

Ensuring Rightful Property Ownership Through the Uniform Partition of Heirs Property Act

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Editor: This article, published earlier this year by the Virginia Conservation Network, was reprinted with permission from the author. Since it was published, the UPHPA has passed and become law in Virginia.

Heirs property refers to land that has been passed down informally from generation to generation. In most cases, it involves landowners who died without a will and the land is owned “in common” by all of the heirs, regardless of whether they live on the land, pay the taxes, or have ever set foot on the land.



More than 900,000 black-owned farms comprised 14 percent of all farms in the US in 1920, yet the number of black-owned farms dropped 95 percent to under 46,000 in 1974. Researchers at Auburn and Tuskegee Universities estimate that there are between 150,000 to 175,000 acres of heirs property owned by people of any race or ethnicity in the 36 Black Belt counties in Virginia and that this property conservatively is valued at \$650 million.

The rate of intestacy among African Americans is more than double the rate of intestacy among white Americans, and only about 20 percent of African Americans have wills. Heirs property therefore continues to be the leading cause of Black involuntary land loss.

The Uniform Partition of Heirs Property Act (UPHPA), a project that the American Bar Association’s Section of Real Property, Trust and Estate Law helped convince the Uniform Law Commission to undertake in 2007, seeks to address partition action abuses that have led many Americans to lose their tenancy-in-common property involuntarily in various legal proceedings. The UPHPA preserves the right of a co-tenant to sell his or her interest in inherited real estate, while ensuring that the other co-tenants will have the necessary due process, including notice, appraisal, and right of first refusal, to prevent a forced sale. If the

other co-tenants do not exercise their right to purchase property from the seller, the court must order a partition in kind if feasible, and if not, a commercially reasonable sale for fair market value. Heirs property disproportionately impacts middle and low income families and communities that do not have access to affordable legal services.

This UPHPA has passed in 13 other states, including Alabama, Arkansas, Connecticut, Georgia, Hawaii, Iowa, Illinois, Missouri, Montana, Nevada, New Mexico, Texas and South Carolina. Legislation is pending in the District of Columbia and New York, where support seems strong. States that have adopted the UPHPA Act have reported no fiscal impact. One of the reasons why this matters now is that in the 2018 Farm Bill, there is language that allows USDA dollars to be used to resolve heirs property if the property is in one of the states that has adopted the UPHPA Act; allowing landowners the ability to fully participate in federal and state programs.

If the court determines partition by sale is appropriate, the property must be offered for sale on the open market at the court-determined value for a reasonable period of time. If the property does not sell at the offered price, the court retains discretion to accept a lower offer or to order a sale by auction or sealed bids.

UPHPA is designed to protect heirs who may be unaware of their property rights and their vulnerability as co-tenants to partition. But nothing in UPHPA prevents co-tenants from reaching agreement voluntarily to sell their shares, or from executing a partition agreement.

It is recommended that the UPHPA be adopted as a separate, parallel statute that applies only when the property to be partitioned meets the definition of “heirs property” contained in the UPHPA. The old law would continue to apply to all other partition actions.

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