

NATIONAL ASSOCIATION OF REALTORS®:  
STATE AND LOCAL ISSUES AND FAIR HOUSING  
POLICY COMMITTEES

APRIL 13, 2022



# Durable, General Racial Economic Gaps

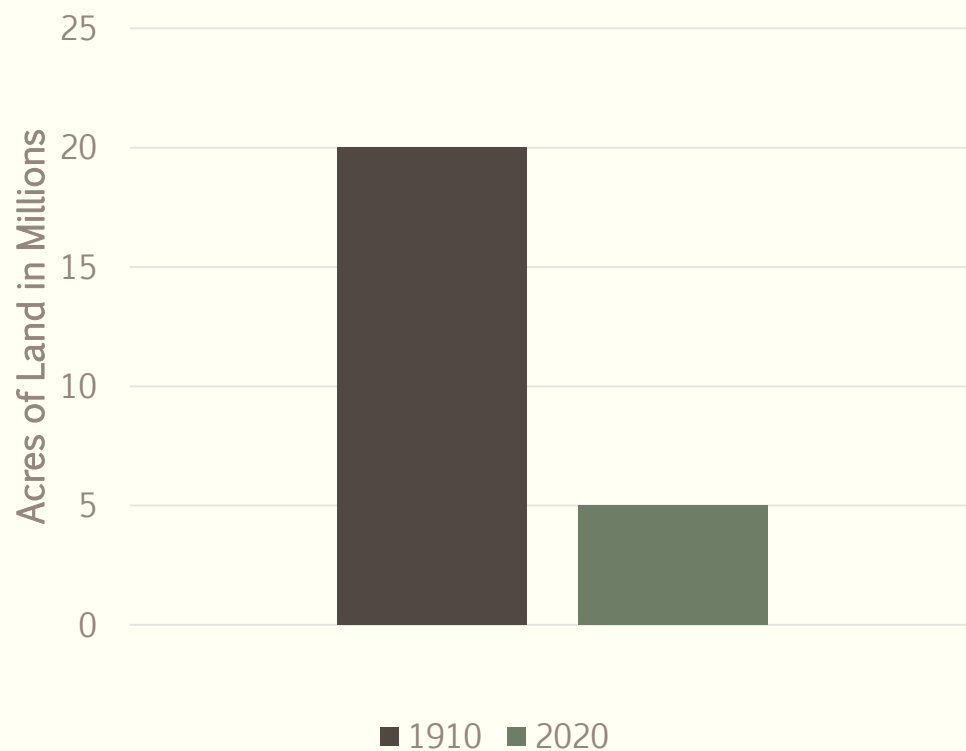
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- Black-White Wealth Gap
  - Typical Black family has 10-13% of the wealth of the typical white family
- Black-White Income Gap
  - Median income for Black households is 60% of median income for white families
- Black-White Poverty Rates
  - Black poverty rate: 19.5%
  - White poverty rate: 8.2%

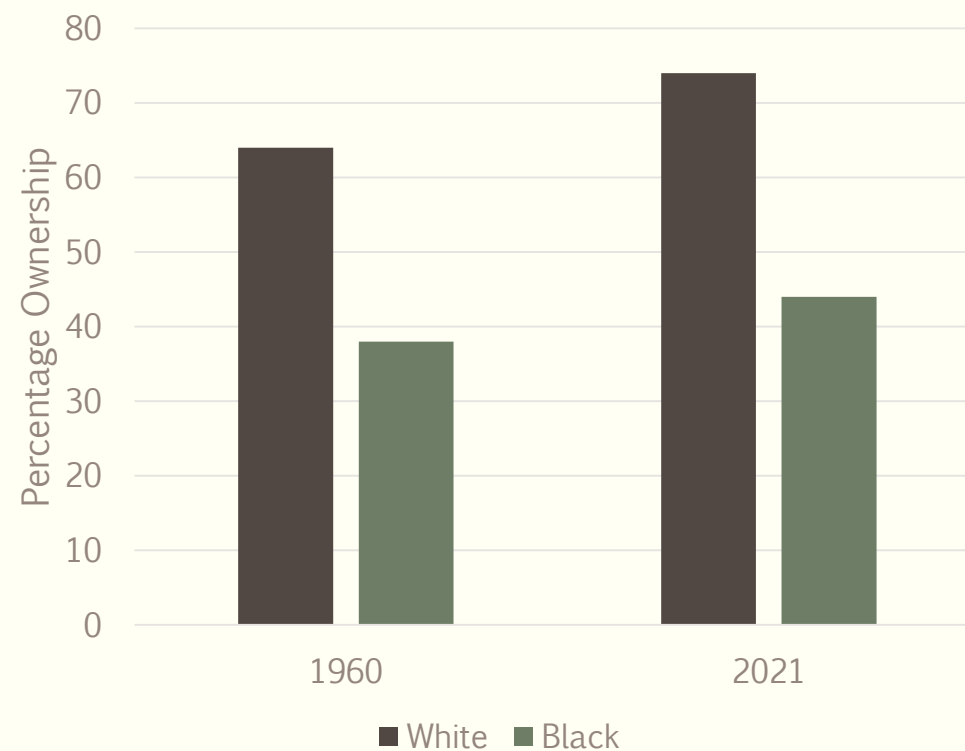
# Dramatic Black Land Loss and Record Homeownership Gaps

