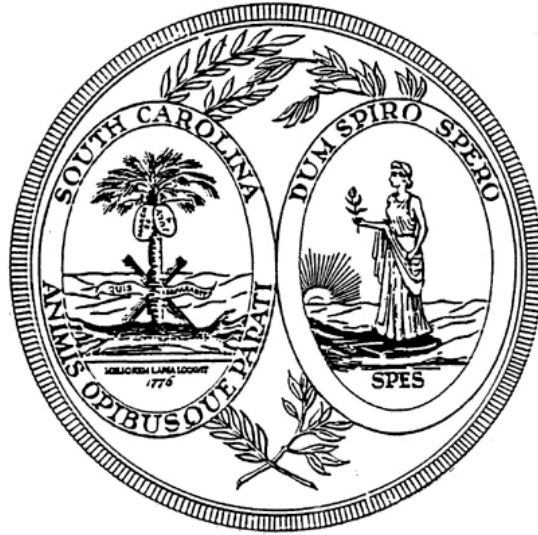


# **HEIRS' PROPERTY STUDY COMMITTEE**



## **Report to the General Assembly**

**Senator John L. Scott Jr., Chairman**

**Senator Billy Garrett**

**Senator Vernon Stephens**

**Representative Roger Kirby**

**Representative Rosalyn Henderson-Myers**

**Representative Gil Gatch**

**December 30, 2022**

## **Executive Summary**

### **Creation of the Heirs' Property Study Committee**

Act 246 established the Heirs' Property Study Committee to study how the Clementa C. Pinckney Uniform Partition of Heirs' Property Act (the Act), which went into effect on January 1, 2017, has impacted heirs' property in South Carolina and what other improvements are needed.

The Study Committee is comprised of 3 members of the South Carolina Senate appointed by the President of the Senate and 3 members of the South Carolina House of Representatives appointed by the Speaker of the House. Senate President Thomas Alexander appointed Senator John Scott, Senator Billy Garrett, and Senator Vernon Stephens. Speaker of the House Murrell Smith appointed Representative Roger Kirby, Representative Rosalyn Henderson-Myers, and Representative Gil Gatch.

The Study Committee held three meetings in November and December 2022. During the meetings, the Study Committee heard testimony from the Center for Heirs' Property Preservation, the South Carolina State Housing Finance and Development Authority, Habitat for Humanity of South Carolina, the Coastal Conservation League, the Lowcountry Gullah Foundation, the Manufactured Housing Institute of South Carolina, and members of the public.

Act 246 directed the Study Committee to seek assistance from the following stakeholders:

- South Carolina State Housing Finance and Development Authority
- The Homebuilders Association of South Carolina
- Landowners' Association of South Carolina
- South Carolina Association of Habitat for Humanity (now known as Habitat for Humanity of South Carolina)
- Affordable Housing Coalition of South Carolina
- Realtors Association of South Carolina
- The Center for Heirs' Property
- Municipal Association of South Carolina
- South Carolina Association of Counties

The Study Committee contacted government agencies and members of the private sector, particularly those related to property and housing, including the Homebuilders Association of South Carolina, the South Carolina Department of Commerce, and Clemson University.

During the meetings, stakeholders and members of the public testified on the impacts of the Act on land partition and how land becomes subject to heirs' property. The Study Committee also reviewed other states' approaches to address heirs' property, the applicability of those approaches in South Carolina, and how federal and state legislation has impacted heirs' property. The Study Committee received suggestions from their testimony and discussed how other states addressed heirs' property. These suggestions are included in Appendix A to this report.

The Study Committee further received written testimony from Habitat for Humanity of South Carolina, the Municipal Association of South Carolina, the Lowcountry Gullah Foundation, the Masters-in-Equity, and the Coastal Conservation League, which is included in Appendix B.

## **Overview of the Clementa C. Pinckney Uniform Partition of Heirs' Property Act of 2016**

The Clementa C. Pinckney Uniform Partition of Heirs' Property Act of 2016 ("the Act") follows the Uniform Law Commission's Uniform Partition of Heirs' Property Act by adding provisions to existing partition law that would apply only to property determined to be "heirs' property." This act does not apply to other tenancies-in-common. Heirs' property is defined in the Act as real property held in tenancy in common that satisfies the following requirements as of the filing of a partition action:

- (a) there is no agreement in a record binding all of the cotenants that governs the partition of the property;
- (b) one or more of the cotenants acquired title from a relative, whether living or deceased; and
- (c) any of the following applies:
  - (i) twenty percent or more of the interests are held by cotenants who are relatives;
  - (ii) twenty percent or more of the interests are held by an individual who acquired title from a relative, whether living or deceased; or
  - (iii) twenty percent or more of the cotenants are relatives.

S.C. Code Ann. §15-61-320(5)

The Act allows a court to consider factors other than pecuniary value in determining how to partition heirs' property, but no one factor would be dispositive.

Procedures provided for include (1) how a court determines if the property is heirs' property; (2) how other parties to the partition action should be notified of this fact; (3) how fair market value of the property is established; (4) what factors a court considers in determining the type of partition to order; and (5) how sales of interests of the cotenants or sales of the property will be handled by a court.

This Act amended the prior law to provide, if requested, a preliminary hearing in a regular partition action to determine if the property in question is "heirs' property." It also amended existing law to correct an erroneous citation and instead cite Rule 71 of South Carolina Rules of Civil Procedure, which sets forth the procedural requirements for partition actions. The Act further provided that these provisions supplement Article 1, and these provisions control if there is a conflict.

## **Heirs' Property Study Committee Summary:**

Act 246 of 2022 directed to the Study Committee to:

- 1) Determine the amount of land in South Carolina that is subject to the heirs' property system,
- 2) Study the impacts of federal and state legislation on the partition of the land subject to heirs' property guidelines,
- 3) Analyze approaches and methods undertaken by other states to address heirs' property and to consider if those methods could be applied to South Carolina, and
- 4) Determine the costs heirs' property presents to the economic well-being of South Carolina and to estimate the benefits of proactive measures taken to address heirs' property.

### **1. Amount of Land Subject to Heirs' Property:**

Act 246 of 2022 directed the study committee to study the amount of land subject to heirs' property. The Study Committee was informed there is a study pending publication on heirs' property in the Southeast.<sup>i</sup> It is anticipated this study will include an estimate of total acres in South Carolina of heirs' property. At the time of this report, a publication date has not been announced and the methodologies used in the forthcoming study are not known to the Study Committee at this time.

Testimony indicated that estimating the amount of heirs' property is complicated by different definitions of heirs' property and the different classifications of property.<sup>ii</sup> An additional complication is new heirs' property could be created as owners die without wills or succession planning in place.

The Center for Heirs' Property Preservation estimated in 2011 that roughly 40,000 acres within six counties was heirs' property.

### **2. Federal and State Legislative Impacts on Partition of Land Subject to Heirs' Property; and Impacts, Approaches, and Methods Undertaken by Other States to Address Heirs' Property**

The Study Committee is required to study the impacts of federal and state legislation on the partition of the land subject to heirs' property, to analyze approaches and methods undertaken by other states to address heirs' property, and to study if those methods could be applied to South Carolina.

In reviewing federal legislation and policy related to heirs' property, the Study Committee received information on the following:

#### **Federal Legislation and Policy:**

##### **United States Department of Agriculture (USDA)**

The Agricultural Improvement Act of 2018 (2018 Farm Bill) allowed heirs' property farm operators to qualify for Farm Services Agency farm numbers, which are needed to be eligible for USDA programs, including lending and disaster relief programs.<sup>iii</sup> The 2018 Farm Bill also authorized the USDA to establish the Heirs' Property Relending Program.<sup>iv</sup> For states that have enacted the Uniform Partition of Heirs' Property Act (UPHPA), a farm operator can provide a court order verifying land meets the definition of heirs property and certification from the registrar of deeds that the owner is dead and at least one heir has initiated proceedings to retitle the land.<sup>v</sup> For farm operators in states that have not enacted the UPHPA, farm operators must provide a tenancy-in-common agreement signed by the majority of the heirs, self-certification of the farm operator, five

years' worth of tax returns, and other documentation as may be required by the Secretary of Agriculture.

In 2021, the USDA promulgated regulations for the Heirs Property Relending Program. The USDA announced in August 2022 that the initial lenders had been selected.<sup>vi</sup> Heirs' property occupants in Alabama, Florida, Georgia, Louisiana, Mississippi, and South Carolina are eligible to apply through Shared Capital Cooperative.<sup>vii</sup> These loans may be used to help pay to resolve title issues, including financing the purchase of property. The program offers eligible loan amounts up to \$5 million at a 1% interest rate.

The Farm Service Agency of the USDA operates an Agricultural Mediation Program, which can help farmer operators mediate disputes with the family related to agricultural land. The program provides grants to state-designated entities to provide mediation services. Currently, South Carolina is not participating in this program.

### **Federal Emergency Management Agency (FEMA)**

While not legislation, FEMA made a policy change in 2021, which allowed the use of alternate documentation to show ownership when applying for FEMA assistance.<sup>viii</sup> Current examples of documentation that FEMA will consider include maintenance or repair receipts dated within 5 years or, as a last resort, self-certification of heirs.<sup>ix</sup>

In June 2022, FEMA Administrator Deanne Criswell testified to the Homeland Security and Governmental Affairs Committee that since the 2021 policy change, FEMA had distributed approximately \$350 million in disaster assistance to 42,000 homeowners and 53,000 renters.<sup>x</sup>

### **American Rescue Plan Act (ARPA) of 2021, as amended by the Inflation Reduction Act of 2022**

USDA was able to establish grants for partner organizations to provide support and technical assistance to underserved producer communities, including heirs' property occupants.<sup>xi</sup> Under the original ARPA, \$75 million was distributed to partner organizations that the Increasing Land, Capital, and Market Access project had accepted applications from for partner organizations. The original ARPA also had a program that would directly pay borrowers loan payments on behalf of socially disadvantaged farmers (SDF), but an injunction was placed on the program.<sup>xii</sup> Congress later repealed Section 1005 related to the SDF program. Under Section 22007 of the Inflation Reduction Act, \$2.2 billion was provided as funding for farmers who experienced discrimination in the USDA's lending programs.<sup>xiii</sup> A class of farm operators filed a class action suit based on their reliance on the prior program under ARPA. As of December 4, 2022, no court hearings have been scheduled in this class action.<sup>xiv</sup>

## **State Legislation**

### **Uniform Partition of Heirs' Property Act (UPHPA)**

As of July 1, 2022, the following 21 states and territories have enacted or substantially follow the UPHPA:

Alabama, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Illinois, Iowa, Maryland, Mississippi, Missouri, Montana, Nevada, New Mexico, New York, South Carolina, Texas, U.S. Virgin Islands, and Virginia.

