

Community Lawyering for Environmental Justice Part 12: Heirs' Property

Introduction to the Community Lawyering Series

Community lawyering, also known as empowerment lawyering, is key to meaningful environmental justice-oriented pro bono work. Community lawyering involves collaboration with community members as facilitative partners. As a result, it differs from the more traditional representational lawyering. This program is the 12th installment of the Environmental Law Institute's [Community Lawyering for Environmental Justice series](#).

1. What Is Heirs' Property?

Heirs' property is property that has been passed down to family members either through a will that devises the property to multiple heirs, or, more commonly, through intestate succession.¹ In either case, the property of the deceased is passed to heirs who then become tenants in common, meaning that they each own the whole, undivided property; rather than having an individual lot on the property, each heir has a fractional interest in the whole property.² Even though the heirs have interest in the property as tenants in common, the heirs must go to the relevant local agency or court to have the title or deed to the property changed to reflect their new ownership.³ Otherwise, the title remains in the name of the deceased, leading to a "cloudy" title and raising a host of issues for heirs' property owners.⁴ For example, without clear title, heirs' property owners cannot use the property as collateral for a mortgage or for other types of loans; cannot sell timber or other natural resources for income; and cannot access government assistance programs that require proof of ownership, such as FEMA disaster relief, COVID-19 assistance, and USDA loans.⁵ Clearing up title can be difficult, as it requires locating all of the heirs and demonstrating unanimous agreement among them on what to do with the property, and can involve a lengthy and expensive legal process.⁶

2. Partition Law

¹ Center for Agricultural & Food Systems at Vermont Law and Graduate School, *Heirs' Property in Farmland Access Legal Toolkit*, available at <https://farmlandaccess.org/heirs-property/> [hereinafter *Farmland Access Legal Toolkit*].

² Thomas W. Mitchell, *Historic Partition Law Reform: A Game Changer for Heirs' Property Owners*, 65 TEX. A&M FACULTY SCHOLARSHIP 67 (2019), available at <https://scholarship.law.tamu.edu/facscholar1327>.

³ *Farmland Access Legal Toolkit*, *supra* note 1.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

Ending any tenancy in common, including heirs' property arrangements, is governed by partition law.⁷ Any tenant in common, regardless of the size of their respective interest in the property, can file a partition action, which leads to the property either being divided or sold.⁸ Courts generally can choose one of two partition actions once the request is filed: a partition in kind, or a partition by sale.⁹

A partition in kind, sometimes known as a partition by division, leads to the property being divided into separate titled parcels that are then allocated to the different tenants in common.¹⁰ Each co-tenant then gets full ownership over an individual share.¹¹ In instances where the property cannot be equitably divided, the court will usually order a partition by sale.¹²

In a partition by sale, even if the other heirs are against the partition action, the property can be forcibly sold, usually in an auction, with the proceeds of the sale distributed to all the heirs based on their fractional interest.¹³ Because it is an auction sale, the heirs usually receive only a small percentage of what the property is actually worth, and often far less than the fair market value of the property.¹⁴

An important aspect to consider in partition actions is that tenants in common can sell their interest in the property without the consent of the co-tenants.¹⁵ Essentially, for heirs' property, any of the heirs can sell their interest to a non-family member, and any co-tenant, including a non-heir, can file a partition action. As a result, heirs' property often leads to involuntary land loss for families which, in turn, can cause not only significant declines in familiar wealth, but also the loss of heritage and familial connection.

3. Disparate Impact and Environmental Justice Implications

Historically and currently, involuntary land loss due to heirs' property disproportionately affects Black American landowners in the South, Appalachian landowners, and Indigenous landowners.¹⁶ One-third of southern Black land is heirs' property, and the USDA has even recognized heirs'

⁷ Mitchell, *supra* note 2, at 68.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 69.

¹¹ Uniform Law Commission, *The Uniform Partition of Heirs Property Act: A Summary* (Feb. 2019), available at <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d>. See "Summary."

¹² *Id.*

¹³ Mitchell, *supra* note 2, at 69.

¹⁴ *Farmland Access Legal Toolkit*, *supra* note 1.

