to-day basis is very marginal. Because usually what we're dealing with is smaller tracts that really don't have enough value to make it feasible to have a lawsuit (Interview AL1).

Along similar lines, a Georgia attorney opined:

> I will say that the partition action, even with the new law here in Georgia, it is still fraught. And I've found that it is not too helpful for the people who call me because the people who call me, they are proactive, they usually have money to spend to, you know, because they are usually the ones that have been paying the taxes all this time. And they want to get it resolved. And I am always reluctant to suggest file a partition action because with the new law, there's an inherent risk...and under the Georgia partition statute, whenever someone is dragged into court, they then have the right to buy out the person who dragged them into court…. That's what we want it to happen for people who were dragged into court by the big bad developer...and so that's the result that you want, you want the family to be able to huddle up, and, you know, pool their resources together, and buy the person out…. Well, that doesn't work if the plaintiff is a cousin…. And so, if, if you're wanting to sort of take charge, and be proactive, and like, fix it for once, and for all, I have to tell you, you know, what, you know, if we follow this action, then the law gives the defendants your siblings, cousins, aunts, whoever, they can then buy you out. And so, so you have, so they have to decide, do I really want to drag my family in the court? And not only that, I could lose, you know, whatever, you know, whatever position I have, now I can lose it….. I'm very reluctant to advise people to do partition actions, as opposed to quiet titles for that reason (GA2).

But a seasoned attorney pointed out that if used defensively, the UPHPA's buyout option could be used by any co-heir to consolidate that co-heir's interests. Rather than initiating a case where the property would likely be sold, the co-heir wishing to clear

title should wait for another heir to file suit and then buy out the "moving" party. Still, another attorney relayed that this tactic could be frustrating for the proactive client who wishes to move quickly.

Most respondents pointed out that litigation may be a moot point considering that legal costs prevent moderate and low-wealth families from pursuing legal action. Before engaging with clients on such cases, for-profit attorneys consider the cost/benefit ratio of taking on a particular case. Attorneys are typically paid a percentage of the sale price if the land is sold, but if the land value is too low to make it cost effective for the attorney to spend the time on the case, the attorney may well refuse the case, which stalls the family's process. Families also make a similar kind of determination in deciding whether to pursue a partition action. If the land is to be partitioned, family members have to pay for the legal fees and court costs. If no heir(s) has the resources or a large enough interest in the land to make it a good investment, then it is likely the family would not pursue partition. Preparing for a partition case is extremely time consuming for the attorney handling the case, and these expenses will of course be passed to the client. One attorney estimated roughly $10,000 for the most routine partition action. This attorney commented that families have come to his office seeking partition, but when he explains the costs, these families have not been able to follow through. All attorneys we spoke with sought to clarify titles, first, outside of courts if possible, then possibly filing quiet title actions, and partition actions as a last resort, if at all.

Another aspect of UPHPA efficacy has to do with both expert and lay knowledge of the UPHPA. Our attorneys emphasized that the law is only effective to the extent that it is recognized and applied by courts. The legislation specifies that it is the responsibility of courts to bring the law to bear on a given case thought to involve heirs' property. It was crafted in this manner to avoid saddling lay persons with the responsibility of being knowledgeable about partition law—so the act contains an inherent safeguard, activated on behalf of the litigants who might not even be aware of the enhanced set of rights conveyed by the act. This protection is especially important in cases where litigants are not represented by counsel. Again, a court must first determine whether the case fits within the definition of heirs' property, as defined by the law, and if it does, then the law's tenets apply. However, some heirs' property rights advocates have expressed concern that judges may not be conversant with the law because of the paucity of partition cases, generally. While courts are responsible for knowing and applying the law, practically speaking, attorneys for the respective parties point out to judges the relevant legislation in the various documents filed with a court. If a court fails to apply what the attorney believes is the relevant law, in cases where families have attorneys, that attorney could bring the omission to the court. One respondent added

that although courts must seek market rate prices for land sales, the law allows local judges a great amount of discretion in terms of allowing or confining the partition sale process (GA2). Another attorney pointed to the need to educate attorneys, in terms of the way that heirs' property can be inadvertently created by wills, for instance when someone leaves real property to their children, collectively. Tenancy in common can also be created via divorce decrees (GA7).