States that have enacted the UHPHA have variations on their heirs' property partition laws to include the following examples:

Alabama<sup>xv</sup>:

- In the initial petition, the cotenant would have to specify whether they are seeking a partition by sale. If they do not specify, it is determined that the request is for a partition by kind.
- For cotenants that do not request a partition by sale, the court has the option of selecting the most economically advantageous method of sale including open market sale (with or without a broker), sealed bids, public auction, or a private sale. Auctions are held at the courthouse.
- Reasonable time for an open mark sale is limited to 180 days.
- Partition/Sale does not affect a mortgage or lien on the property (or the obligations of the parties to the mortgage- or lienholder)

California<sup>xvi</sup>:

- For partition filed on or after January 1, 2023, the principles of the UHPHA apply to all tenancies-in-common where there is not a record of an agreement binding on all of the cotenants that governs the partition of the property.

Hawaii<sup>xvii</sup>:

- A special master is responsible for the heirs' notifications provided in the UHPHA and their costs are covered by the cotenants at the end of the partition action. (The court does have authority to order that the cost be covered by the estate, the proceeds of a sale, the cotenants, or some combination.)

Illinois<sup>xviii</sup> :

- The court can apportion the costs as it deems just and equitable.
- The court can consider good faith efforts of the parties to agree prior to the filing of the partition action.
- Defendants that present a substantial defense can recover against the plaintiff if the court finds it would be just and equitable.

Maryland<sup>xix</sup>:

- Applies to property held in tenancy in common.
- Provides for the appointment of an attorney
- Allows for a prior appraisal to be used if it was conducted within 6 months prior to the filing of the partition action.
- Notice by publication does not apply to a person in actual possession of the real property.

New York<sup>xx</sup>:

- Within 60 days of filing for partition, the parties must hold a settlement conference. The settlement conference can be adjourned and reconvened at any time during the partition proceedings. If the settlement conference is unsuccessful, the referee reports to the court on the parties' good faith efforts in negotiating and provides recommendations. If the court determines the plaintiff is not negotiating in good faith, the partition will be dismissed.
- New York provides for the same process of appointing a broker and establishing an open-market sale for a reasonable period of time. If there are no reasonable offers, the court may appoint a substitute broker.

### **Variations of the UHPA introduced but not enacted:**

Kentucky introduced a variation of the UHPA in 2022. It included a section for an heirs' property research fund that would cover up to \$2,000 of costs related to clearing title, conducting research of heirs, etc.<sup>xxi</sup>

### **3. Other methods to address heirs' property issues undertaken by states:**

#### **Methods of Partition**

North Carolina has not enacted the UHPA. In a North Carolina partition, there are 4 possible types of partition: - Actual partition/partition by kind, partition by sale, actual partition of part and partition by sale, and partition of part (either actual/sale) with remainder remaining in cotenancy. While partition in kind is the preference under North Carolina law, the courts often opt for partition by sale.<sup>xxii</sup> Cotenants do not have the option to buy out the petitioning cotenant's interest in the action.

#### **Use of Affidavits for Small Succession**

Louisiana: Under the Louisiana probate code, there is a small succession process for intestate distribution where the total value of the property is less than \$75,000. The heirs file an affidavit establishing the heirs and the property to be distributed.

#### **Enhanced Life Estate Deeds**

Vermont: Under Enhanced Life Estate Deeds (ELE Deeds), the grantor reserves a common-law life estate and reserves the right to convey the property during their lifetime, the grantee has a contingent remainder interest in the property, and upon the death of the grantor, the title vests in the grantee.

#### **Heirs Property Assistance Program:**

Washington, DC: Washington, DC's Department of Housing and Community Development is soliciting information in a Request for Information (RFI) for an Heirs Property Assistance Program. In 2022, as part of their budget they passed the inclusion of the Heirs' Property Legal Assistance Act, which would allow the mayor to issue grants to help pay for legal services to obtain clear title. The RFI references a similar program in Philadelphia and the South Carolina Heirs' Property Study Committee.

### **Transfer on Death Deeds/Beneficiary Deeds:**

#### **i. Uniform Real Property Transfer on Death Act**

The Uniform Real Property Transfer on Death Act (URPTODA) allows a real property owner to pass the real property to a beneficiary at the time of their death by designating the beneficiary in a transfer on death (TOD) deed, and by executing and recording the TOD deed. The real property transfers to the beneficiary at the time of the owner's death without probate. During the owner's lifetime, the owner maintains all ownership rights and can revoke the TOD deed or change beneficiaries.<sup>xxiii</sup>

The following 19 states and territories have enacted the URPTODA: Alaska, District of Columbia, Hawaii, Illinois, Maine, Mississippi, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Texas, U.S. Virgin Islands, Utah, Virginia, Washington, and West Virginia. Out of these 19 states, Hawaii, Mississippi, Montana, Nevada, New Mexico, Texas, U.S. Virgin Islands, Utah, and Virginia have also enacted the UHPA.

In 2022, Maryland, New Hampshire, and Tennessee introduced the URPTODA. The URPTODA is not enacted in South Carolina.

## **ii. Beneficiary Deeds**

Indiana: If a beneficiary designation is made by an owner, the real property passes to the beneficiary at the owner's death.

### **Future Legislation related to Heirs' Property:**

The Uniform Law Commission has a committee drafting a Uniform Tenancy in Common Default Rules Act. The anticipated uniform act would address the complications that tenancies in common face with managing real property. It would allow for a supermajority of the cotenants to make limited decisions in the management of the property. The draft is tentatively expected to be finalized in 2023.

## **4. Costs Heirs' Property Presents to the Economic Well-Being of South Carolina and Benefits of Proactive Measures**

The Study Committee received testimony related to the impact heirs' property has on the economic well-being of South Carolina. The Study Committee received testimony that economic opportunities have been lost due to land not having clear title.<sup>xxiv</sup> The Municipal Association of South Carolina cited examples in its written testimony of heirs' property issues. One example involved efforts to address derelict structures that impact the neighborhoods and property values. Another issue involved lost opportunities; in some cases, heirs' property may affect the availability of commercial locations, and in other cases annexations are prevented, due to lack of contiguity caused by heirs' property.

The Center for Heirs' Property Preservation provided testimony that since 2009, they have resolved over 370 tracts of land with a tax assessed value of \$17.5 million.<sup>xxv</sup>

## **RECOMMENDATIONS OF HEIRS' PROPERTY STUDY COMMITTEE:**

### **1) Establish a Commission or Advisory Board**

To fully examine the impacts of heirs' property and to determine what steps the General Assembly should consider, the Study Committee recommends establishing a commission or advisory board of gathered experts and stakeholders. Currently, there are no states that have a commission to address the issues associated with heirs' property.<sup>xxvi</sup>

Habitat for Humanity of South Carolina recommended the establishment of a commission or advisory council. In addition to the stakeholders listed in the Joint Resolution, Habitat suggests adding the South Carolina Department of Transportation, the Palmetto Land-Title Association, a representative from the register of deeds, and other entities. The South Carolina Department of Commerce was also mentioned in the meetings as potential stakeholders. All stakeholders should be at the table for no less than 12 months (and probably up to 3 years) and should meet once a month to discuss the complex issues pertaining to heirs' property, evaluate research, and evaluate bills from other states to figure out what would work in this state. Under this recommendation, the counsel would report back to the General Assembly once a year.



During the Study Committee, Senator Scott, the Chairman of the Heirs' Property Study Committee, recommended a commission be formed and suggested that the commission should try to compartmentalize issues so that individuals can be identified to work on the issues daily with the commission. Also, the commission should be able to conduct arbitration, especially with smaller issues.

A commission could be established under a state agency, such as the South Carolina Department of Labor, Licensing and Regulation (LLR). LLR provides staff for its commissions and the commission/board members receive a per diem for their participation. The South Carolina State Housing Finance and Development Authority could be another agency to consider for a commission.

The Study Committee recommends including an 11-member commission consisting of a representative of the following entities:

- 1) Center for Heirs' Property Preservation
- 2) South Carolina State Housing Finance and Development Authority
- 3) Homebuilders Association
- 4) Habitat for Humanity South Carolina
- 5) Municipal Association of South Carolina
- 6) South Carolina Association of Counties
- 7) Coastal Conservation League
- 8) South Carolina Department of Transportation
- 9) Lowcountry Gullah Foundation
- 10) a Master-in-Equity, selected from the Master in Equity Association
- 11) a member appointed by the Governor (or General Assembly)

An alternative consideration is for the members of the commission to be comprised of individuals from all congressional districts.

The Study Committee also discussed that the commission should:

- be able to conduct arbitration, especially with smaller issues;
- recommend good proposals with respect to taxes, etc., to the General Assembly and conduct training and workshops throughout the state to educate the public on heirs' property; and
- file an annual report with proposals with respect to taxes and other legislative or policy changes to the General Assembly.

The Study Committee is including in this report a list of suggestions for a commission or an advisory board to consider. (Appendix A)

## **2) Extend Study Committee**

The Study Committee also recommends extending the Study Committee. The members of the Study Committee would be able to receive recommendations from an advisory board or a commission.

