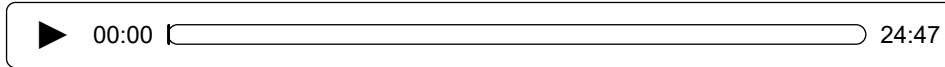


**Special Edition Podcast: Heirs' Property**



7/6/2017

**Ann Carpenter:** Welcome to another Federal Reserve Bank of Atlanta's Economy Matters [podcast](#). I'm Ann Carpenter, with the Atlanta Fed's community and economic development team.

*Heirs' properties are parcels of residential, agricultural, commercial, or even vacant land that are inherited by the descendants of a previous owner. Without a properly administered will, property is passed on to the owner's children, and then to their children, and then to other successive generations of children, and this default ownership structure is known as "tenancy in common." It can cause a number of issues for both families and communities, which we will discuss today.*

*I'm talking with [Thomas Mitchell](#), a professor at Texas A&M University School of Law, and with [Cassandra Johnson Gaither](#), a research social scientist at the U.S. Department of Agriculture Forest Service's Southern Research Station. Thomas was the principal drafter of the 2010 Uniform Partition of Heirs Property Act, which is the most substantial legal reform effort in modern times to stabilize ownership of heirs' properties. Cassandra focuses her research on the intersection of heirs' property ownership and social vulnerability in the South, and its implications for national forest management. Cassandra and the USDA Forest Service cohosted a gathering of heirs' property experts on June 15th, 2017, with the Federal Reserve Bank of Atlanta. Thomas served as the keynote speaker of the event.*

*This podcast will explore the problems associated with heirs' property in the South, and other issues raised at the event.*

*Thomas and Cassandra, thank you for joining me today.*

**Cassandra Johnson Gaither:** Thank you for having me.

**Thomas Mitchell:** Thank you for inviting me.



*Cassandra Johnson Gaither (left), a research social scientist at the U.S. Department of Agriculture Forest Service's Southern Research Station, and Ann Carpenter, a senior community and economic development adviser at the Atlanta Fed, with a concentration in affordable housing and neighborhood revitalization, at the recording of a podcast episode.*

**Carpenter:** First of all, can you both explain why property owned by multiple heirs is problematic? One might argue that it is fair to distribute your property equally among your kids.

**Gaither:** From my perspective, it's not a problem really to pass on property, real property, to subsequent generations. That's an ideal. That's what we're expected to do as Americans. But the problems come in in how that property is transferred. If that property is transferred in such a way that it's not very clear who the subsequent owners are, that's when the problems come in because one of the fundamental issues with heirs' property is the problem of actually identifying who the actual owners of these properties are. When that's unclear, lending institutions—for example, banks—are either reluctant to, or they absolutely will not deal with people who have property where the titles are quote-unquote clouded or unclear. So that's a huge problem when it comes to heirs' property.

**Mitchell:** Right. And I'd say that, in addition to the problem with clear title, which is certainly a huge problem with heirs' property ownership, heirs' property ownership assumes in most cases that the property is transferred without a will—we call that “by intestacy.” So as Cassandra has indicated, there are all kinds of problems when you cannot identify who each of the members are in a group who collectively owns a property.

In addition to that, when one compares that to property that passes down when there is a will, in the absence of a will, property tends to get passed down to many more people over the generations. One of the problems with tenancy-in-common ownership, under the rules that the state will give you, if you don't make provision otherwise—in a will or some other type of document—the property can be incredibly unstable in terms of its ownership because state law allows just one of the common owners to file a legal action called a partition action and request a court to order a forced sale of the property. Even if all of the other common owners do not want the property forcibly sold, the property still can be sold.

So that's the problem of unstable ownership, and heirs' property is widely recognized to be the most unstable form of common ownership of real property that the law recognizes in the United States.

