ENSURING RIGHTFUL PROPERTY OWNERSHIP THROUGH THE UNIFORM PARTITION OF HEIRS PROPERTY ACT

INTRODUCTION

Heir property refers to land that has been passed down informally from generation-to-generation. In most cases, it involves landowners who died without a will and the land is owned “in common” by all of the heirs, regardless of whether they live on the land, pay the taxes, or have ever set foot on the land.

More than 900,000 black-owned farms comprised 14 percent of all farms in the US in 1920 yet the number of black-owned farms dropped 95 percent to under 46,000 in 1974. Researchers at Auburn and Tuskegee Universities estimate that there are between 150,000 to 175,000 acres of heirs' property owned by people of any race or ethnicity in the 36 Black Belt counties in Virginia and that this property conservatively is valued at $650 million.

The rate of intestacy among African-Americans is more than double the rate of intestacy among white Americans and only about twenty percent of African-Americans have wills. Heir property therefore continues to be the leading cause of Black involuntary land loss.

BACKGROUND

The Uniform Partition of Heirs Property Act (UPHPA), a project that the American Bar Association's Section of Real Property, Trust and Estate Law helped convince the Uniform Law Commission to undertake in 2007, seeks to address partition action abuses that have led many Americans to lose their tenancy-in-common property involuntarily in various legal proceedings. The UPHPA preserves the right of a co-tenant to sell his/her interest in inherited real estate, while ensuring that the other co-tenants will have the necessary due process, including notice, appraisal, and right of first refusal, to prevent a forced sale. If the other co-tenants do not exercise their right to purchase property from the seller, the court must order partition in kind unless the court determines that partition-in-kind will result in great prejudice to the co-tenants as a group.

Adoption of the UPHPA would require the court to determine at the outset of a partition action whether the property involved meets the act's definition of heirs property. If so, the following special procedures are triggered:

1. The court must obtain an independent appraisal of the property with the value based on the full, undivided parcel;
2. Any one or more co-tenants, except the co-tenant who filed for partition, has a right of first refusal to purchase the share of the property owned by the filer for a proportional share of the court-determined value;
3. If no co-tenant exercises the right of first refusal, the court must order partition in-kind unless the court determines that partition in-kind will result in great prejudice to the co-tenants as a group;
4. In making its determination under #4, the court must consider a set of statutory factors that includes a co-tenant's sentimental attachment to the property because of ancestral or other special value; and,
5. If the court determines partition by sale is appropriate, the property must be offered for sale on the open market at the court-determined value for a reasonable period of time. If the property does not sell at the offered price, the court retains discretion to accept a lower offer or to order a sale by auction or sealed bids.

The old law would continue to apply to all other partition actions.

HEIRS PROPERTY DISPROPORTIONATELY IMPACTS MIDDLE AND LOW INCOME FAMILIES AND COMMUNITIES THAT DO NOT HAVE ACCESS TO AFFORDABLE LEGAL SERVICES.

Virginia Should pass the Uniform Partition of Heirs Property Act.

Work to resolve Heir Property issues.