



Louisiana's Tangled Titles: Best Practices

By Adrienne K. Wheeler and Laura Tuggle¹

Family property passed informally through generations by possession without legal recordation results in deeply fractionated ownership interests. Under Louisiana law, when a family member dies without a will, ownership of immovable property passes to the heirs as designated by the Civil Code. Over time, if property continually passes through generations of heirs, every heir is entitled to a fraction of the property. Most commonly, informally passed “heirs’ property” results in several to dozens of

heirs being unable to control their own property. This fractionated ownership regime encourages land loss through blight and abandonment, inadvertent tax sales and unfair buyouts and increases the likelihood that the heirs cannot access or quickly qualify for government or private funds to rebuild following disasters. This problem disproportionately impacts low-income communities and people of color who cannot afford to pay for court costs, recordation fees and attorney time.

Residents of the property are often unaware of any title issue or are uninformed regarding the urgency of taking legal action after a relative passes away. Homestead exemptions can be lost when the title owner passes away with taxes then becoming due on the property. Land loss can follow if the taxes are not paid. Municipalities then sell the overdue tax deed at auction; if the tax debt is not paid within three years by the property owner, title transfers to the tax deed buyer, who can evict anyone on the property. This has played out in some parts of Louisiana, especially after hurricanes, and has been dubbed “disaster gentrification.” Fractionated properties are also susceptible to sheriff sales: co-owners can force a sheriff sale, with property being sold for a fraction of its market value. This process results in the loss of generational wealth in low-income families and takes a heavy emotional toll.

The prevalence of tangled title is often characterized by legal aid attorneys as “it’s not a problem, until it’s a problem.” Approximately 5% of all applications for Federal Emergency Management Agency (FEMA) assistance following a disaster tend to be rejected due to lack of ownership — *i.e.*, tangled title.² Property owners with tangled title often cannot access or quickly access recovery funding programs run by FEMA, the Small Business Association (SBA) or the State with long-term rebuilding funds. Likewise, banks typically require clear title as collateral for a loan. Without repairs, it is more likely the property will fall into disrepair, heirs will be unable to sell it and it may end up abandoned, leading to blight within communities. When communities are hard hit by a disaster such as a hurricane, flood, fire, etc., entire neighborhoods may become blighted.

Heirs’ property issues are particularly acute in black rural communities. Law professor and preeminent scholar on heirs’ property Thomas Mitchell captures it perfectly:

[T]he fifteen-million-acre land base that many black families built up in the South between the end of the Civil War and 1910 has been almost

completely wiped out. In recent decades, thousands of black families have lost their land due to partition sales, many of which were initiated by outsiders who acquired an interest in a tenancy in common with the sole intention of forcing a sale.³

Completing a succession is the ideal method for avoiding heirs’ property regimes. Louisiana’s low-income legal service providers lend insights into the barriers people face with completing a succession. Of the 2,773 succession cases handled by Southeast Louisiana Legal Services since 2012, 49% were closed after an attorney provided advice as opposed to closure by judgment of possession. With nearly one-half of all wills and successions cases handled failing to reach the ideal outcome, attorneys provided the top reasons why cases were closed on advice. These included (1) the client unable to afford filing or recordation costs, (2) FEMA provided rebuilding funds without requiring clear title, (3) the client cannot locate documentation on the heirs, or too many heirs, (4) likely outcome was undesirable and (5) documents not returned by clients to proceed with the case. With these reasons top of mind, there are several conceivable best practices that emerge.

This article outlines five measures that Louisiana advocates could consider as best practices in preventing or otherwise avoiding land loss in low-income communities:

1. Proactively Identify Heirs’ Properties.
2. Mitigate Issues and Preserve Wealth.
3. Protect Future Generations via Legislative Reform under the UHPA.
4. Engage in Continuous Data-Driven Outreach.
5. Bridge the Gaps in Systems.

These best practices are not an exhaustive list. Nonetheless, they are drawn from the experiences of colleagues and advocates across Louisiana who have handled these matters in a variety of circumstances. Additionally, they take into account

nuances of Louisiana’s civil law system and consider some innovations that could further protect generational land wealth in the state.

Best Practice 1: Proactively Identify Heirs’ Properties

First, recognize the volume of the problem. For example, a 2021 study from Tuskegee University with support from the U.S. Department of Agriculture (USDA) of select counties across the southern region estimated there was over 1 million acres of heirs’ property valued at over \$2.5 billion.⁴ A study led by the Atlanta Federal Reserve Bank and the University of Georgia (UGA) found heirs’ property across four counties in Georgia was valued at \$1.4 billion.⁵ Based on these two studies, the geographic breadth of the problem guides the scope of the proposed solution. For example, the cross-section of a handful of states in the Tuskegee study provides the USDA with broad estimates for the volume of USDA or *federal* resources required to address the problem. Meanwhile, the UGA study helps to target specific *state* resources to the areas of highest need. Neither study is exhaustive, and they do not cover Louisiana in detail. Louisiana advocates must identify the volume of heirs’ properties in the state and target resources accordingly.