Unanimously, the attorneys interviewed in Kentucky believe that the UPHPA could provide important protections for families against forced partitions and loss of family land, although one attorney did note that partition actions are very infrequent and, for this reason, the law might not see widespread use (KY2). One attorney, speaking about a partition case filed by a coal company against a family, said that the UPHPA, "would be helpful because it would prevent the outcome that we were most fearing, which was basically a bidding war between our clients, who really did not have a lot of money and the coal company, which had...a lot more resources" (KY1).

All of the attorneys we spoke with about Kentucky highlighted the past and present "fraught relationship between surface and mineral owners (KY4)." One attorney drew a connection between the very low frequency of partition actions and a common form of agreement between landowners and oil and gas companies: leasing (KY5). Multiple Kentucky attorneys raised the issue that it only takes the permission of one heir to allow a coal, oil, or gas company to lease the mineral rights of property owned in heirship, which can easily result in exploitation of the land without the consent of all, or even a majority, of the heirs. Additional protections against this manner of resource extraction in Kentucky heirs' parcels were strongly urged by interviewees, especially in cases where companies elect to strip-mine for coal on the property. Strip-mining, one attorney suggested, was tantamount to "waste" or laying waste to the entire property, though Kentucky case law has not defined strip-mining as such (KY4). Furthermore, split estates, in which the surface and mineral rights of a piece of land are owned separately, negate the need for forced partition actions by mineral interests.

Attorney Recommendations for UPHPA and Property Law Revision

When asked about recommendations for modifying the UPHPA, most of those we talked with believed that improving the UPHPA was less important than halting or limiting tenancy in common as the normative outcome of intestate succession. They recognized that the legislation addressing partition actions is just one way of addressing heirs' property deficiencies and that it was not intended to, nor does it solve the larger problem of the lack of estate planning. As one Alabama respondent commented: "What I consider the UPHPA to be is like, I'll just be perfectly honest, it's a band-aid...imagine like a gushing wound and you're putting a band-aid on it. That's basically what the UPHPA is. It's a great law, but it's [heirs' property] a huge problem, [and the UPHPA]

can't solve everything" (AL3). Another attorney also used a first aid metaphor to describe needed reforms: "...the default being tenancy in common, is a difficult hurdle to overcome if estate planning isn't implemented. And so it's kind of like, you know, we're talking right now about a suture [UPHPA], but what we need to be talking about is not running with the scissors. And so I think that for me, not running with the scissors is the estate planning" (GA6). This attorney suggested that legislation analogous to the 1983 Indian Land Consolidation Act is needed to consolidate fractionated, Black land interests. The attorney further stressed that estate planning and education programs need to be sufficiently funded so that these services are not interrupted but also cautioned that *carte blanche* funding for heirs' property redress could lead to abusive solicitations on the part of attorneys, especially from for-profit firms. The attorney pointed to the abuses of funding seen in the 1987 *Pigford vs. Glickman* settlement where attorneys ostensibly offered their services to affected families but in actuality further exploited their plight. To avoid this, the attorney suggested that intermediary organizations act as a referral clearinghouse to vet and refer clients to attorneys. There was also the recognition that attorneys are prohibited ethically from soliciting services and that their heirs' property clearance work has to be couched as technical rather than legal assistance.

One attorney suggested legislative reform aimed at addressing the straits of smaller, rural landowners, essentially allowing heirs who have paid property taxes for at least ten years to claim adverse possession by filing and publishing an affidavit of heirship. There was also the suggestion that UPHPA definitions be modified so that the blood kin could not buy out the petitioning family member. Finally, some attorneys also felt strongly that the problems of heirs' property ownership are well understood and that fewer resources should be devoted to research, relative to education and estate planning assistance.