Additional time would allow for more stakeholder participation and time to assess the long-term impact of making changes to the Pinckney Act. Act 246 of 2022 created the Study Committee. Under Act 246, the Study Committee dissolves when its report is submitted. Act 246 specifies the report is due December 31, 2022. An additional joint resolution extending the Study Committee would be necessary to extend its work.

## APPENDIX A

### Suggestions for Commission or Advisory Board to Consider

The Study Committee received suggestions from testimony and through research on how other states address heirs' property related issues. The Study Committee provides the following suggestions for consideration and further review by a commission or advisory board:

#### 1) Tax Freeze During Pendency of Resolving Title

Families that are resolving their heirs' property should have their taxes frozen until the titling has been resolved. A tax freeze would mean that back taxes would not be owed once the title is resolved.

#### 2) Tax Assessment: allow property to remain at lowest tax percentage rate (remain at 4% and not subject to rollbacks; for a set time or in perpetuity)

Heirs' property should be "grandfathered in at the lowest tax percentage rate in perpetuity," and heirs' property should be held at 4% assessment and not subject to rollbacks on vacant land or subject to difference in tax rates.

#### 3) Mediation/Settlement Conference Prior to Partition Hearings

The U.S. Department of Agriculture operates a mediation program through its Farm Service Agency to help farm operators mediate disputes with family related to agriculture land. South Carolina does not currently participate in this program.

New York has passed the Uniform Partition of Heirs' Property Act. However, New York included an additional section that requires a settlement conference prior to a partition proceeding. By providing an opportunity for possible settlement, families may reach an agreement on how to manage or partition the land without court intervention. In the event the settlement conference is not successful, the referee provides findings to the court, including any recommendations or findings that a party did not participate in the settlement conference in good faith.

#### 4) Allow parties applying for partition or a judge in the matter to determine the situation could be more effectively handled under Article 1 (general partition) as opposed to Article 3 (Pinckney Act)

If the parties request or the court determines that the use of Article 1 (General Partition) would more effectively protect the parties' interest, than Article 3 should not apply.

#### 5) Funding the Center for Heirs' Property Preservation

A direct allocation of funding from the state to the Center for Heirs' Property, in order to expand the work of preserving heirs' property to its rightful owners and to allow South Carolina families with generational lands to obtain access to mortgages, titles, and government assistance, which would empower them to have and maintain a home on their inherited land.

This allocation would cover expenses such as legal fees, account administration, education, counseling, and other expenses deemed necessary by the center to assist South Carolinians in obtaining clear titles

and in the drafting of wills to prevent future title issues. The center would submit annual reports to the General Assembly for the duration of the allocation.

#### **6) Identification of Heirs' Property**

Developing a statewide listing of existing heirs' property.

According to Josh Walden (CEO of the Center for Heirs' Property Preservation) a 2011 study of six counties in South Carolina (Beaufort, Berkeley, Charleston, Dorchester, Georgetown and Jasper counties) revealed that roughly 40,000 acres in those six counties is heirs' property. This number is modest in terms of what the Center believes actually exists because heirs' property often remains in the name of the deceased original owner making it hard to trace.

#### **7) Heirs' Family Relationship Identification**

Establishing an heirs' family relationship identification. It would be the plaintiff's burden to establish the family relationship in a partition action. One suggestion for how to demonstrate proof would be through DNA.

#### **8) Transfer on Death Deeds/Beneficiary Deeds**

Under the Uniform Transfer on Death Deed Act (UTODDA), an owner would designate a beneficiary for their real property. The real property would not transfer until the owner's death and would only transfer if the forms and procedures were followed under the UTODDA.

In 2011, Senate Bill 234 provided for the transfer upon death by a beneficiary deed to a designated grantee-beneficiary. This bill did not make it out of subcommittee.

#### **9) Partition requires majority of heirs to trigger a sale**

A minimum of 51% of heirs must agree to trigger a partition by sale.

#### **10) Land Preservation: Community Reinvestment Act and SC Open Land Trust Funds**

South Carolina should encourage banks to utilize the Community Reinvestment Act to provide funding and to use the property as collateral. The Foundation further suggested to include provisions with the SC Open Land Trust funds to help preserve undeveloped heirs' property.

#### **11) Tax Sales: Redemption without Penalties**

In the event an heir is able to redeem a property from a tax sale, the property should be redeemed without additional penalties; such penalties could make the redemption difficult or impossible for heirs.

#### **12) Tax Sales: Heirs have first opportunity to bid**

No outside bidders should be allowed to make an initial bid in a tax sale unless there are no heirs' or heirs' representatives to the property present at the tax sale. Prior to any special exemption bidding, the heirs should be verified as heirs of the property.

The Study Committee heard testimony that heirs not in the immediate succession from the decedent should have the opportunity to bid on the property in order to keep the property within the family. Testimony noted that real property helps build generational wealth for many families.<sup>xxvii</sup>

### **13) Property Tax Exemptions**

Together with tax credits, property tax exemptions are the most widely adopted form of property tax relief. Available in 47 states and the District of Columbia, property tax exemptions reduce the taxable amount of a homestead's value by either a fixed dollar amount or a percentage of a homestead's value. For example, in South Carolina, the homestead law exempts the first \$50,000 of a home's appraised value if the home is owned by a senior.

### **14) Property Tax Credits**

Tax credits reduce a homeowner's overall tax bill by a fixed dollar amount or a percentage, or tax credits allow a homeowner to deduct a portion of the property taxes on their residence from their state income tax bill. For example, in Illinois, a property tax credit reduces a homeowner's state income tax bill by 5% of the property taxes paid on the homeowner's principal residence.

### **15) Property Tax Circuit Breakers**

Circuit breakers are a variation of tax freeze and tax credit laws that target lower income homeowners. Eligible homeowners are entitled to a reduction or a refund of all or a portion of their property taxes when their tax bill exceeds a certain percentage of the homeowners' income. Circuit breaker programs have been adopted in at least 18 states and the District of Columbia (not including South Carolina).

### **16) Property Assessment Limits**

These limits cap or restrict the growth in the value of a home that is subject to taxation (i.e., the assessed value), with the assessed value resetting to market value when the home is sold. Assessment limits are especially useful for homeowners in areas with rapidly appreciating land values. For example, homeowners in the District of Columbia can qualify for a 10% assessment cap, which means the assessed value of their homesteads cannot increase more than 10% a year.

### **17) Property Tax Freeze Laws**

These laws cap a homeowner's property taxes when certain conditions are met—e.g., in Texas, school district taxes are capped for a resident's homestead once they turn 65, so long as they have a senior homestead exemption in place. The tax freeze also applies to homesteads owned by persons with a qualifying disability.

### **18) Property Deferral Program to Prevent Tax Foreclosures**

In addition to reducing homeowners' tax bills, many states have a range of additional programs that protect homeowners from property tax foreclosure when they cannot afford their property tax bills. For example, approximately 27 states and the District of Columbia offer some type of property deferral program that gives certain classes of homeowners the right to defer their taxes with interest until they die or no longer reside in the homestead.

### **19) Delay tax changes if property is in probate or pending partition**

The recommendation to delay a tax change while a family is pending in probate or pending partition would leave the heirs' property at the tax rate it was assessed during the decedent's life. Delaying a tax change would keep costs rising for families while they are working through the courts.

## **20) Education of property taxes, estate planning, clearing title for the public**

Education to address heirs' property and to prevent future heirs' property.

During the Study Committee meetings and in testimony received, it was repeatedly noted the need for education for the public on the importance of estate planning, having a will, making sure the property taxes are up to date on family land, and how to clear title in the event the deed is not in the name of a living relative.

## **21) Consider Uniform Tenancy in Common Rules Act once finalized by the Uniform Law Commission**

The Uniform Law Commission is currently working on finalizing a Uniform Tenancy in Common Rules Act. The anticipated model legislation would delineate situations where a majority of tenants-in-common could make decisions about a property without having unanimous agreement amongst all the cotenants. Depending on the final draft, South Carolina may want to consider adopting the Uniform Act to allow heirs to make repairs, apply for financing, or other decisions that would benefit the property and all of the heirs.

## **22) Alternatives to clear title for programs**

### **i. South Carolina State Housing Trust Fund – Model Proof of Ownership Documentation Requirements Used by FEMA for the SC Housing Trust Fund**

To prevent homeowner displacement and maintain the habitability of homes, implementing policy changes similar to the FEMA Disaster Relief Reform of 2021. As a result, families living on heirs' property will be allowed to self-certify that they own their homes. FEMA would also be able to accept letters from local officials and bills for home repairs as proof of ownership.

### **ii. Alternative consideration: Requirements used by USDA**

The USDA Agricultural Improvement Act of 2018 (commonly referred to as the 2018 Farm Bill) allows farmer operators to qualify for Farm Services Agency farm numbers through alternative documentation. Farm numbers are used for identifying agricultural land for lending and disaster relief programs available through the USDA. Under the 2018 Farm Bill, farm operators in states that have enacted the Uniform Partition of Heirs' Property Act may provide a court order verifying the land meets the definition of heirs' property and certification from the register of deeds that the owner is dead and at least one heir has initiated proceedings to retitle the land.

## **23) Add language to Pinckney Act to allow for designation of heirs' property at the beginning of the petition**

Amend the statute to allow the petitioner to designate at the beginning of the matter that the land is heirs' property.

## **24) Add language to the Act to direct the Clerk of Court to notify the Civil Chief Administrative Judge within 14 days of the filing of the complaint**

The Clerk of Court notify the Civil Chief Administrative Judge within 14 days of the filing of the complaint.

### **25) Review Louisiana Small Succession of estates under \$75,000**

Under the Louisiana probate code, a small succession process for intestate distribution is available where the total property of the estate is less than \$75,000. Heirs file an affidavit establishing the heirs and how the property should be distributed.

### **26) Law School Clinics**

The Center for Heirs' Property Preservation previously had an internship with Charleston School of Law where the law students assisted in the estimate of land impacted by heirs' property. A similar program to help quantify the amount of land impacted would help determine the current state of heirs' property in South Carolina. Additionally, law schools' clinics provide the law students with experience under the supervision of professors and licensed attorneys. Law clinics focused on assisting families with heirs' property could be beneficial to both the law students and the families.