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## Black Farmland Loss



## Black-White Homeownership Rates



# Forced Sales Impacting Poor and Minority Property Owners

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- Foreclosure
  - Including many that were the end product of discrimination
- Tax Sales
  - Strong evidence that minority-owned properties in some jurisdictions have been over-assessed and properties owned by middle- to upper-middle class whites have been under-assessed.
- Partition Sales
  - Poor and minority property owners disproportionately impacted
  - Minorities have lost vast amounts of rural and urban properties as a result of having weak property rights protections against those who seek forced sale of their property
  - Minorities also have lost at least tens of billions of dollars of generational wealth as well
- Eminent Domain

# Property Owners Impacted

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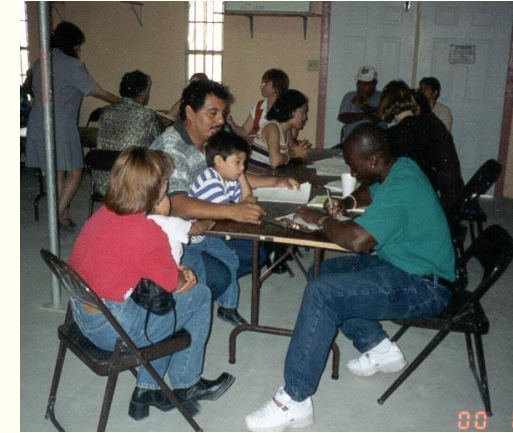
African Americans: Rural



Urban Properties



Hispanic/Latinx



White Americans



Native Hawaiians



# Property Owners Impacted: Representative, Award-Winning Videos

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Rural:

VICE Documentary: Peabody Award Winner

■ Urban:

Spectrum News NY1, New York City: New  
York Associated Press Award

# Heirs' Property Ownership Challenges

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- Unstable and insecure ownership: Vulnerable to court-ordered partition sales, a major source of family property loss in many places
- Problem with ownership which can become contentious and even gridlocked over time
  - Problem with unanimity requirement for changing ownership form
  - Uniform Tenancy-in-Common Default Rules Drafting Committee
- Problems with lack of clear title
  - Commercial lenders
  - Governmental programs
- Problem with great difficulty in utilizing property laws intended to benefit various types of property owners
  - E.g., Homestead Exemptions

# Heirs' Property Ownership

## Vulnerable Heirs' Property Owners

- Low-income/wealth
- Lack of access to affordable legal services
- Low rates of will-making/estate planning
- Property located in areas undergoing intensification of development/appreciation of property values

## Will-Making: Race and Class Disparities

	Respondent has a will	Respondent has a will, by education level		
		No high school	High school	College and above
		----- -percent-----		
All respondents	56.93	47.13	58.92	65.71
White	64.23	56.76	65.26	72.04
Black	23.68	20.15	22.89	32.34
Other	27.24	20.79	34.54	38.63
Non-Hispanic	60.66	54.26	61.06	68.09
Hispanic	19.38	14.57	28.30	31.67



# Uniform Partition of Heirs Property Act

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- Promulgated by Uniform Law Commission at urging of American Bar Association
- I served as “Reporter,” person vested with principal drafting authority for act
- UHPHA provisions represent most substantial reform to archaic property law since reforms in early to mid-1800s
  - Substantially increases property rights protections for disadvantaged families
- Consensus among lawyers and law professors that it would be a failure

# Uniform Partition of Heirs Property Act: Hierarchy of Remedies Bolstering Property Rights

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- Buyout Provisions For Cotenants Opposing Request for Forced Sale
- Adds Substance to Preference for Partition in Kind
  - Bolsters superficial preference included in general, state partition laws by replacing economics-only tests with so-called totality of the circumstances test.
- Restructured Sales Procedure to Improve Sales Price in Significant Way

# Bottom Up and Top Down Collaboration

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## Grassroots

- Land Loss Prevention Project
- Center for Heirs' Property Preservation
- Black Family Land Trust
- Alabama, Georgia, Louisiana, and South Carolina Appleseed
- Legal Aid of Alabama