Similar to Georgia and Alabama attorneys, Kentucky attorneys see the problems associated with heirs' property as "a lot bigger than partition actions" (KY2). One Kentucky attorney felt that a positive impact could be made for heirs' property owners if a *pro bono* legal services organization existed to help clear titles. This interviewee also pointed out that education of heirs would be a crucial component of such an organization, saying, "...people, I think, know that they own property with their cousins...but they don't know the ramifications of that. They have no idea of the dangers of that kind of ownership. They have no idea that it could be sold out from under them, for example" (KY2). Another Kentucky attorney suggested, either as a modification to the UPHPA or a separate piece of legislation, that a more equitable arrangement be put in place to protect heirs and their property with respect to mineral leasing agreements,

since it takes the consent of only one heir to agree to lease mineral rights on a piece of property (KY5).

Related to additional legislative reform addressing broader problems associated with heirs' property ownership, the Uniform Law Commission (ULC) accepted Professor Thomas Mitchell's proposal in 2021, requesting the ULC to establish a drafting committee to draft a uniform act (model state statute) that would make changes to tenancy-in-common ownership default rules (Thomas Mitchell, personal communication). The so-called default rules are rules a state establishes if someone owning real property dies leaving two or more heirs and either dies without a will or dies leaving a will that does not get probated in a timely manner. Heirs' property is a subset of tenancy-in-common ownership governed by these default rules. These are rules that tenants in common, that have access to competent lawyers, would never accept as a whole, because they make the ownership very unstable and do not allocate rights and responsibilities in connection with the property in a rational way.

Under current laws, unanimous agreement from all co-tenants is needed to engage in substantial matters implicating the property, including management and use issues. Existing laws effectively grant any one co-tenant veto rights, even if that co-tenant only owns a very small fractional interest in the property. Professor Mitchell describes this scenario as "gridlocked ownership." For example, unanimous agreement is needed to use the entire property as security for a loan (a common way that real property owners are able to leverage wealth) or to change the legal status of such properties to more stable and rational forms such as a trust, limited liability company, or a tenancy-in-common agreement.[7] Recognizing these challenges, Professor Mitchell proposed that the ULC consider establishing legislation that would allow co-heirs to make substantive administrative decisions or to engage in certain uses without unanimous approval from all co-heirs but instead would allow for more *democratic* management by allowing decisions to be made with majority or supermajority support among the group of tenants in common. Such a law would provide families with much more flexibility in managing and using property, particularly in cases where co-heirs cannot be located or where a small minority of owners hold intractable positions. The urgency of this legislation in redressing the larger suite of heirs' property problems is indicated by the fact that in 2021 the ULC accepted approximately five percent of submitted proposals.

This legislation would address stagnancy in heirs' property administration; however, as the Kentucky attorneys point out, unilateral decision making related to leases for mineral exploration is highly problematic in Appalachia. This is an important issue that could also be taken up in the proposed legislation.

Attorney Survey

The survey sent to the State Bar of Georgia Real Property listserv (800 potential recipients) received nine responses, which is a much lower number than we had hoped for. Of the attorneys who responded, 77.8 percent were familiar with partition actions involving heirs' property, and 66.7 percent had litigated a partition case involving heirs' property. When asked about familiarity with the UPHPA, 44.4 percent reported that they were reasonably familiar, 33.3 percent were somewhat but not very familiar, and 22.2 percent were not at all familiar with the act. Of the five attorneys who had some familiarity with the UPHPA, 60 percent feel that the UPHPA does not address partition problems at all, while the other 40 percent believe it provides some improvements.