### **27) Conduct an Heirs' Property County-level Data Assessment to Estimate the Amount and Assessed Land Value.**

Conducting an heirs' property county-level data assessment to estimate the amount and assessed value of heirs' property in South Carolina's 46 counties, utilizing the framework of the *Southern Regions Heirs' Property Collaborative Final Report* (2011) to collaborate with the registers of deeds.

The evaluation should include (1) the estimated amount and assessed value of heirs' property in each county and (2) a five-year assessment of right-of-way impacts on heirs' property, including the number of parcels, assessed value, acquisition methods utilized, and responses from heirs' property landowners.

A county-level data assessment should occur over a period of six months, commencing no later than the first month of the creation of the Heirs' Property Commission. At the end of six months, the counties should provide a report of findings to the General Assembly and the Heirs' Property Commission.

### **28) Allocate Funding Directed to an Entity to Assist in Preventing the Creation of New Heirs' Property (Wills Clinics in each county, funding to assist with clearing title, etc.)**

Direct allocation of funds to a selected entity providing no less than two free community wills and trusts clinics in each county each year. The allocation of funds should also cover expenses for existing heirs' property owners wishing to limit the exponential growth of heirs' property and complexities by clearing titles and creating a trust for the property. The entity would consider South Carolinians earning less than 150% of the area median income to be eligible for assistance.

The Lowcountry Gullah Foundation is an example of an organization that is assisting individuals in dealing with heirs' property issues, including assisting in the coverage of tax redemption fees.

The Clemson Extension Agribusiness Team provides programming including timber management, record keeping, taxation and one-on-one consultation with heirs' property holders. They assist with business plans and succession and estate planning and other issues.<sup>xxviii</sup> Dr. Kantrovich highlighted the USDA relending program recently approved and the USDA's mediation program. Dr. Kantrovich

encouraged that participation in any program that provided funding would include succession planning in order to receive the funding to prevent future heirs' property issues.<sup>xxix</sup>

### **29) Changes to Agriculture Tax Exemptions**

Changes to agricultural tax exemptions would benefit both conservation efforts and assist families dealing with heirs' property. By extending agricultural tax exemptions to smaller lots of land, more families would be able to maintain the property and agricultural use.

### **30) Identifying Proportion of Ownership Interests for Tax Liabilities**

When it is possible for ownership interest to be documented, taxing authorities could allocate the tax liabilities in accordance with the heir's proportionate share of interest. This policy change would help families address the issue of challenge of having a single submission to the county for tax liabilities.

### **31) Reforming Tax Assessments on Historical Cultural Properties to Current Use**

A property tax provision to assess undeveloped property in historic settlement areas and cultural overlay districts at their current use would help families maintain property. Currently, this property may be taxed at highest and best use (reflecting the market value). As development encroaches on a property, property taxes may rise without any change to the use of the land by the family.

## **Appendix B**

### **Written Testimony Submitted by:**

- **Habitat for Humanity South Carolina**
- **Municipal Association of South Carolina**
- **Lowcountry Gullah Foundation**
- **Masters in Equity**
- **Coastal Conservation League**





## HEIRS' PROPERTY STUDY COMMITTEE

**To:** The Honorable John Scott, Chair                      The Honorable Rosalyn D. Henderson-Myers  
The Honorable Billy Garrett                              The Honorable Roger K. Kirby  
The Honorable Gil Gatch                                      The Honorable Vernon Stephens

**From:** Nancy Lee, Executive Director of Habitat for Humanity South Carolina  
[nancy@southcarolinahabitat.org](mailto:nancy@southcarolinahabitat.org)  
(803) 291-4258

**Date:** December 5, 2022

**RE:** **Heirs' Property Study Committee Meeting**

Determining equitable, attainable, and sustainable solutions to the challenges posed by heirs' property is a complex endeavor. While there is currently no data quantifying the total amount of heirs' property land in South Carolina, housing metrics showcase the need of maintaining property rights and benefitting from the full use of ownership.

Historic racial disparities have led to a lower homeownership rate, a higher housing cost burden, and a higher asset poverty rate. In 2020, Prosperity Now<sup>i</sup> reported that South Carolina's homeownership rate of white households was 77.5% compared to 51.3% of black households. Meanwhile, 23% of white homeowner households were reported as burdened by housing costs, compared to 35.8% of black households. The median net worth of white households is approximately \$125,000, compared to nearly \$11,000 for black American households.

SC Housing's *2021 South Carolina Housing Needs Assessment*<sup>ii</sup> reported that a basic 2-bedroom apartment is unaffordable in 40 out of 46 counties. The report also calculated that the lack of affordable housing cost the state of South Carolina \$9.4 billion in 2019. Published in March 2021, the National Low Income Housing Coalition's Gap Report<sup>iii</sup> found that South Carolina has a shortage of 87,369 affordable and available units for extremely low-income renters.

In 2020, Habitat for Humanity International published an evidence brief<sup>iv</sup> documenting research that has shown numerous outcomes of owning a home, such as greater economic stability, better health, access to quality education, and increased civic and social engagement. Another brief<sup>v</sup> identified that low-income households and households of color have limited access to homeownership because of barriers such as limited supply of affordable housing, restricted access to credit, and systemic inequities.

The Housing Finance Policy Center at the Urban Institute<sup>vi</sup> in May 2021 provided research in May 2021 confirming that owning one's own home is frequently more affordable than renting. The brief found that it is cheaper to buy a home than it is to rent in two-thirds of counties across America. Unfortunately, the existing housing inventory does not meet current demand<sup>vii</sup>, particularly for lower-priced homes. The rising costs of land, labor and materials limit homebuilding and target most new construction at higher price points.

Habitat South Carolina firmly supports protecting the rights of heirs' property owners and lessening the affordable housing challenges facing the state.

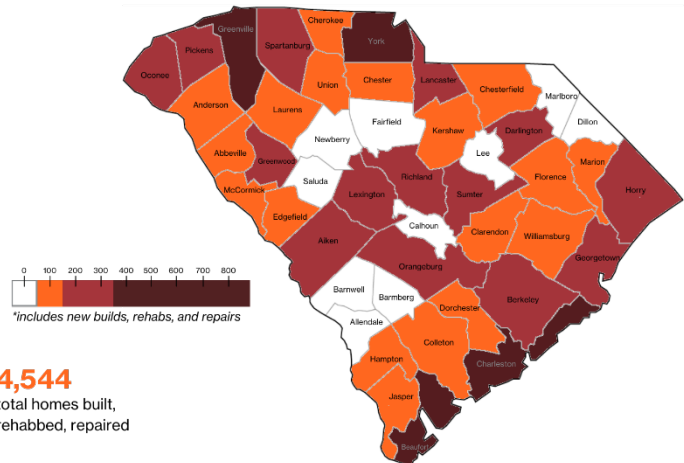
**Habitat Background and Economic Impact**

Habitat for Humanity South Carolina’s (“Habitat South Carolina”) network of affiliates have built, rehabilitated, and repaired over 4,500 homes across South Carolina since 1978. Habitat has helped more than 115,000 South Carolinians become first-time homebuyers, improve their housing conditions, and achieve the strength, stability, and self-reliance they need to build better lives for themselves.

Habitat for Humanity’s work extends beyond individual households, impacting jobs and the economy across the state of South Carolina. Habitat invests in communities statewide by helping households earning between 30-80% of the area median income access and sustain responsible, affordable homeownership. Habitat homeowners help build their own homes alongside volunteers and pay an affordable mortgage. Through home construction, rehabilitation, repairs, housing finance, support services, and technical assistance, Habitat partners with families and individuals to build and improve a place to call home. Paying an average monthly mortgage of \$500 for a three-bedroom home, our partners are participants in building a better home and future for themselves and their families.

According to the *Out of Reach Report 2021*, the fair market rent for a three-bedroom unit is \$1,225.<sup>viii</sup> Habitat is a more affordable option than renting for families and has a greater economic impact on the state. Every Habitat home is both an investment and one answer to a critical need. Habitat affirms that stronger homes create stronger communities.

**total home production\***  
1978-2021



Habitat South Carolina’s *2020 Economic Impact Analysis*<sup>ix</sup> utilized IMPLAN economic modeling software and an independent party to determine that the Habitat network invested \$33.6 million in South Carolina. The analysis identified that Habitat supported over \$22 million in labor income and created nearly \$62 million of total economic activity throughout the state. In addition, federal, state, and local governments benefited from \$8.7 million in tax revenue produced from constructing and repairing houses.

**Recommendations**

Although not exhaustive, Habitat South Carolina recommends short- and long-term considerations for the Study Committee’s review. The recommendations are intended to 1) prevent *new occurrences* of inherited title issues and 2) create simple(r) ways to clear *existing* title issues.