## Grasstops

- American Bar Association
- Uniform Law Commission
- National Association of REALTORS®/Several State REALTOR® Associations
- American Land Title Association
- Various State Farm Bureaus
- American College of Real Estate Lawyers
- The Business Roundtable

# Status Report on UHPA

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## NATIONALLY

- [Status of Enactment Efforts](#)

## SAMPLE OF SELECTED STATES

South Carolina



New York



Iowa



Virginia



# UPHPA: Evidence of Success

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- The UPHPA's Positive Impact
  - Significant reduction in number of abusive partition actions being filed in many states including Georgia and South Carolina
  - Dramatically higher sales prices being realized for partition sales under UPHPA'S open-market sale procedure compared to judicial sales
    - For example, Texas case in which property sold for \$2,500,000 using UPHPA open-market sales procedure though all lawyers for both plaintiffs and defendants agreed property would have sold for at most \$1,000,000 had normal judicial sale, auction procedure conducted at the courthouse.
- UPHPA has generated other legal reforms to address other heirs' property problems
  - National level: 2nd model state statute being developed to address gridlocked ownership
  - States such as Virginia pursuing additional state law reform to bolster heirs' property ownership
  - Texas has enacted into law statute to make it much easier for heirs who are owners-occupiers of principal residence to claim full homestead exemption, which could become model for other states seeking to improve ability of heirs' property owners to maintain ownership of their property

# New Allies

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- Relatively New Allies/Supporters of the UHPA:
  - Some state REALTOR® associations (*e.g.*, California, Louisiana, Massachusetts, Maryland, North Carolina, and Utah)
    - In California, CAR was the principal champion of the UHPA, which was a total game changer
  - Some state farm bureaus (*e.g.* Illinois, Mississippi, Missouri, and Virginia)
- 2018 Farm Bill incentivizes states that have not enacted the Uniform Partition of Heirs Property Act to enact it into law.
- As a direct result of the heirs' property provisions of the 2018 Farm Bill, the following states have enacted the UHPA into law since 2019:
  - Florida
  - Illinois
  - Mississippi
  - Virginia

## How NAR Can Further Promote UPHPA

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- The National Association of REALTORS® (NAR) recognizes that property owners who own tenancy-in-common properties under default rules are vulnerable to forced sale and eviction and a substantial loss of generational wealth and other noneconomic damages. NAR recognizes the need for increased protections in state law to safeguard the property rights of these owners of “heirs’ property.” Under the default common law, tenants-in-common may face a court-ordered partition sale by public auction if a single co-tenant demands it, which often results in a forced sale well below market value. The Uniform Partition of Heirs Property Act (UPHPA) provides a series of simple due process protections: notice, appraisal, right of first refusal, and if the other co-tenants choose not to exercise their right and a sale is required, a commercially reasonable sale by a real estate broker, supervised by the court, to ensure all parties receive their fair share of the proceeds. The UPHPA was developed by a bipartisan group of experts appointed by state governments to the Uniform Law Commission.

# Forthcoming A.B.A. Book

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Heirs' Property and the Uniform Partition of Heirs Property Act:  
Challenges, Solutions, and Historic Reform



FOREWORD: by Reginald Turner, ABA President

INTRODUCTION: Thomas W. Mitchell and Erica Levine Powers: Scope and Breadth of Heirs Property Problems/ overview of chapters

I. Heirs' Property Partition Reform

1. Thomas W. Mitchell, The Uniform Partition of Heirs Property Act: Fundamental Property Law Reform Promising Racial and Social Justice
2. Benjamin Orzeske, Enactment: The Transition from Uniform Act to State Law
3. K. Scott Kohanowski, Taking the UHPA out of the Rural Context and Strengthening it: the New York Experience and A Framework for UHPA Advocacy

I. Role of Nonprofit Organizations

1. John Pollock and Karama Neal, UHPA: Grassroots Advocacy and Action
2. Jennie L. Stephens, Joshua F. Walden and W. Andrew Gowder, Jr., Working with Heirs' Property Families: The Center for Heirs Property Preservation and the Georgia Heirs Property Law Center

I. Proactive Planning by Heirs and Lawyers

1. Mavis Gragg, Practically Speaking: Strategies to Prevent and Resolve Heirs' Property Legal Issues
2. David Dietrich, Probate and Business Organization Strategies to Minimize Land Loss of Heirs' Property
3. Heather Way: Heirs' Property, Property Tax Relief, and the Further Undermining of Black and Latino Homeowners' Housing Stability

AFTERWORD: Erica Levine Powers and Steven F. Stapleton

IV. Appendices

- A. UHPA (2010) with Prefatory Notes
- B. Map of Jurisdictions where UHPA is adopted