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The Uniform Partition of Heirs Property Act: Advancing Social and Racial Justice Through Historic Property Law Reform

—Thomas W. Mitchell

I. INTRODUCTION

As indicated in the introduction to this volume, one of the major problems with heirs' property ownership is that it represents the most insecure form of common real property ownership in this country. For the past 150 years or so, predatory real estate speculators, developers, lawyers, and some others have preyed upon African American, Latino, and some other heirs' property owners by using an archaic property law known as partition law to force the sale of an untold number of their properties. The vast number of properties that families and communities have lost in partition actions have included numerous agricultural properties, single-family homes, and even, in some instances, properties that were comprised of tens of thousands of acres of land with vast open spaces.¹ The properties in almost every case were sold for prices well below market value, oftentimes for fire-sale prices.

¹ See, e.g., Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 ALA. L. REV. 1, 31–36 (2014). As indicated, African American families and others have lost a large number of their single-family homes in urban and other areas either as a direct result of partition actions or how those that acquired many of these homes were able to use partition law to coerce disadvantaged families under duress into selling their homes for below-market prices. See, e.g., Lydia Hu, *Going, Going, Gone: New Tactic by Real Estate Investors Forcing New Yorkers from Their Homes*, SPECTRUM NEWS NY1 (Mar. 9, 2019, 7:00 AM), <https://www.ny1.com/nyc/all-boroughs/news/2019/03/19/going--going--gone--new-tactic-by-real-estate-investors-forcing-some-new-yorkers-from-their-homes-ny1-investigation/>.

B. Substantial Real-World Positive Impact

More important than the number of enactments, based on reports from many states assessing the effectiveness of the UHPA, the act is working very well and as intended. It is helping many families maintain ownership and control of their property. The UHPA is also helping families preserve their generational wealth in different ways.

Here are some selected examples of how the UHPA has helped certain families with their heirs' property problems. In Georgia and South Carolina, the UHPA has led to a significant reduction in the number of abusive partition actions filed by real estate developers, speculators, and others, according to several lawyers in those states. In New York City, the UHPA is helping African American heirs' property owners maintain ownership and possession of their properties as well as the wealth associated with this property ownership. Some of these owners are longstanding owner-occupiers of single-family homes in rapidly gentrifying neighborhoods who have been targeted by real estate speculators that successfully forced other heirs out of their homes by using partition law prior to New York's enactment of its version of the UHPA in 2019. In Texas, a property that was sold using the UHPA's open-market sales procedure yielded a sales price of \$2.5 million in a partition action in which all of the lawyers agreed that the property would have sold for no more than \$1 million if the auction sales procedures provided for under the general partition law had been used instead. Though seemingly a dramatic result, the result in this case in fact is completely consistent with what real estate economics theory would predict would be the impact of the UHPA's open-market sales procedure replacing the auction sale procedure.

In Montana, the UHPA has helped stabilize the ownership of certain ranch properties that were in danger of being targeted for a partition sale. In 2017 in Hawaii, Mark Zuckerberg dismissed eight lawsuits he had filed seeking the forced sale of certain kuleana lands (Native Hawaiian-owned heirs' property parcels with a unique history) located within the interior boundaries of his 700-acre estate on the island of Kauai. He dismissed the lawsuits in part because of the extremely bad media coverage he had received, including some media outlets that prominently noted that Zuckerberg had filed his lawsuits two days before the UHPA was to become law in 2017 in an effort to prevent the kuleana landowners from being able to avail themselves of the UHPA's enhanced protections.⁹⁴ In all the jurisdictions that have enacted the UHPA into law, farmers and ranchers who own heirs' property are eligible for expanded or priority access to a number of important programs administered by the United States Department of Agriculture but farmers and ranchers who own heirs' property in states that have not enacted the UHPA into law who are not entitled to such expanded or priority access.

VI. CONCLUSION

For decades, heirs' property owners suffered one tragic loss after another, which resulted in disadvantaged families losing a massive number of properties, whether urban, suburban, or rural ones. This loss resulted in a massive depletion of generational wealth and it has had a devastating impact on many families and communities given that their heirs' property often had constituted their most substantial asset. Such loss also had a devastating impact on the history, culture, and heritage of

⁹⁴ See, e.g., Duane Shimogawa, *New Hawaii Law Likely Influenced Timing of Kauai Lawsuits by Facebook's Zuckerberg*, PACIFIC BUSINESS NEWS, Jan. 20, 2017.