Conclusion

In the court records searches completed in Georgia, we found very few partition actions in our selected counties. This decreases the robustness of our initial plan to compare the rate of partition actions before and after adoption of the UPHPA. However, designing a methodology and gathering these records has spurred new insights and questions. For instance, formulating a systematic methodology to find documentation of partition actions at the county level has been a challenge. In Georgia, we learned about the Georgia Superior Court Clerks' Cooperative Authority (GSCCCA) database which does offer a compilation of court records for every county beginning in 1990, although it requires a paid subscription. Our team of researchers needed the assistance of an attorney to determine which documents to search to find any partition actions that took place in our counties. This search process was time consuming because the database requires the user to search in three-month intervals and look at the official documents associated with every search result. That said, the GSCCCA records allowed us to search county-level documents by keyword. Neither Alabama nor Kentucky has a comparable system. The findings from this portion of our project raise important questions about accessibility of court records for both the public and professionals attempting to identify temporal or spatial patterns in partition actions.

The heirs' property frequency estimates completed in Alabama, Georgia, and Kentucky revealed interesting patterns that may correlate with other variables indicative of vulnerability. In the course of our study, we examined statistical associations between county-level heirs' property estimates and indicators of race, class, rural status, and histories of extraction, but much more contextual research of this kind can be pursued. We believe our frequency estimates are conservative due to the search terms we used and limitations in the data. Our continuing inquiries into Property Valuation Administrator protocols in Kentucky may help us better understand counties' capacity to

account for heirs' property, which would not only help us assess the accuracy of our estimates but also formulate recommendations related to data standardization.

Attorney interviews in Alabama, Georgia, and Kentucky illuminated many nuances related to heirs' property and the UPHPA. Two of our preliminary findings, the low number of partition actions in counties and regions of interest and the hesitancy of heirs' property family interviewees to speak openly of sensitive legal and interpersonal issues, are obstacles we could face in our efforts to incorporate grounded, experiential perspectives from individuals and families into our final research findings and recommendations.

Recommendations

At least seven recommendations are emerging from this work.

1. Expansion of information and public funding to assist families with estate planning and title clearance. Some attorneys we interviewed believe that good progress on this front is being made in Deep South states such as Alabama, South Carolina, Georgia, and Alabama — due in part to the efforts of organizations like the Federation of Southern Cooperatives/Land Assistance Fund, the Center for Heirs' Property Preservation, and the Georgia Heirs Property Law Center. However, the existence of heirs' property outside of the South was raised by one attorney. There is little or no information about reduced or no fee legal service providers in Appalachia or elsewhere outside the South. Public funding is needed to provide these resources although again, it was suggested that such funding be dispersed by reputable land rights advocacy organizations to vetted attorneys.

2. Attorney and court education. Roughly half of the attorneys we interviewed have not filed a case under the UPHPA and believe that it is not widely known among attorneys in their states. Further, although the UPHPA states that it is the responsibility of the courts to determine whether a case falls under the UPHPA, our attorney interviews indicated that judges may not know about this law unless an attorney introduces it in a case, or unless a judge has presided over cases that have invoked it previously. Again, the above-named nonprofit organizations provide education focused on heirs' property and land retention.

3. Legislative reform**.** As a practical solution to title clearance, one attorney suggested that local level tax law be revised to allow the co-heirs who pay taxes to obtain adverse possession of the property. Also, the possible purchase of heirs' property titles modelled on the Indian Land Conservation Act was proposed as one way of addressing the larger problem of existing, fractionated land titles. Congress passed Indian Land Consolidation

Acts in 1983, 1984, and 2000 as one way to help rectify the abysmal failings of the 1897 Dawes Act, which instigated heirs' property or fractionated land titles held by Native individuals (Shoemaker 2003). The Consolidation Acts authorize the federal government to purchase or "buy back" fractionated land titles from Native allottees in exchange for consolidated tribal acreage (U.S. Department of the Interior 2012). However, a challenge to these federal buy back initiatives has been bureaucratic encumbrance. The 2010 Claims Restoration Act also authorizes the U.S. Department of the Interior to use a $1.9 billion Trust Land Consolidation Fund to purchase fractional land interests from Native Americans and place them into tribal trusts (Indian Land Tenure Foundation 2015, U.S. Department of the Interior 2012).