One approach would be to evaluate recorded properties in a state or geolocate potential heirs’ properties. A USDA report from 2017 spelled out a methodology for estimating the prevalence of heirs’ property in a given region by using computer-assisted mass appraisal (CAMA) data.⁶ The CAMA method is currently the best practice for exhibiting the prevalence of heirs’ property, but it does not translate well as the ideal method for Louisiana. As recently as 2021, authors⁷ have noted that identifying heirs’ properties here presented “challenges in data accessibility.”⁸ Louisiana’s decentralized recordation systems seems to deter researchers who are not already situated in and familiar with Louisiana. Louisiana should consider GIS Parcel and Tax Roll data property by property to estimate the volume of heirs’ property in the state.

Best Practice 2: Mitigate Issues and Preserve Wealth

To avoid blight, abandonment, tax sales and buyouts that would deprive families of their generational wealth, individual heirs may want to consider consolidating ownership through acts of donations or creating a business entity to stabilize ownership. The best practice in heirs' property advocacy is to connect individuals and families considering these solutions to legal resources that can help to mitigate issues and preserve family wealth. For families who can afford it, private attorneys in Louisiana are readily available to assist with estate planning and in clearing tangled titles. Thus, the primary focus of best practices for legal assistance is identifying what is available to low-income families in need.

In Louisiana, civil legal aid is the most widely available resource for heirs' property owners. Low-income individuals and the elderly are served by two legal aid entities whose largest funders are the Legal Service Corporation and the Louisiana Bar Foundation.

In 2021, legal aid handled a collective 705 cases involving wills and estates, which was approximately 4.35% of their total caseload. This figure likely captures a mere fraction of the total need because many families who require assistance are unable to afford the court filing costs or unaware of local legal aid programs. Nonetheless, legal aid remains Louisiana's best practice and resource for heirs' property owners, although these programs are chronically underfunded.

Besides the ability to afford an attorney, the cost to open a succession or to record court documents that could resolve tangled titles is often the biggest barrier to relief for heirs' property owners in the state. While not prohibited by statute, courts customarily will not grant a request to file petitions in forma pauperis when a suit is filed in court. Pauper status typically allows a low-income petitioner (measured by federal poverty guidelines) to proceed with filing a case at no upfront cost, with final costs typically passed onto the losing party or split in a case resolved by consent. But succession cases do not

generally have an "adverse" or "losing" party, so there is no such party from whom to collect costs. With recordation costs of at least \$150 and court costs ranging from \$400 to several thousand dollars, advocates for vulnerable populations who engage in this work should be armed with sufficient financial resources necessary to file documents with court, clerk and other administrative offices.

In other instances, barriers to clear title may arise from family dynamics. In Louisiana, all property owners, such as all legal heirs, must agree on how to manage the property. Generally, if the parties were to petition the court for a resolution, the most likely outcome is an extreme one — a partition by licitation⁹ or a sheriff's auction. In an auction, the property is likely to sell for a fraction of fair market value and the proceeds divided evenly among heirs. When families disagree on how to maintain, use or sell a property, mediation can be a valuable tool, lessening the likelihood for forced sales at a sheriff's auction. In Louisiana, the Federation of Southern Cooperatives offers free mediation for heirs, but other free mediation options are rare through legal aid or pro bono programs. This is another area for future investment.

Finally, some agencies have become more responsive to heirs' property regimes but have simultaneously made resolving the problems more difficult. Specifically, FEMA changed its policy from one of denying assistance owing to tangled titles, to one of providing financial assistance. This change has positively impacted heirs but has increased the likelihood that tangled titles will persist by removing this particular incentive to clear them. Again, legal aid is the single best resource for facilitating clear titles.

Best Practice 3: Protect Future Generations via the UHPHA

Adoption of the Uniform Partition of Heirs Property Act (UPHPA) would protect family wealth when court disputes arise related to heirs' property. The UHPA is a national best practice for resolving heirs' property matters before

the court. It has been adopted in 21 states and the recommendation for adoption in Louisiana is pending with the Louisiana State Law Institute. The UHPA primarily focuses on mitigating the threat of land loss, which would otherwise fall to licitation. Adoption of the UHPA is both a best practice in preserving wealth for future generations as well as a mitigation strategy for current heirs' property owners that would better serve Louisiana families than the current legal regime.

In brief, there are five pillars of the UHPA:

1. Enhanced notice provisions, including notice by posting on the property if notice by publication is requested. (UPHPA Section 4.)
2. Independent appraisal of the property, unless all the owners in indivision agree to another method of determining value. (UPHPA Section 6.)
3. One-way buyout provisions based on the remedies requested, including reasonable time periods for potential buyers to arrange financing. (UPHPA Section 7.)
4. Enhanced preference for partition in kind, including consideration of non-economic factors in determining partition-in-kind resolutions. (UPHPA Sections 8 & 9.)
5. Open-market listing and sale by default, with other methods permissible only when the court finds it would be economically advantageous to the owners in indivision as a group. (UPHPA Section 10.)