- I. **Empower an Heirs’ Property Advisory Council to research, recommend, and report to the General Assembly for a period of two years, but no less than 12 months.**
  - a. Members of the Advisory Council shall include:
    - i. One representative from each entity listed in Joint Resolution A246 (R254, S560): South Carolina State Housing Finance and Development Authority, the Homebuilders Association of South Carolina, the Landowners Association of South Carolina, Habitat for Humanity South Carolina, the Affordable Housing Coalition of South Carolina, the Realtors Association



- of South Carolina, the Center for Heirs' Property Preservation, the Municipal Association of South Carolina, and the South Carolina Association of Counties;
  - ii. One representative from the South Carolina Department of Transportation;
  - iii. One representative from the Palmetto Land Title Association;
  - iv. The Register of Deeds from up to three coastal and/or neighboring counties;
  - v. Other governmental agencies, nonprofits, and/or members of the private sector as deemed appropriate by the Study Committee.
- b. The Advisory Council shall meet no less than once a month for a period of 12 months. At the end of 12 months, a report shall be provided to the General Assembly with prospective solutions and methods for implementation in South Carolina.
  - c. During the second year, the Advisory Council shall meet no less than bi-monthly (six times) for a period of 12 months. At the end of the second year, an updated report shall be provided to the General Assembly, including the status of the prior recommendations, in addition to new prospective considerations.
- II. Conduct a heirs' property County-Level Data Assessment to estimate the amount and assessed value in South Carolina's 46 counties.**
- a. Utilize the framework of the *Southern Regions Heirs' Property Collaborative Final Report (2021)*<sup>x</sup> to collaborate with the Registers of Deeds.
  - b. Evaluation shall include the following:
    - i. Estimated amount and assessed value of heirs' property in the County; and
    - ii. Five-year assessment of Right of Way impacts on heirs' property, including number of parcels, assessed value, acquisition methods utilized, and response from heirs' property landowners.
  - c. County-Level Data Assessment to occur over a period of six months, commencement to begin no later than the first month of the creation of the Heirs' Property Advisory Council.
  - d. At the end of six months, Counties shall provide a report of findings to the General Assembly and the Heirs' Property Advisory Council.
- III. Direct allocation of funding to the Center for Heirs' Property Preservation ("Center") for no less than five years.**
- a. Direct allocation from the state to the Center will expand the work of preserving heirs' property to its rightful owners and allow South Carolina families with generational lands obtain access to mortgages, titles, and/or government assistance that would empower them to have a home and/or maintain a home on their ancestral and/or inherited land.
  - b. The allocation will cover expenses such as legal fees, account administration, education, counseling, materials, subcontractor fees, and other expenses deemed necessary by the Center to assist South Carolinians obtain clear titles and draft wills to prevent future title issues.
  - c. The Center may choose to contract with qualified partner agencies and/or nonprofit organizations to expand the number of households reached.
  - d. The Center will submit annual reports to General Assembly for the duration of the allocation.



- IV. Direct allocation of funding to an entity to assist South Carolinians in preventing the creation of new heir's property for a period of no less than five years.**
- Selected entity will provide no less than two free community Wills Clinics in each County per year.
  - Allocation will also cover expenses for existing heirs' property owners wishing to limit the exponential growth of heirs' and complexities by way of clearing titles and creating a Trust for the property.
  - Entity will consider South Carolinians earning less than 150% of the area median income to be eligible for assistance.
- V. Model the Proof of Ownership standards utilized by the Federal Emergency Management Agency (FEMA) for the South Carolina Housing Trust Fund ("SC HTF") Owner-Occupied Rehabilitation Program and the Emergency Repair Program, administer by the SC State Housing Finance and Development Authority ("SC Housing").**
- Prevent homeowner displacement and maintain the habitability of homes by implementing policy changes similar to the FEMA disaster relief reform of 2021.
  - Families living on heirs' property will now be allowed to self-certify that they own their homes. FEMA will also accept letters from local officials and bills for home repairs as proof of ownership.

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<sup>i</sup> Prosperity Now (2020). Prosperity Now Scorecard, South Carolina. Retrieved from <https://scorecard.prosperitynow.org/>.

<sup>ii</sup> State of South Carolina. South Carolina State Housing and Finance Authority. (2021). *South Carolina Housing Needs Assessment: 2021 Update, State Overview*.

<sup>iii</sup> National Low Income Housing Coalition. (2021). *The Gap: A Shortage of Affordable Homes* (March 2021).

<sup>iv</sup> Habitat for Humanity International. (2020). U.S. Research and Measurement Team. Evidence Brief: What are the benefits of homeownership? Retrieved from <https://www.southcarolinahabitat.org/research>.

<sup>v</sup> Habitat for Humanity International. (2020). U.S. Research and Measurement Team. Evidence Brief: How does homeownership contribute to wealth building? Retrieved from <https://www.southcarolinahabitat.org/research>.

<sup>vi</sup> Urban Institute. (2021). Housing Finance Policy Center. Loftin, M. (May 2021). Homeownership is Affordable Housing. Retrieved from <https://www.urban.org/research/publication/homeownership-affordable-housing>.

<sup>vii</sup> Habitat for Humanity International. (2020). U.S. Research and Measurement Team. Evidence Brief: Who has access to homeownership? Retrieved from <https://www.southcarolinahabitat.org/research>.

<sup>viii</sup> National Low Income Housing Coalition. (2021). *Out of Reach 2021: South Carolina* (July 2021).

<sup>ix</sup> Habitat for Humanity South Carolina. (2021). 2020 Economic Impact Analysis. Retrieved from <https://www.southcarolinahabitat.org/reports>.

<sup>x</sup> Henry, J., Thompson, S., and Zabawa, R. (2021). Southern Region Heirs' Property Collaborative (USDA AFRI Grant No: 2019-69006-29334 Final Report). United States Department of Agriculture. Retrieved from [http://srdc.msstate.edu/heir\\_property/SOUTHERN-REGION-HEIRS-PROPERTY-Final-Report-2021.pdf](http://srdc.msstate.edu/heir_property/SOUTHERN-REGION-HEIRS-PROPERTY-Final-Report-2021.pdf).

MEMORANDUM

TO: Heirs' Property Study Committee

FROM: Scott Slatton, Director of Advocacy and Communications *Scott Slatton*

SUBJECT: Effects of heirs' property on municipalities

DATE: December 6, 2022

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South Carolina's cities and towns and their residents are affected by a number of issues arising from heirs' properties. Below is a brief description of those issues, their effects and the few solutions currently used by cities and towns to address them.

Heirs' properties most often present code enforcement issues in municipal neighborhoods that are difficult to mitigate. Derelict structures and overgrown lots are the most common problems municipal officials must address on heirs' properties. The conditions on these properties cause a decline in a neighborhood's quality of life, threaten public safety and are a drag on neighboring property values. Mitigation of these conditions falls to the property owner. However, due to the ambiguity of ownership of heirs' properties and often the absence of a resident on the property, mitigation falls to the local government.

In those cases, the city or town conducts its mitigation procedure that includes multiple notices to the owner(s) of record, posting of the property and ultimately conducting the cleanup using taxpayer funds. That cost is then attached as a lien against the property, which further encumbers an heirs' property and the family's ability to clear the title.

Heirs' properties sometimes cause a city or town to miss economic development opportunities big and small. A small town in Barnwell County lost a national retail restaurant because its preferred location was an heirs' property whose owners couldn't agree on a sale. As mentioned by the study committee, industrial or commercial development opportunities are thwarted by heirs' properties. And finally, cities and towns sometimes lose economic development opportunities when an heirs' property must be excluded from a proposed annexation thereby breaking contiguity with the municipality's boundary. These lost opportunities hurt the economic prosperity of not just cities and towns, but also that of the owners of an heirs' property.

Municipal solutions to these issues are very limited. However, the City of Charleston works very closely with the Center for Heirs Property Preservation to direct families to resources the Center provides. And the Town of Hilton Head Island created the Gullah-Geechee Land & Cultural Preservation Task Force that works with Beaufort County non-profits in Beaufort County to help resolve heirs' property issues. More resources to spread efforts like these statewide are needed.

To that end, the Municipal Association of SC supports the efforts of the Center for Heirs' Property Preservation and others like it and we urge the General Assembly to provide recurring funding to the Center through either a contract or direct, recurring appropriation so it can expand its reach across the entire state.



## **Heirs' Property Land Protection Recommendations**

SC history has directly affected the Gullah Geechee culture and placed heirs' property in the position that it is currently in. Everyone is affected by the implication of unresolved heirs' property issues; from the disagreements within families to municipalities who are losing potential tax revenue from undeveloped or abandoned land.

As a result, laws, new and revised, need to be enacted to assist families who are trying to resolve the entanglements that are associated with heirs' property. In general, the partition sale process is detrimental to Gullah Geechee families. A partition sale of heirs' property destroys families, encourages predatory investments and hinders the opportunity to establish generational wealth.

- 1) Heirs' Property Identification
  - a) Develop a statewide listing of existing heirs' property
    - i) Creates a metric on the amount that still exists and tracks losses
    - ii) Enables properties to be categorized and receive special exceptions
  - b) If an individual is living on the land and has been responsible for the taxes for 10+ years, with no other heirs staking a claim, then said individual should be granted 'common law' ownership.
  
- 2) Heirs' Family Relationship Identification
  - a) Burden of family relationships should be on the partitioner.
  - b) Demonstration of proof through DNA of being an heir to the property.

**Lowcountry Gullah Foundation**  
**Heirs' Property Land Protection Recommendations**  
**Page 2 of 2**

- 3) Establish a 'Transfer on Death Deed' law
  - a) Similar to other real estate deeds; it names the current owner, provides the exact legal description of the property, and designates someone to receive the property (known as the "grantee" or "beneficiary") to take effect upon the current owner's death.
  - b) The beneficiary doesn't have to sign, acknowledge, or even be told about the deed.
  - c) In the deed, alternate beneficiary(s) can be named to inherit the real estate if the first choice isn't alive at the time of the individual's death. If an alternate is not named, and the first choice doesn't survive the owner, the property then goes through probate.
  
- 4) Partition Sales
  - a) One family member should not be able to force the sale of property. Of the heirs' a minimum of 51% of ownership must be in agreement to trigger a sale.
  
- 5) Land Preservation
  - a) Banks need to become more sensitive to the unique needs of heirs' property. SC needs to place pressure on banks to utilize the Community Reinvestment Act to provide funding, using the property as collateral.
  - b) Establish provisions within the SC Open Land Trust funds to help preserve undeveloped heirs' property at the local level.
  
- 6) Tax Sale Special Exceptions
  - a) Properties should be able to be redeemed without penalties.
  - b) Tax sale auctions without additional interest for land established as heirs' property.
    - i) At the tax sale, no outside bidders unless no heirs' to the property are present.
    - ii) Property heirs' should be verified as heirs prior to special exemption bidding.
  - c) Heirs' Property should be grandfathered in at the lowest tax percentage rate in perpetuity.
  - d) Families who are resolving Heirs' Property should be exempt/frozen from paying taxes for x amount of years until the titling has been resolved.
  - e) Heirs' Property should be held at 4% and not be subject to rollbacks on vacant land and charged the difference in tax rates.