¹⁵ Uniform Law Commission, *supra* note 11. See "Summary."

¹⁶ *Farmland Access Legal Toolkit*, *supra* note 1.

property as “the leading cause of Black involuntary land loss.”¹⁷ In fact, Black Americans lost about 90% of their farmland during the 20th century, in large part due to heirs’ property issues.¹⁸ For Black heirs’ property, the problem stems primarily from the Reconstruction and Jim Crow eras, when Black Americans did not have equal access to the legal system.¹⁹

Indigenous heirs’ property also stems from historic injustices. The General Allotment Act of 1887 allowed reservations to be divided into allotments for individual tribe members, but Native Americans were not legally permitted to use wills for land transfers until 1910; afterward they still struggled with access to such legal mechanisms, especially due to differences in cultural values regarding land ownership and management.²⁰ Currently, millions of acres of heirs’ property are estimated to exist across the United States in rural and urban areas, with hotspots in southern and Appalachian states.²¹ These heirs’ properties, particularly in areas with growing development, are being forced into partition actions, especially partition by sale, often by non-family member co-tenants in common.²²

The disparate impact of heirs’ property matters on Black and Indigenous communities also leads to environmental justice issues. For example, as stated earlier, many heirs’ property owners are unable to get disaster relief from FEMA because of difficulties in establishing clear title.²³ After Hurricane Katrina, about 25,000 families in New Orleans applied for rebuilding grants from the federal agency but ran into issues as heirs’ property owners.²⁴ One Louisiana attorney estimated that \$165 million in recovery funds went unclaimed after Hurricane Katrina due to title issues.²⁵ Furthermore, without being able to produce clear title, heirs’ property owners cannot access agricultural assistance related to the clean energy transition, including carbon credits through forestry or wetlands programs.²⁶ Also, without clear title, heirs’ property owners are not able to lease their property for renewable energy projects or create conservation easements.²⁷ Climate change will only exacerbate the problem, as heirs’ property owners often lack access to private capital necessary for capacity-building; nor can they sell their property if it is located in a disaster-

¹⁷ Lizzie Pressner, *Kicked Off the Land*, The New Yorker (July 15, 2019), available at <https://www.newyorker.com/magazine/2019/07/22/kicked-off-the-land>.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Farmland Access Legal Toolkit*, *supra* note 1.

²¹ *Id.*

²² For an example that illustrates the depth of the problem for Black families in particular, this article tells the story of Melvin Davis and Licurtis Reels, heirs to a property in Carteret County, North Carolina, who were incarcerated for eight years for civil contempt in their case to prevent their eviction from their property, following a partition action. Pressner, *supra* note 17.

²³ *Farmland Access Legal Toolkit*, *supra* note 1.

²⁴ Pressner, *supra* note 17.

²⁵ *Id.*

²⁶ Scott Schang, *Heirs’ Property and Climate Change*, PowerPoint presentation for the Public Interest Environmental Law Conference, 2025. On file with author.

²⁷ *Id.*

prone area. Simultaneously, heirs' property concerns limit the clean energy transition's potential because clear title is required for climate mitigation and adaptation projects.²⁸

4. Recent Developments

Different reforms have come forth to address heirs' property issues at both the federal and state level. Federal agencies have introduced reforms that are more sensitive to heirs' property issues. States, meanwhile, have adopted a key model statute to limit, as much as possible, forced sales of heirs' property via partition actions. These reforms are outlined here.

Federal Agency Reforms

In 2018, the Farm Bill, which governs much of U.S. agricultural policy, required the USDA Farm Service Agency to develop rules that would allow heirs' property owners to gain a farm and tract number, regardless of whether the owners have clear title.²⁹ Heirs' property owners can then use this farm or tract number, rather than clear title, to participate and access benefits from certain USDA programs.³⁰ The Farm Service Agency also runs an Agricultural Mediation Program for heirs' property owners to mediate family disputes related to agricultural and legal issues on the property.³¹