Pillar 3 may present a problem for low-income families; for instance, a property may be inherited by three elderly heirs: one sells his/her interest to a non-family member, one lives out-of-state and has no attachment or interest in the property, and the last heir lives on the property with a fixed income. Alone, this heir pays the taxes and otherwise maintains the property. If the non-family member seeks partition, the third elderly heir would have to secure financing to purchase the property from the non-family member, which was

probably not feasible on his/her fixed income. A topic for future discussion should include whether current financial products frustrate or facilitate the goal of preserving family wealth under Pillar 3 of the UHPA.

Even if financial products do not yet exist to support buyouts within low-income families, the UHPA remains a best practice. A case from northern Louisiana proves illustrative. Heirs living on a property going through partition by licitation lost their rights to the land after auction, even though the extended family had collectively raised over half a million dollars. Had the UHPA been in effect at the time, the amount raised would likely have facilitated a Pillar 3 buyout. Instead, the family was evicted after auction.

Best Practice 4: Engage in Continuous Data-Driven Outreach

The most salient best practice according to Louisiana advocates is how to encourage heirs whose *current* situation does not require clear title, but *future* events may demand it. Given the importance of outreach to long-term systemic change, it is essential to allocate funding for professional media and public relations activities to advise, plan and execute an ongoing print, radio and television strategy. Outreach is also critical in helping heirs' property owners realize the importance of taking legal action and protecting their generational wealth through estate planning since so few property owners realize how critical this can be to protecting their assets.

The intended audience for an outreach strategy should be the general public in both rural and urban areas. It could utilize public schools, faith-based institutions, libraries or any other venue where people access trusted information.

Even if every acre of Louisiana were accounted for with clear title, it is imperative that outreach continue as the next generation takes ownership. With each passing generation, there remains a danger of creating new heirs' property regimes. Persistent outreach is imperative.

Best Practice 5: Bridge the Gaps in Systems

Louisiana law requires consistent attention and responses from directly impacted community members or their advocates. The dialogue between law and society will reveal whether law meets the intended results. For example, Louisiana Appleseed was successful in raising the state's small succession threshold from \$75,000 to \$125,000 and including successions when the owner died 20 or more years prior to filing.¹⁰ The continuous monitoring of emerging gaps in law and these responses enabled more families the option to prevent the proliferation of tangled title.

There are also gaps that emerge in the course of legal service delivery that require ongoing support. There have been several instances in which heirs unexpectedly decided not to complete their successions because inheriting this asset would adversely impact a disabled heir's continued eligibility for Supplemental Security Income (SSI) and/or Medicaid.¹¹ An ownership interest in a home that the disabled heir does not live in can render that heir ineligible for ongoing critical benefits. To bridge this gap, advocates are now trained to create a special-needs trust to protect these benefits for impacted heirs, though training in this field (and more pro bono lawyers) are badly needed.

Conclusion

The best practices outlined here should supplement other strategies used by institutions in the field.¹² These best practices are intended to offer broad guidance in preserving wealth, mitigating issues that may arise and preventing land loss in predominantly black low-income communities in Louisiana.

FOOTNOTES

1. This white paper was funded in part by Fannie Mae in connection with its duty-to-serve plan for the underserved markets characterized as high-needs rural regions. It reflects the work and opinions of its authors and does not necessarily represent the view of Fannie Mae.

2. This figure is from internal statistics of Southeast Louisiana Legal Services, of which co-

author Laura Tuggle is executive director.

3. Thomas Mitchell, "From Reconstruction to Deconstruction: Undermining Black Ownership, Political Independence, and Community through Partition Sales of Tenancy in Common Property," 95 Nw. U. L. Rev. 505 (Winter 2001) at 579.

4. Southern Region Heirs' Property Collaborative USDA AFRI Grant Final Report (Feb. 2021), available at: <https://srhc.msstate.edu/sites/default/files/2023-06/southern-region-heirs-property-final-report-2021.pdf>.

5. Ann Carpenter, "Understanding Heirs' Properties in the Southeast," Fed. Reserve Bank of Atlanta (March/April 2016), available at: <http://t.ly/t-eU>.

6. Available at: <https://www.fs.usda.gov/research/treesearch/55263#>.

7. Southern Region Heirs' Prop., *supra*.

8. *Id.*

9. La. Civ.C. art. 811.

10. 2017 La. Acts No. 96.

11. A summary of these rules may be found at: <https://www.ssa.gov/ssi/spotlights/spot-resources.htm>.

12. These include Southern Rural Development Center, Southeast Louisiana Legal Services, Acadiana Legal Services Corp. and Louisiana Appleseed.

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