SUMTER COUNTY MASTER IN EQUITY

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December 18, 2022

Heirs' Property Study Committee  
PO Box 142  
Columbia, SC 29202

IN RE:           Clementa Pickney Act

Senators Scott, Garrett & Stephens and Representatives Kirby, Henderson-Myers & Gatch:

On behalf of the Masters in Equity, I write to you to provide input, information and limited suggestion based upon our collective courtroom experiences. As you may recall Curtis Clark attended a committee meeting, where he gathered information and then disseminated same to our group for review and discussion. From this information our group exchanged comments, first-hand experiences and possible suggested revisions to offer a single joint letter in the interests of the committee's information gathering.

The Masters collectively offered the following observations, concerns and suggestions:

1. The current version of the Heirs' Property partition procedure proves too costly for most litigants, and too time consuming to complete each and every separate step in the process for most cases.
2. The Clementa Pinckney Act was designed to halt efforts by developers and unrelated parties who have an interest in the property that is the subject of the case, and to protect families. However, in many cases, it now hampers those families.
3. Practicing lawyers continue to get hung up on the procedural complications in the Heirs' Property statutes, and oftentimes should instead begin with a Quiet Title action to identify all the participants, before the property can be declared "heirs property" under the statute.
4. Most participants do not like the fact that at the first real hearing, the value of the property is determined and set, when it may take more than a year or even years to resolve the case. The property's value may well go up or down over time during the course of the litigation.



5. Most practicing lawyers remain unfamiliar with the many requirements of the Pinckney Act for Heirs' property cases and have not managed their client's expectations about the process. Litigants expect one court appearance and are usually hoping for a quick resolution, particularly where there is an identified purchaser and an already agreed upon price.

6. As currently written, sections 15-61-10 and 15-61-330 place the burden on the court to review the pleadings well in advance of the potential first hearing on the case to determine if a preliminary hearing is required.

7. It would be ideal to have one hearing where the parties are notified in advance, at least 30 days or more, unless waived, that the Court will determine property value, ownership interests, and determine a period for a buyout by parties or a sale to a third party.

8. A suggested amendment to section 15-61-370(B) is to provide that notification must be made to the Clerk of Court and to the trial court at least 30 days before the trial. Currently it is only 10 days.

9. It would be helpful to have some and/or more specific ways for litigants to opt out of having to comply with the provisions of the heirs property sections when there are a limited number of heirs and/or limited property values at stake.

The Masters also offered the following suggested two amendments to the partition statutes:

1. That language be added: (1) requiring a designation on the face of the Complaint that the Pinckney Act applies (or Article 3 of Section 61 applies), or that the property that is the subject of the partition action is or "qualifies as" or "meets the definition of" "Heirs Property" as defined in Section 15-61-320; and (2) directing the Clerk of Court to notify the Civil Chief Administrative Judge for the circuit within fourteen (14) days of the filing of the complaint.

Suggested language for the above is:

In any complaint for the partition of lands or real property that is filed with the Court of Common Pleas, if applicable, the plaintiff or plaintiff's attorney shall designate on the face of the complaint that the lands that are the subject of the lawsuit meet the definition of "Heirs' Property", as defined at Section 15-61-320. Upon the filing of a complaint with that designation, the Clerk of Court of the county that the complaint is filed in shall notify the Chief Civil Administrative Judge within fourteen (14) days of filing that a complaint involving lands that potentially require the use or application of the provisions of Article 3 of Chapter 61, of Title 15, has been filed.

2. A suggested opt-out provisions for qualifying cases, consistent with the concerns expressed in number 9 above that allows the parties or trial judge to use the general partition provisions under Article 1 of Section 61, Partition, of Title 15; instead of being required to use the (Pinckney Act) sections of Article 3.

Suggested language for the above is:

Upon motion of a party or its own motion, the trial court may determine that Article 1 of this Chapter would more effectively protect the interests of the heir parties, such that Article 3 should not apply. In making this determination, the court may consider the relationships of the parties, the cost of litigation parties in default, or any other factor relevant to the case.

or:

Upon motion of a party or parties, or upon its own motion, the court may determine that the provisions of Article 1 of Chapter 61 would adequately and effectively protect the interest of the parties to the case; such that Article 3 of Chapter 61 should not apply or only certain enumerated requirements of Article 3 shall apply. In making this determination, the court may consider the relationships of the parties including if and how many cotenant parties are relatives, the cost of the litigation, length of time the litigation takes, necessity and benefit of procedural actions required under Article 3 of Chapter 61, parties that are in default or are unknown, any manifest prejudice or manifest injury that may occur if Article 3 is not applied, or any other factor that is relevant to the case.

On behalf of the Masters, I thank you for allowing us the opportunity to provide our collective input. If we can be of further assistance please let me know.

With kindest regards, I am

Very truly yours,



Michael M. Jordan

Sumter County Master in Equity

President, Masters in Equity

COASTAL  
CONSERVATION  
LEAGUE

*Heirs' Property Study Committee Testimony*

*Monday, Dec. 19, 2022*

*Faith Rivers James, J.D.*

*Executive Director,*

*South Carolina Coastal Conservation League*

- I. Introduction**
- II. The First Step: Partition Statutory Law Reform**
- III. The Conservation Challenge – Maintaining Agricultural Status**
- IV. Stem the Tide of Land Loss through Tax Sale Procedural Reforms**
  - a. Disaggregate Tax Liabilities**
  - b. Facilitate Private Tax Sales**
- V. Incentivize Cultural Property Preservation with “Current Use” Assessment**
- VI. Conclusion**

*Note: Portions of this testimony are excerpted from The Next Chapter in Heirs' Property Preservation: Tax Policy Strategies to Restore the Commons for Heirs' Property Owners<sup>1</sup>*

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<sup>1</sup> Work in progress; please do not cite without permission of the author.

## I. Introduction

Good afternoon, Chairman Scott and members of the Study Committee. Thank you for having me here to speak today. My name is Faith Rivers James, and I serve as the Executive Director of the Coastal Conservation League in Charleston. While I currently lead this non-profit conservation organization, I appear before you today wearing three hats:

-First, I am a conservationist who is intent to preserving our rural landscapes.

-Second, as a lawyer, foundation executive, and professor of property law, I have led efforts to highlight and grapple with the challenges of heirs property. Twenty years ago, I led the South Carolina Bar Foundation and helped garner philanthropic resources to launch the Center for Heirs' Property Preservation. We partnered with the South Carolina Coastal Conservation League to consider the implications of land-use policies on communities of heirs' property owners.

As a professor, my scholarship agenda focused on heirs' property preservation and the challenges of managing tenant in common property. I served a term on the American Bar Association's Heirs' Property Preservation Task Force, and I participated as an observer to the Uniform Partition of Heirs' Property Act committee at NCCUSL.

In my 2009 law review article about the Tragedy of Tenants in Common,<sup>2</sup> I highlighted three facets of South Carolina law that offered potential solutions to the challenges presented by heirs' property:

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<sup>2</sup> See generally Faith R. Rivers, *Inequity in Equity: The Tragedy of Tenancy in Common for Heirs' Property Owners Facing Partition in Equity*, 17 TEMP. POL. CIV. RTS. L. REV. 1 (2007) [hereinafter *Inequity in Equity*].

- Sen. Clementa Pinkney’s “right of first refusal” provision<sup>3</sup> opened the nation’s eyes to the importance of giving families a chance to buy out a partitioning cotenant, without having to buy the entire parcel – again.
- The SC Supreme Court’s decision in *Zimmerman v. Marsh*,<sup>4</sup> was one of three state supreme court decisions that recognized sentimental attachment to property as a factor for consideration in partition cases;
- South Carolina’s partition by allotment<sup>5</sup> empowered Masters in Equity to carve up and balance the value of interests, thus countering the charge that unique property cannot be divided between co-tenants.

I advocated for all three of these provisions, and you see them included in the Uniform Act. I appreciate the South Carolina Legislature for adopting this statute and dedicating it to monumental contribution that Sen. Clementa Pinckney made to this effort.

Last but not least, I am a native of Mt Pleasant. I bring my experience in a family that has dealt with heirs’ property issues firsthand. My fourth great grandfather, Mike Wigfall, was enslaved on Hamlin Plantation in Mt. Pleasant. His son, Mike, Jr., gained his freedom at emancipation and worked as a sharecropper. By 1890, Mike Jr. saved enough money to buy ten acres of land on Hamlin Sound from the family that had once enslaved him. He and his wife Julia

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<sup>3</sup> S.C. CODE ANN. §15-61-25 (2006). (“Upon the filing of a petition for partition of real property owned by joint tenants or tenants in common, the court shall provide for the nonpetitioning joint tenants or tenants in common who are interested in purchasing the property to notify the court of that interest no later than ten days prior to the date set for the trial of the case.” After the report of “one or more competent real estate appraisers,” the cotenant seeking to exercise the option shall have 45 days to the established price into the court, or the property will be made available for public sale.)

<sup>4</sup> *Zimmerman v. Marsh*, 364 S.C. 383, 618 S.E.2d 898 (S.C. 2005).

<sup>5</sup> S.C. Code Ann. 15-61-50.

worked that ten-acre tract all of their lives, and when he died, the property passed on to his three daughters.

My great-great grandmother, Rebecca, was allotted the “worst” tract next to the marsh. That property stayed in my family for five generations. And then, in the 1980’s, a family member started a movement to sell the property. My mother didn’t want to sell the land, but she wasn’t in a position to stop the train. At that time, there was no guaranteed right to purchase the interest of the petitioning co-tenant. My mother received a modest check that was small recompense for the loss of the land her third great-grandfather earned by the sweat of his brow.

This is a case that never made it to a courtroom. It’s a story that’s never been told in news, in pleadings, or in articles. In fact, the case was your “*run of the mill*” quiet title action. But valuable land and irreplaceable family heritage was lost because it was heirs’ property.