4. Greater data transparency, standardization, and accessibility. One way researchers quantify the amount of heirs' property in a given county is to consult parcel data maintained by the tax assessor (or property valuation administrator in Kentucky), which often contains an indication of heirs' property within the owner name field. However, collection and maintenance of these parcel records are not standardized across counties or states, and the records are often not accessible online. When they are available online, there may be costs for viewing or downloading. We have also come up against numerous challenges in our efforts to systematically find records of partition actions in Georgia, Alabama, and Kentucky. Assessing the efficacy of the UPHPA and better understanding the history and patterns of partition actions would be greatly aided if county-level court records were consistently recorded, digitized, and made available in a user-friendly online database.

5. Census of Agriculture collection of data on heirs' property ownership. As stated, our use of aggregated data to estimate the number of heirs' parcels revealed inadequacies in data quality—in terms of the consistency and uniformity of parcels classed as heirs' parcels and completeness of complementary data on land values and acreage. Given that sound policy must be based on an accurate accounting of the extent of these parcels, these data should be collected in a uniform manner, for instance by the Department of Commerce (Decennial Census) or U.S. Department of Agriculture (Census of Agriculture). One attorney expressed reservations about African American landowners providing data on heirs' property ownership because of their distrust of the federal government. We would counter that any information individuals provide would be protected by extant regulations covering all data collected by censuses.

6. Long-term monitoring of heirs' property ownership. The last comprehensive heirs' property assessment was published in 1980 by the Emergency Land Fund (Emergency Land Fund 1980). Since then, there has been no in-depth, concerted effort to estimate the number of heirs' property parcels in the South or elsewhere in the U.S.[8] Yet, as many

have argued, real property ownership is crucial in Americans' ability to create wealth and social stability—and anything that threatens that ability should be carefully monitored. One attorney interviewed for this project described people's homes and the land it rests on as non-fungible, meaning the bonds that people have to their homes are distinct from their relationships with other types of possessions. Real property conveys identity in a way that other goods or property do not. Given the threats posed by heirs' property, we propose that long-term monitoring of heirs' property and related forms of ownership be either undertaken or supported by the federal government. The monitoring would be analogous to the Long-Term Ecological Research programs conducted in various places across the country which evaluate changes in key ecological conditions over time. Longitudinal monitoring of tenancies in common would allow policymakers to see trends in this form of ownership, evaluate efforts to mitigate it, and correlate title clearance programs with changes in local level revenue capture. Long-term monitoring would look at various facets of heirs' property ownership, not just the number of heirs' parcels; these would include title clearance process, family dynamics after title clearance, and use of cleared titles to stabilize or build wealth. For such an evaluation to be successful, other improvements such as the standardization of heirs' property indicators must be in place.

7. Further research that contextualizes heirs' property ownership patterns within wide patterns of regional development: This project has allowed us to consider the broader social and economic context of heirs' property ownership in both the Black Belt and Central Appalachia. Appalachian economies based on resource extraction have largely shifted to service economies (e.g., outdoor recreation, tourism), and there is growing interest by states and corporations in purchasing land in Appalachia for carbon offsets. Also, the steady migration of people to southern cities and suburban areas across the South has had the effect of converting timber and cropland into suburban developments and changed the way timber companies operate on the ground. As well, the surplus of timber across the South has lowered prices for non-industrial forestland owners into the foreseeable future. Yet, programs like the Sustainable Forestry and Land Retention Program incentivizes Black Belt African American landowners to plant forests, arguing that forest markets are an untapped revenue source for Black landowners. The program includes legal assistance for clearing heirs' property titles for participants. In both the Black Belt and Appalachia, these changes compel an examination of how low-wealth landowners such as those with heirs' property, will fit into these shifting economies. An extension of the current investigation is needed to examine these trends.

References

Appalachian Land Ownership Task Force. 1983. *Who Owns Appalachia? Landownership and Its Impact*. University of Kentucky Press.