The third problem, in addition to unstable ownership—lack of clear title—is that tenancy in common ownership under these rules that the state will give you—we call those the default rules—does not do anything to allocate rights and responsibilities among the common owners, which frequently leads to disputes among those heirs or common owners, or it results in the property being paralyzed so that it's often just sitting idly and not working in any kind of economic sense, or other sense, for the family.

**Gaither:** I think what Thomas and I are both really referring to—we haven't said it explicitly—is that when property is classified as heirs' property, it really has a negative impact on people's ability, families' ability, to generate wealth, to increase their wealth base. I mentioned earlier that banks are reluctant to accept property, real property, that's classed as heirs' as collateral for home improvement loans, for example. Also, public agencies—the federal government—will not offer home improvement loans or agricultural loans, for example, to homeowners or land owners that have property classed as heirs' property. For example, the [Natural Resources Conservation Service](#) (NRCS)—it offers a category of—not loans but grants, if you will—with the acronym EQIP (E-Q-I-P), which stands for [Environmental Quality Incentives Program](#). This funding is available for conservation purposes, but again, if these rural land owners do not have clear title to the properties, then that assistance is off limits.

So those kinds of things, those situations, really have an impact then on people's ability to maintain their property, to just use their property to generate further wealth.

**Carpenter:** *So moving on: I've noticed that in the research, much of the focus has been on heirs' property in the rural South. Could you explain why this is, and what some of those major findings are?*

**Gaither:** Most of the research I might even say almost exclusively has focused on the problem of heirs' property as it affects rural African Americans, primarily in the Black Belt South, and the reason for this focus is likely the fact that, because of the predominance of African Americans in this part of the country, in this part of the South, because of their numbers and their history, and their embeddedness in this place, a lot of attention then is focused on the financial situation, the wealth situation, the social situation, of these populations. And because of decreasing property ownership, the decline in the amount of real property or land that African Americans have held since the beginning of the 20th century, people are looking around to try to find out what are some of the reasons for this decline, and heirs' property has been identified as a potential, or a possible, culprit, a factor that has contributed to land loss among African Americans.

So I guess from that very high-profile situation—the land loss among African Americans in the South, and the reasons for it related to heirs' property—a lot of the research has focused on African Americans. There's also been some work that has looked at this issue for folks in Central Appalachia, but to a much lesser extent.

**Mitchell:** Yes, and I would say, in addition to what Cassandra indicated, that with respect to African Americans generally: African Americans disproportionately own heirs' property, and that comes back to what is a racial differential in rates of intestacy in this country. The overall rate of intestacy in this country is something about 40 percent. However, in the African American community, their rates of intestacy are in the low 80s. So African Americans are just differently situated in terms of their passing property by intestacy at twice the rate of the national average—which makes their ownership, given some of the legal rules, much more unstable.

The problem with heirs' property certainly includes African American rural land ownership, but that's not the complete universe of people who have had problems with heirs' property.

**Carpenter:** *Could you describe some of those other contexts, other regions of the country (or even urban neighborhoods), that are also experiencing heirs' property issues?*

**Mitchell:** As Cassandra has noted, there are heirs' property problems in different parts of Appalachia. I think in some ways that problem has played out a little differently than it has with African Americans because there is not the evidence that the heirs' property problem in Appalachia has been as much of a source of land loss as it has been in the African American community—but the other problems of heirs' property ownership certainly apply in that particular context.

And then, in urban neighborhoods, you're going to have heirs' property because it's a function of people being poor, being relatively unsophisticated, and often having a lack of access to legal services. And that is not along an urban-rural or suburban-urban divide. That's going to impact people who own property who are poor, unsophisticated, and often have a lack of access to legal services.