Sadly, my family’s land story is not unique. Through public and private initiatives during Reconstruction, more land was made available to Black Carolinians than in any other Southern state.<sup>6</sup> These lands were primarily parcels of low, coastal lands that were carved out of former Lowcountry plantations. For generations, the land was a source of sustenance and sanctuary for thousands of African Americans who cultivated and maintained their tidal tracts and culture in relative isolation.<sup>7</sup>

Today, in areas of rapid ex-urban growth and coastal development, much of the undeveloped property is owned by African-Americans who inherited the land and

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<sup>6</sup> See generally WALTER EDGAR, SOUTH CAROLINA: A HISTORY at 396 (1998),

<sup>7</sup> See generally PATRICIA JONES-JACKSON, WHEN ROOTS DIE: ENDANGERED TRADITIONS ON THE SEA ISLANDS (1987); WILLIAM S. POLLITZER, THE GULLAH PEOPLE AND THEIR AFRICAN HERITAGE (1999); MARY A. TWINING & KEITH BAIRD, *Sea Island Culture: Matrix of the African American Family*, in AFRICAN PRESENCE IN THE CAROLINAS AND GEORGIA: SEA ISLAND ROOTS 1-17 (Mary A. Twining & Keith Baird eds., 1991).

who now share title with family members as tenants in common.<sup>8</sup> The practical difficulties of sharing interests in undivided land, the complex statutory partition process in the courts, and the challenges of co-managing tenant-in-common property create substantial obstacles to maintaining ownership of heirs' property.

## **II. The First Step: Partition Statutory Law Reform**

Important law reform efforts have been made to cabin the ability of developers to force the sale of heirs' property and to preserve African-American landowner resources in those instances where courts order partition sales.

The Uniform Partition of Heirs Property Act (UPHPA) was a critical first step in the effort to make heirs' property ownership more viable by enhancing procedural protections for heirs facing the partition process. South Carolina's Clementa C. Pinckney Uniform Partition Act<sup>9</sup> supports the role of judges in partition actions by providing them with the tools to manage and decide cases before them in accordance with commercially reasonable standards.

These advancements are important accomplishments to be heralded and preserved. I suggest to this committee, however, that several legislative and administrative steps in the *tax policy* arena could further combat inequities that hamper effective land management between heir co-tenants.

Our current tax policies lead to systemic loss of heirs' property and spur the conversion of our state's coastal resources into developments. I believe there are

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<sup>8</sup> See generally *Inequity in Equity*, *supra* note 2.

<sup>9</sup> S.C. CODE ANN. § 15-61-310.



several tax policy reforms that could achieve conservation and community preservation outcomes.

### **III. The Conservation Challenge – Maintaining Agricultural Status**

Many heirs' property owners run the risk of being “taxed off” of their land once subdivision, commercial, or industrial uses encroach upon ex-urban areas where heirs' property is prevalent. There are a number of preservation strategies that could be employed to conserve our rural landscape and protect heirs' property ownership in rapidly developing areas.<sup>10</sup>

Of course, we are all familiar with conservation easements which are a fundamental tool in the effort to conserve natural resources. In the heirs' property context, however, this strategy encounters transactional challenges, as heirs must clear title prior to placing conservation easements on their inherited property. In addition, the typical conservation easement tax benefits are only valuable to the extent that heirs have tax liabilities against which to claim deductions.

**Despite these limitations, policymakers can achieve conservation outcomes on heirs' property through reforms to the agricultural tax exemption.**

Owners of large agricultural tracts qualify for property tax exemptions, which dramatically reduce the annual tax liability for these landowners.<sup>11</sup> The agricultural exemption insulates owners of large rural tracts from the upward pressure of development-driven, escalating tax assessments.

Over the past twenty years, practitioners and scholars have observed that an

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<sup>10</sup> See generally Faith Rivers, *The Public Trust Debate: Implications for Heirs' Property Along the Gullah Coast*, 15 Southeastern Env'tl. L.J. 147 (2006).

<sup>11</sup> See generally Jesse J. Richardson, Jr., *Beyond Fairness: What Really Works to Protect Farmland*, 12 DRAKE J. AGRIC. L. 163 (2007).



unintended consequence of families taking affirmative steps to clear title is that they will be confronted with exponential property tax assessments at the conclusion of the action.

Once a family pursues partition in kind to subdivide their property into tracts with clear title, they risk losing the agricultural exemption if the resulting parcels are too small to meet the acreage requirements once the tracts are partitioned across several generations. Current law provides an extension of the agricultural exemption to subdivided lots; however, the extension is limited to the third degree of blood relationship, or consanguinity. So, while the line of direct descendants are covered; cousins are not. The vast majority of heirs' property cases involve several generations of cousins. So these landowners cannot take advantage of the exemption.

Many heirs have cleared title and converted their ownership into a limited liability corporation (or LLC).<sup>12</sup> Most LLC property owners can take advantage of the agricultural exemption; but LLC's created by heirs' property owners typically have a large number of shareholders, and thus exceed the statutory limit. Under current law, family LLC's with more than 10 shareholders are disqualified from utilizing the agricultural exemption.<sup>13</sup>

As a result, heirs risk losing the agricultural exemption when land is partitioned in kind among multiple generations of cousins, or when they convert to a more secure LLC form of ownership.<sup>14</sup> Even though the agricultural status of the property does not change, the resulting increase in property tax assessments when

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<sup>12</sup> See generally, Mitchell, *Reconstruction*. *supra* note 2, at 567-75.

<sup>13</sup> See *Public Trust*, *supra* note 6, at 167- 68; SCDOR 117-1780.2. Agricultural Special Assessment <https://dor.sc.gov/resources-site/lawandpolicy/Documents/117-1780-Classification-of-Property-Agricultural.pdf>

<sup>14</sup> See *Public Trust*, *supra* note 6, at 167.

the agricultural exemption is lost is a major contributing factor to financial hardship and potential land loss among heirs.

**Agricultural exemption policies could be amended to alleviate these unintended consequences.**

If a parcel of agricultural heirs' property is subdivided through a partition action, the statutory provision could be amended to extend the degree of family relationship, or consanguinity, to include the broader range of cousins who once shared title as heir cotenants. In addition, the statute could be amended to eliminate the cap on the number of shareholders before disqualifying a tract from the agricultural exemption.

These administrative tax policy reforms can protect the rural landscape in areas where heirs' property is prevalent. Extension of the agricultural exemption to smaller lots that were once part of larger agricultural tracts would deter escalating property tax assessments and eliminate the unintended penalty that partitioning heirs' property owners encounter.

It is important to note that this action would support our state's conservation policies. Although these tracts may not be permanently encumbered with conservation easements, maintaining agricultural status supports the aims of the S.C. Conservation Bank. Keeping these tracts of property in an undeveloped state also supports our resilience efforts to preserve our natural resources along the coastal plain.

#### **IV. Stem the Tide of Land Loss through Tax Sale Procedural Reforms**

##### **a. Disaggregate Tax Liabilities**

The most common challenge that heirs property owners face is management of annual property tax liabilities. A second way that legislative and administrative

officials can help stem the tide of land loss<sup>15</sup> is to adopt fair tax property policies and administrative rules.

In the case of heirs' property, the property tax bill is issued in the name of the deceased landowner or an heir. Any cotenant or heir can volunteer to be the person to receive the tax notice. It falls to the pool of cotenants to make arrangements for the collection of partial or proportionate contributions from those able to pay.<sup>16</sup>

If cotenants are unwilling or unable to pay their share of the property taxes, the entire group of heirs' ability to maintain a tract of land is at risk. Akin to single shareholder control that plagues heirs' property owners in the context of partition, in the property tax arena, a single individual's failure to pay their fair share of property taxes forces other heirs to cover the non-participating heirs' portion, or risk losing the entire tract of property through the delinquent tax sales system.

Tax policy should reward responsibility, and not facilitate freeloading by non-participatory heirs who do not cover their fair share of property expenses. Where the proportion of ownership interests is documented (through a quiet title action, a petition to determine heirs, or other county forms),<sup>17</sup> taxing authorities could allocate liabilities in accordance with the proportional share of ownership interest. This

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<sup>15</sup> *Inequity in Equity*, *supra* note 2, at 8.

<sup>16</sup> See 7 RICHARD R. POWELL & MICHAEL ALLAN WOLF, *POWELL ON REAL PROPERTY* 50.04 (2007); see Mitchell, *Reconstruction*, *supra* note 2, at 512-513; see also EMERGENCY LAND FUND, *supra* note 8, at 280 (If a cotenant pays more than her fair share of the tax bill, the law does not grant the paying cotenant any greater rights in the property as compared to the rights retained by other cotenants who fail to pay their share of property taxes.)

<sup>17</sup> Families can identify heirs and document proportionate shares of heirs' property through submission of allocation of interest forms or through equity or probate court proceedings. Equity courts that handle partition actions receive family testimony about the ownership shares attendant to a parcel of property. Probate courts handle "Petition to Determine Heirs" as a method of disposing of a decedent's estate.

would generate individual tax notices to each shareholder, thus alleviating the annual challenge of collecting tax payments for a singular submission to the county.

## **b. Facilitate Private Tax Sales**

If heirs are permitted to document their proportionate interests to authorities, taxing authorities could support the preservation of heirs' property by transferring Sen. Clementa Pinckney's "right of first refusal" procedures in partition sales over to the delinquent tax sale process.

In my current law review "work in progress," I suggest that policy makers institute a private tax sale structure for heir co-tenants. Building upon the "right of first refusal" process for partition sales,<sup>18</sup> administrators could create a similar process for cotenant heirs to purchase and foreclose the interest of cotenants who have not met their proportionate share of the property tax liability.<sup>19</sup> Private tax sales offer an opportunity for administrative officials to help resolve the tragedy of tenancy-in-common ownership by creating procedural opportunities for cotenants to buy each other out and maintain land within the family.