In 2022, in response to Hurricane Fiona in Puerto Rico, FEMA similarly developed guidelines for its agents to accept alternative documentation (as opposed to clear title) from heirs' property owners to allow them to obtain disaster relief, such as receipts for major repairs dated within five years prior to the disaster, a public official's letter, or even a self-certification of heirs' property ownership as a matter of last resort.³² The guidelines ultimately have the goal of "ensuring equity" for "underserved populations" and provide some promise for changes in heirs' property governance.³³

The Uniform Partition of Heirs Property Act (UPHPA)

The UPHPA is a model statute, drafted by the Uniform Law Commission, which is a nonprofit association of attorneys who draft model statutes to promote uniform laws in U.S. states and territories.³⁴ The Act only applies to heirs' property and when there is no written agreement

²⁸ *Id.*

²⁹ *Farmland Access Legal Toolkit*, *supra* note 1.

³⁰ *Id.*

³¹ Farm Service Agency USDA, *Certified Mediation Program Fact Sheet* (Sept. 2022), available at https://www.fsa.usda.gov/sites/default/files/documents/202209_fsa_factsheet_certified_mediation_program_091522.pdf.

³² Press Announcement from FEMA, *FEMA Provides Multiple Ways to Prove Home Ownership* (Oct. 12, 2022), available at <https://www.fema.gov/press-release/20221013/fema-provides-multiple-ways-prove-home-ownership>.

³³ *Id.*

³⁴ Uniform Law Commission, *supra* note 11. See "Summary."

between heirs regarding partition actions.³⁵ In such cases, the Act ensures the right of a co-tenant to sell their share of the property while also ensuring certain protections for other co-tenants to prevent loss of land.³⁶ The statute can be boiled down into three key points: (1) in a partition action, other co-tenants should have the right to buy out the co-tenant interested in partition; (2) courts should, as much as possible, issue a partition in kind rather than a partition by sale and, in their deliberations, consider non-economic factors of partition such as loss of identity and heritage; and (3) if a partition by sale is issued, the property should be sold at market value, rather than at an auction, to secure better value for all co-tenants.³⁷ In summary, the UHPA aims to have the necessary due process to prevent forced sales: notice, appraisal, and right of first refusal.³⁸

In 2011, Nevada became the first state to enact the law, with the goal of modifying heirs' property state policies to keep heirs' properties in families or to at least ensure equitable compensation for the property.³⁹ As of August 2025, 26 states have enacted the UHPA, and five states have introduced it.⁴⁰ Of course, states can and have modified the model Act for their own needs.⁴¹ For example, New York adopted a modified version of the Act to provide additional protections, such as expanding the definition of heirs' property to include property occupied by an heir with ownership interest, giving priority to in partition actions to occupant co-owners, requiring courts to consider how a co-tenant acquired their interest, and more.⁴² Arkansas, meanwhile, adopted the Act without any modifications.⁴³ Kentucky, Massachusetts, North Carolina, Pennsylvania, and Rhode Island have only introduced, not yet adopted, the Act as of 2025.⁴⁴

³⁵ Uniform Law Commission, *supra* note 11. See "Summary."

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Donna Arzanipour, *Enhancing the Uniform Partition of Heirs Property Act: The Need for Broader Use and Essential Modifications*, 40 *TOURO L. REV.* 581, 583-84 (2025).

⁴⁰ Uniform Law Commission, *supra* note 11. See "Map."

⁴¹ Arzanipour, *supra* note 39, at 591.

⁴² Farmland Access Legal Toolkit, *Heirs' Property: Understanding the Legal Issues in New York Fact Sheet*, 5-6 (Aug. 2024), available at <https://farmlandaccess.org/wp-content/uploads/2024/08/heirs-property-factsheet-ny-2024.pdf>.

⁴³ Farmland Access Legal Toolkit, *Heirs' Property: Understanding the Legal Issues in Arkansas Fact Sheet*, 5 (Mar. 2024), available at <https://farmlandaccess.org/wp-content/uploads/2024/10/heirs-property-factsheet-ar-2024-rev10-7-24.pdf>.

⁴⁴ Uniform Law Commission, *supra* note 11. See "Map."

5. Notes

Part I: Heirs' Property & Tangled Title: Legal and Historical Foundations

Part II: The Intersection of Environmental Justice & Heirs' Property

Part III: Organizational Efforts & Solutions in Practice