**Carpenter:** *So we've really established that heirs' properties are a major issue, particularly here in the South. Can you talk about what's currently being done to manage existing heirs' property, and limit this land loss that you're talking about?*

**Mitchell:** Sure. I think in terms of legal reform—I was the principal drafter of the Uniform Partition of Heirs Property Act, which is a uniform act that I

helped develop for an organization called the Uniform Law Commission, which has been the leading organization in that it developed model state statutes in this country over the past 125 years. And the Uniform Law Commission finalized, or our drafting committee finalized, the drafting of this Uniform Partition Act in 2010, and really began to seek introductions by state legislatures in 2011. Between 2011 and 2017, there are now 10 states that have enacted the Uniform Partition of Heirs Property Act into law, and half of those states are in the South, and Texas became the most recent state to enact it into law.

So I think that this has been, as you indicated, the most significant reform of partition law in modern time. Its enactment and its success were very unexpected, but very welcome among different communities, so I think that that is one systemic effort to address one particular aspect of the heirs' property problem—the problem of unstable ownership—but Cassandra can tell you about some other initiatives.

**Gaither:** Several years ago—in 2012, I believe it was—an organization called the [U.S. Endowment for Forestry and Communities](#) came up with the idea of focusing on forest resources—the trees, actually—that existed on rural lands, rural African Americans' lands, and focusing on those resources as an incentive to encourage African Americans to hold onto their land rather than to sell their land.

I think this had been an overlooked resource for the most part. And this effort, again, was spearheaded by the U.S. Endowment for Forestry and Communities but it also involved other federal, state, and private entities. The idea here has been to infuse specific African American communities and participants in this program with information and knowledge about forests—harvesting of trees, the sustainable replanting of those trees—and also to just provide information to these participants about how to engage more fully in forest products markets.

The idea again is to try to generate longer-term wealth for these participants. The program was piloted in 2012, 2013, 2014 in North Carolina, coastal South Carolina, and two Black Belt counties in Alabama, and in the past year or so the program has expanded to coastal Georgia and to Arkansas. So that's one specific instance of how different entities from various backgrounds and with different organizational goals have come together around this issue to try to resolve it using forest resources as a carrot, if you will.

**Mitchell:** I think in addition to that, as I mentioned, our Uniform Act is really a national-level push to reform state law in various states. In addition to that national effort, there have been some limited efforts to reform laws implicating heirs' property in different states. One of the most prominent examples I can think of was in Louisiana. In Louisiana, in the aftermath of Hurricane Katrina, it got revealed that there were 10,000 to 20,000 properties that were actually heirs' property. As a result of that, these families were initially prevented from accessing some governmental funds that were made available in the aftermath of Katrina to help the families either rebuild their homes and restore their homes, or to sell their homes and then sell them to the government essentially for a certain amount of money, where they could then acquire a different home.

There were people in Louisiana, including a public interest law firm called Louisiana Appleseed, that successfully were able to reform the law in Louisiana to enable those who owned heirs' property to, for a limited purpose, have clear title, or have their title deemed to be clear title, for the specific purpose of accessing the governmental funds that were made available. But they were federal funds that were made available to Louisiana under a program called the Road Home, and so instead of having to prove their title in a much more elaborate, expensive way, they came up with something called "affidavits of heirship," which essentially was what provided these families with a shortcut and a much less expensive way of proving that they had title to the property.

So you see, in places like Louisiana, discrete, state-specific efforts to reform the law. But also, in a much more diffuse way, you have a variety of organizations—some of these are public interest legal organizations, some are nonprofit organizations, sometimes they are legal aid offices—that have tried to, one, conduct community legal education workshops to let various communities in their service areas know about the hazards of heirs' property ownership, and then with a certain subset of those people, help them to change their form of ownership from this tenancy in common, under what we call the default rules—the rules that the state will just automatically give you if you don't come up with rules of your own—and change it to something that is much more stable and provides much more of a rational basis to manage the property.

So there's a variety of these organizations that have worked with what, ultimately, given the limit of resources of these various organizations, is a small subset of heirs' property owners that have been able to change their form of ownership to something that is much more rational and that provides much more security in terms of ensuring the continuity of that ownership over time.