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<sup>18</sup> S.C. CODE ANN. § 15-61-25 (Supp. 2014); *see also* Mitchell, *Reforming Property Law*, *supra* note 9 at 14-15 (providing a comprehensive review of state statutes allowing buyout rights).

<sup>19</sup> *Cf.* David J. Dietrich, Presentation at the American Bar Association State and Local Government Law Section Annual Meeting: Heirs Property, Legal Planning, and Social Justice (Apr. 25, 2014) (presentation materials available at

[http://www.americanbar.org/content/dam/aba/events/real\\_property\\_trust\\_estate/step/2014/materials/step\\_2014\\_a\\_legal\\_rubiks\\_cube\\_tic\\_with\\_exhibits.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/real_property_trust_estate/step/2014/materials/step_2014_a_legal_rubiks_cube_tic_with_exhibits.authcheckdam.pdf)) ("The failure of any Owner to make such additional contribution... shall constitute a material breach of this Agreement... The non-defaulting Owner shall have the right, but not the obligation, to pay the defaulting Owner's pro rata share of such additional contribution. The non-defaulting Owner so electing to pay the defaulting Owner's share shall be entitled to a percentage of the defaulting Owner's interest."), (Private tenants-in-common agreements regularly provide for the transfer of a defaulting non-participating cotenant's interest over to a cotenant that funds the obligation.)

## V. Incentivize Cultural Property Preservation with “Current Use” Assessments

My final tax policy suggestion is the first that I offered in my 2006 law review article in the *Southeastern Environmental Law Journal*.<sup>20</sup> Recognizing that a significant contributor to the loss of heirs’ property is the exponential increase in property taxes that occurs when development encroach upon ex-urban, historic Gullah communities, I suggest reforming how we assess taxes on these lands.<sup>21</sup>

Property taxes are based on an assessment of the market value of a parcel of property. In determining market value, an appraiser will consider the property’s “highest and best” use.<sup>22</sup> Although the concept of assessing taxes at a property’s “highest and best use” is generally accepted,<sup>23</sup> application of the concept to heirs’ property can have devastating implications for landowners who have not changed their use of property, but simply lay within the path of sprawl and development.

Legislators could advance preservation efforts by adopting a property tax provision that assesses undeveloped heirs’ property in historic settlement areas and cultural overlay districts at the ***current use***, rather than the “highest and best” use. Modeled after the agricultural exemption,<sup>24</sup> a “cultural property preservation” exemption provision would protect traditional communities of heirs’ property owners.

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<sup>20</sup> See *Public Trust*, *supra* note 6, 147-169.

<sup>21</sup> See *Public Trust*, *supra* note 6, at 161 for a discussion of Gullah Land Use Patterns.

<sup>22</sup> 2 Bender’s *State Taxation: Principles and Practice*, § 24.04 (Charles W. Swenson ed., Matthew Bender 2015).

<sup>23</sup> SWENSON, *supra* note 17, defining “fair market value” and “highest and best use.”

<sup>24</sup> See, e.g., S.C. CODE ANN. § 12-43-232 (2014).

This exemption could allay the impact of escalating property tax assessments where suburban or industrial development encroaches upon traditional settlement communities.<sup>25</sup> If families have the opportunity to reduce the tax liability to an amount that the current use could sustain, this would reduce the outside pressure to sell family land and preserve our historic settlement communities.

## **Conclusion: The Next Chapter in Heirs' Property Preservation: Legislative and Administrative Reforms**

I commend the Committee for your efforts to continue the work of preserving heirs' property. Preservation of communities of heirs' property owners aligns with efforts to protect our state's rural landscape and provides essential opportunities to conserve natural resources that are critical to our resilience efforts.

You have tackled the inequities of the partition process. South Carolina lawmakers helped pave the way to partition reform, and dozens of states are following your lead in creating more equitable procedures that empower heirs to hold on to their land and achieve better outcomes through the partition process. The Clementa Pinckney Act is operating as you intended.

The next step in the ongoing challenge of helping heirs' property owners is to eliminate the distorted economics and inefficiencies that plague tenancy-in-common

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<sup>25</sup> See, Charleston County Comprehensive Plan, Chapter 3.4 – Cultural Resources Element for a discussion of the historic settlement communities at <https://www.charlestoncounty.org/departments/zoning-planning/files/comp/Part%203%203.4%20Cultural%20Resources%20Element.pdf?v=25>; See also, Beaufort County Comprehensive Plan, Chapter 6 – Cultural Resources for a discussion of the Cultural Protection Overlay District at <https://beaufortcountysc.gov/council/comprehensive-plan/documents/2010-comprehensive-plan-documents/chapter-6-cultural-resources.pdf>

ownership in the property tax system. Extending the agricultural exemption, providing disaggregated tax statements and “right of first refusal” opportunities in delinquent tax sales, and reforming tax assessments on historical cultural properties to “current use” (rather than “highest and best” use) would go a long way toward the goal of helping heirs’ property owners stay in place.

Together, these legislative and administrative ends will provide the means for past generations of African Americans to make their dreams of land ownership a lasting legacy for their heirs. And these efforts will go a long way toward the goal of conserving natural resources and protecting the rural landscape that makes our South Carolina such a beautiful and special place.

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- <sup>i</sup> (Forthcoming) Thomson R., Bailey, C. & Gunroe, A., *Quantifying Heirs' Property Across the Deep South: A Geospatial Approach*. US Department of Agriculture Forest Service, Southern Research Station. (Note: Staff will forward copies of the study upon publication to the Study Committee members and will have copies available upon request.)
- <sup>ii</sup> Testimony of Luana Graves Sellars and Testimony of Dr. Adam Kantrovich, Heirs' Property Study Committee, 12/19/2022.
- <sup>iii</sup> Williams, Elizabeth, "New Farm Bill Gives 11 States with Heirs Property Act a Boost.", *AgFax*, January 17, 2019 (<https://www.agfax.com/2019/01/17/new-farm-bill-gives-11-states-with-heirs-property-act-a-boost-dtn/> (last viewed 11/29/2022))
- <sup>iv</sup> <https://www.federalregister.gov/documents/2021/08/09/2021-16459/heirs-property-relending-program-hprp-improving-farm-loan-program-delivery-and-streamlining>
- <sup>v</sup> Section 12615, Pub-Law 115-334 (2018)
- <sup>vi</sup> <https://www.usda.gov/media/press-releases/2022/08/18/usda-announces-first-three-lenders-heirs-property-relending-program> (last viewed 11/30/22)
- <sup>vii</sup> <https://www.farmers.gov/working-with-us/heirs-property-eligibility/relending> (last viewed 11/30/22)
- <sup>viii</sup> [https://www.postandcourier.com/hurricanewire/fema-change-may-make-it-easier-for-heirs-property-owners-to-get-disaster-relief/article\\_41cf523e-1aec-11ec-a972-3b19b8f505dc.html](https://www.postandcourier.com/hurricanewire/fema-change-may-make-it-easier-for-heirs-property-owners-to-get-disaster-relief/article_41cf523e-1aec-11ec-a972-3b19b8f505dc.html) (last viewed 11/30/22)
- <sup>ix</sup> <https://www.fema.gov/press-release/20221013/fema-provides-multiple-ways-prove-home-ownership>
- <sup>x</sup> <https://abcnews4.com/news/local/fema-distributes-350m-in-disaster-relief-to-heirs-property-owners-after-policy-change-senator-tim-scott-jon-ossoff-wciv> and <https://www.scott.senate.gov/media-center/press-releases/following-sens-scott-ossoff-successful-push-fema-distributes-350-million-in-disaster-relief-to-heirs-property-owners>
- <sup>xi</sup> <https://www.usda.gov/media/press-releases/2022/08/24/usda-announces-550-million-american-rescue-plan-funding-projects>
- <sup>xii</sup> <https://ask.usda.gov/s/article/Update-on-American-Rescue-Plan-Act-ARPA-Section-1005-Payments>
- <sup>xiii</sup> <https://www.farmers.gov/inflation-reduction-investments#:~:text=Meanwhile%2C%20Section%2022007%20of%20the,to%20its%20programs%20and%20services.>
- <sup>xiv</sup> *Boyd v. United States*, 1:22-cv-01473, Pacer Deadlines/Hearing Report (last viewed December 4, 2022)
- <sup>xv</sup> AL ST §35-6A-3 et al.
- <sup>xvi</sup> CA CIV PRO § 874.313, et al.
- <sup>xvii</sup> Haw, Rev. Stat. §668-6A
- <sup>xviii</sup> 755 ILCS 75/12
- <sup>xix</sup> <https://mgaleg.maryland.gov/2022RS/bills/sb/sb0092T.pdf>
- <sup>xx</sup> NY RP ACT & PRO §993 et al.
- <sup>xxi</sup> KY SB 110 (2022)
- <sup>xxii</sup> Miller, Francine, *Heirs' Property: Understanding the Legal Issues in North Carolina*, November 2022; <https://farmlandaccess.org/wp-content/uploads/2022/11/heirs-property-legal-issues-north-carolina.pdf> (last viewed December 4, 2022)
- <sup>xxiii</sup> Act Summary, 2009 Real Property Transfer on Death Act , <https://www.uniformlaws.org/committees/community-home?CommunityKey=a4be2b9b-5129-448a-a761-a5503b37d884> (Last viewed 11/29/22)
- <sup>xxiv</sup> Written Testimony, Municipal Association of South Carolina
- <sup>xxv</sup> Testimony of Josh Walden, Heirs' Property Study Committee, 11/15/2022
- <sup>xxvi</sup> Washington, D.C. is developing their Heirs Property Assistance Program. The D.C. program intends to issue grants to help pay for legal services necessary to clear legal title. The program also intends to consider improvements to the program to help families.
- <sup>xxvii</sup> Testimony, Heirs' Property Study Committee, 12/5/2022
- <sup>xxviii</sup> Testimony of Dr. Adam Kantrovich, Heirs' Property Study Committee, 12/19/2022
- <sup>xxix</sup> Testimony of Dr. Adam Kantrovich, Heirs' Property Study Committee, 12/19/2022