Baab, C. H. 2011. "Heir Property: A Constraint for Planners, an Opportunity for Communities: The Legacy of Steve Larkin." *Planning and Environmental Law* 63(11):3-11.

Bailey, Conner, Becky Barlow, and Janice Dyer. 2019. "Practical Constraints to Timber Management among African American Owners of Heir Property." *Landscape and Urban Planning* 188:180-187.

Billings, Dwight B., Mary Beth Pudup, and Altina L. Waller. 1995. "Taking Exception with Exceptionalism: The Emergence and Transformation of Historical Studies of Appalachia." Pp. 1-25 in *Appalachia in the Making: The Mountain South in the Nineteenth Century*, edited by M. B. Pudup, D. B. Billings, and A. L. Waller. University of North Carolina Press.

Casagrande Jr., J.G. 1986. "Acquiring Property through Forced Partitioning Sales: Abuses and Remedies." *Boston College Law Review* 27(4):755-83.

Chandler, April B. 2005. "The Loss in my Bones": Protecting African American Heirs' Property with the Public Use Doctrine." *William & Mary Bill of Rights Journal* 14(1):387-414.

Chastain Baker, Crystal, and Shunta Vincent McBride. 2013. "A Primer on Heirs Property and Georgia's New Uniform Partition of Heirs Property Act." *Georgia Bar Journal* 19(2):16-22.

Craig-Taylor, Phyliss. 2000. "Through a Colored Looking Glass: A View of Judicial Partition, Family Land Loss, and Rule Setting." *Washington University Law Quarterly* 78(2):737-788.

Daniel, Pete. 2013. *Dispossession: Discrimination Against African American Farmers in the Age of Civil Rights*. The University of North Carolina Press.

Deaton, B. James. 2007. "Intestate Succession and Heir Property: Implications for Future Research on the Persistence of Poverty in Central Appalachia." *Journal of Economic Issues* 41(4):927-942.

Donald, David Herbert. 1996. *Lincoln*. Touchstone.

Dunaway, Wilma A. 1995. "Speculators and Settler Capitalists: Unthinking the Mythology about Appalachian Landholding, 1790-1860." Pp. 50-75 in *Appalachia in the Making: The Mountain South in the Nineteenth Century*, edited by M. B. Pudup, D. B. Billings, and A. L. Waller. University of North Carolina Press.

Dyer, Janice F. 2008. "Statutory Impacts of Heir Property: An Examination of Appellate and Macon County Court Cases." Paper presented at the 66th Annual Professional Agricultural Workers Conference, Tuskegee University.

Eller, Ronald D. 1982. *Miners, Millhands, and Mountaineers: Industrialization of the Appalachian South, 1880-1930*. University of Tennessee Press.

Emergency Land Fund. 1980. *The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States*. http://hdl.handle.net/2027/coo.31924067935720.

Gaventa, John, and Bill Horton. 1984. "Land Ownership and Land Reform in Appalachia." Pp. 233-244 in *Land Reform, American Style*, edited by C. C. Geisler and F. J. Popper. Rowman & Littlefield.

Halperin, Rhoda H. 1990. *The Livelihood of Kin: Making Ends Meet "The Kentucky Way."* University of Texas Press.

Hufford, Mary 1997. *American Ginseng and the Idea of the Commons*. Library of Congress. https://www.loc.gov/collections/folklife-and-landscape-in-southern-west-virginia/articles-and-essays/american-ginseng-and-the-idea-of-the-commons/

Indian Land Tenure Foundation. 2015. Annual Report: Serving American Indian nations and people in the recovery and control of their rightful homelands. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://iltf.org/wp-content/uploads/2016/11/AnnualReport_2015_final_compressed.pdf. Accessed April 3, 2024.

Lewan, Todd, and Delores Barclay. 2001. "Torn from the Land: Black Americans' Farmland Taken through Cheating, Intimidation, and Even Murder." Associated Press.