**Gaither:** And I should add that the U.S. endowment program—one of the main features of that program is the clearing of heirs' property; so in order for these families, these people, to participate in this program that uses forestry as an incentive, one of the initial things that they have to do is to clear title to the property. So in that way, this program addresses the heirs' property issue by the clearing of the title.

**Carpenter:** *To close up, I wondered if you guys could also comment on what you think can be done to prevent heirs' property from forming in the first place, to deal with that 40 percent or so of the national average that do not have a will in place currently.*

**Gaither:** Well, the first thing that would occur to me is just to encourage families to engage in estate planning. The writing of wills, I think, is essential. That may sound pretty simplistic, but I think that's a necessary first step.

**Mitchell:** Yes, I certainly think that much of the effort that has been done has been through what I described as these community legal education workshops, that what a variety of these public interest law firms, nonprofit organizations, community based organizations, legal aid offices, have tried to do is to highlight to them the real pitfalls of that ownership, and pointing out to these communities that instead of having a wide number of people, or a large group of heirs who own this heirs' property—which many of these families have tended to think of as the larger the number of heirs, the more secure their ownership is, because these families have tended to assume that it would take unanimous agreement among the heirs, or at least a very high percentage, like a supermajority, of the heirs, to agree to a sale—so it turns out that these families fundamentally misunderstand how the law works. Instead of their greater numbers providing greater security, the larger the number, essentially, it provides ample opportunity to those who want to take the property. It provides more targets for them.

**Gaither:** And I think it's really important to emphasize to these various communities that if title to these properties—if it's made clearer, if it's more defined, then that does not, or that should not, diminish the rich, cultural attachments and associations, since place and attachment, and the vibrancy, the emotions, that these families have with property—it's been reported in some of the literature that there may be a reluctance among African Americans in particular to formalize property ownership because of some little bit of trepidation that if the rights to these properties are more formal, then that would have the effect of excluding members of the family, OK? If all of a sudden Aunt Sally's name is on the property, on the deed, and several other cousins, their names aren't there or their names aren't there implicitly, then that might mean that Aunt Sally could say that people couldn't use the property in a way that they had prior. But I think formalizing title could lead to such scenarios, but of course it could also strengthen that family's ties to that land. It would make it less vulnerable rather than more vulnerable.

And I think that kind of messaging could be or should be communicated to some of these families. It could be communicated by these longstanding organizations, of course, like the [Center for Heirs Property Preservation](#) in Charleston, South Carolina—and I'm sure they're already engaged in such communication—and some of the newer organizations like the Georgia Heirs Property Law Center, when they go out and talk to these families and individuals. But I think that it's essential that these folks who are involved in this situation realize that it's a win-win if the title to these properties is formalized.

**Mitchell:** Right. And I think, consistent with that is one of the points I often make is that heirs' property ownership is this form of ownership that the law will give you if you don't engage in planning on your own. But those who are wealthier and who are more legally sophisticated consult with real estate lawyers and trust estate lawyers, and universally among that group of these transactional lawyers, the pitfalls of heirs' property ownership and tenancy in common ownership under the default rules are well known.

These lawyers always advise their clients to make sure that their family ownership of real property is in some other type of ownership form. And they do that so that these families can maintain longstanding ownership of their property from one generation to another, so that these families can develop rules that can lead to having their property be property that actually generates wealth for the family, and deals with situations where you have family members who are not paying their fair share of the ongoing cost of maintaining that property. And they also do that so that, to the extent that the family wants to sell their property, that they're able to sell on terms that generate economic value to the family.

So owning property with clear title under rational rules, as Cassandra indicated—those shouldn't be in tension, given the number of families that do actually engage in such planning, to preserve their heritage and those types of values in the family, but also to ensure that the property is actually working for them in terms of generating wealth.

**Carpenter:** *Thank you so much, Thomas and Cassandra.*

*And that brings us the end of another Economy Matters podcast episode. Please see the Atlanta Fed's [community development web page](#) for more information about the [event](#), and for other materials on heirs' property. Thank you for listening.*

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