Lewis, Ronald L. 1987. *Black Coal Miners: Race, Class, and Community Conflict 1780-1980*. University Press of Kentucky.

Linklater, Andro. 2013 *Owning the Earth: The Transforming History of Land Ownership*. Bloomsbury.

Mitchell, Thomas W. 2005. "Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism." *Wisconsin Law Review* 2005(2):557-615.

Mitchell, Thomas W. 2014. "Reforming Property Law to Address Devastating Land Loss." *Alabama Law Review* 66(1):1-61.

Mitchell, Thomas W. 2019. "Historic Partition Law Reform: A Game Changer for Heirs' Property Owners. Pp. 65-82 in *Heirs' Property and Land Fractionation: Fostering Stable Ownership to Prevent Land Loss and Abandonment*, edited by C. Johnson Gaither, A. Carpenter, T. Lloyd McCurty, and S. Toering. Gen. Tech. Rep. SRS-244. U.S. Department of Agriculture Forest Service, Southern Research Station.

Rivers, Faith R. 2006. "Restoring the Bundle of Rights: Preserving Heirs' Property in Coastal South Carolina." Article presented at the American Bar Association's 17th Annual Estate Planning Symposium, San Diego, CA.

Shoemaker, Jessica A. 2003. "Like Snow in the Spring Time: Allotment, Fractionation, and the Indian Land Tenure Problem." *Wisconsin Law Review* 2003(4):729-788.

Thomson, Ryan. 2021. "Quantifying Heirs' Property Across the Deep South: A Geospatial Approach." Unpublished report available from the author.

Turner, William H., and Edward J. Cabbell. 1985. *Blacks in Appalachia*. University Press of Kentucky.

U.S. Department of the Interior. 2012. *Initial Implementation Plan: Land Buy-back Program for Tribal Nations*.

Waller, Altina. 1995. "Feuding in Appalachia: Evolution of a Cultural Stereotype." Pp. 347-380 in *Appalachia in the Making: The Mountain South in the Nineteenth Century* edited by M. B. Pudup, D. B. Billing, and A. L. Waller. University of North Carolina Press.

Wimberley, Ronald C., and Libby V. Morris. 1997. *The Southern Black Belt: A National Perspective*. University of Kentucky.

Endnotes

[1] [Heirs' property is] "real property held in tenancy in common which satisfies all of the following requirements as of the filing of a partition action: (A) there is no agreement in a record binding all the co-tenants which governs the partition of the property; (B) one or more of the co-tenants acquired title from a relative, whether living or deceased; and (C) Any of the following applies: (i) 20 percent or more of the interests are held by co-tenants who are relatives; (ii) 20 percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or (iii) 20 percent or more of the co-tenants are relatives" (Chastain Baker and McBride 2013, p. 18).

[2] A sub-region of southern counties stretching from southern Virginia to east Texas, known historically for its exceptional soil quality (black) and later for higher-than-average proportions of African Americans (Wimberley and Morris 1997).

[3] Pearson, Johnston, Sampson, Duplin, Carteret, New Hanover, Halifax, Edgecombe, Nash, Warren, Beaufort, Washington, Tyrell, Bertie, and Moore.

[4] Diana Santos memo obtained from Janice Dyer, 5 May 2020. Subject: Methodology and Research Process for Partition Sales Research Trip Memo. 20 July 2007.

[5] Ten heirs were not a party to proceedings, so the court appointed a representative for them, referred to as *ad litem*. Proceeds from the sale were placed in an account for the none presenting heirs.

[6] This attorney goes on in the interview to explain that Alabama's pre-UPHPA partition law gave defendants the buyout option.

[7] A privately negotiated agreement that enables the co-tenants to reject a number of the default tenancy-in-common rules and to substitute their own rules.

[8] The second author used aggregated tax parcel data for the 13 states of the South to estimate heirs' property extent. Roughly 239,000 heirs' property parcels were found, totaling 3.5 million acres with an assessed value of $28 billion were identified.

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