



Heir Property: Education, Advocacy, Reform

A nonprofit network of 16 public interest justice Centers in the United States and Mexico, Appleaseed is dedicated to building a society in which opportunities are genuine, access to the law is equal and universal, and government advances the public good.

Overview

One aspect of the crisis in housing — long present, but accelerating in its malign effects — merits singular focus and attention, as it disproportionately affects African-Americans and typically affects those who never even tried to finance a mortgage, much less undertake one that is no longer affordable. The mortgage crisis dominates the headlines, but people living on “heir property” are equally vulnerable to being dispossessed and thrown into homelessness, often without any inkling that their security in their homes was in danger. Appleseed proposes to attack this nation-wide threat to home ownership, and in the process unlock virtually billions of dollars of wealth for low-income Americans.

What is Heir Property?

Heir property, heirs property or heirship property are terms that refer to land passed down from one generation to the next without a valid will, the ownership of which land is determined by each state’s laws. The legal term for this type of ownership is “tenancy-in-common,” because each of the heirs who inherit the land under the state’s law all own the land together — in common — and each has the same rights as the others to use, live on and occupy the entire piece of land. Since all own the land together — although the title remains in the name of the deceased person who died without a will — all must legally agree before anything can be done with the land. Thus, all of the often dozens, or hundreds, of tenants-in-common must sign the same mortgage application or sales deed, for it to be valid. Also, one of the owners cannot sell her portion of the land because it is also owned by all other co-tenants.

Tenancy-in-common is the most prevalent form of land ownership in America, but there is little reliable data on the extent of low-income ownership in either rural or urban communities. It is most prevalent in low-income urban centers and in rural communities among poor farmers who did not keep written wills. After the Civil War, African Americans were deeded land by others or purchased land for themselves, and such landowners during that time did not leave written wills because they could not hire a lawyer or, if they did, often were the victims of fraud. Thus, while heir property ownership was and is common practice and knowledge among African-Americans throughout the country, it was not until Hurricanes Katrina and Rita struck that the full scope of the problem became revealed to Appleseed. What Appleseed learned is that heir property owners whose homes were damaged or destroyed by the storms could not qualify for various FEMA and HUD rebuilding grants unless and until they could prove clear title to their land. Legal Services and pro bono lawyers have helped some of these

families in urban centers in Louisiana and Texas and also in Alabama and Mississippi clear their property title, but thousands of others have not received such assistance and, thus, have not been able to rebuild their homes and lives.

Heir Property Proves to be Problematic for Families

Although real property is an important asset and source of wealth for any property owner, those who own heir property can't access that wealth. It is not uncommon for property passed down from one generation to the next without a will to end up being owned by over one hundred heirs. "While we do not know the full extent of the (land loss) problem, we have clues," observed Alabama Appleseed's Craig Baab, national Appleseed's Heir Property Project director. "Some 95 percent of African-American owned farmland in Alabama, and the U.S. generally, has been lost in the last 50 years either through voluntary sales, but most likely through more abusive practices," said Baab. Heir property owners are at a much higher risk of losing their properties in tax sales, through partition actions, due to lack of education and legal counsel, through adverse possession or outright theft.

The confusion this process creates allows for outsiders to swoop in and use legal loopholes to wrestle the land away from an entire extended family. Sometimes a family member who doesn't pay taxes on time leads to the property being seized by the county or city government. Other times a wealthy investor can buy one person's interest in the land and then sue the family, forcing the family to sell the property. Typically, the investor has more money to buy the land than the family when the land goes up for a bid. Also, if land is sold, many family members cannot afford to "buy out" other co-owners within the family. The unfolding economic crisis adds urgency to this issue. Many family members do not recognize that co-owners' financial difficulties may jeopardize their homeownership or housing situation. If one co-owner or heir becomes severely indebted, other heirs may be put in a position to have to sell or even vacate the property.

While some co-owners mistakenly think they have more flexibility by owning heir property, holding land without a clear title, in fact, exacerbates vulnerability. Family members without clear title to their land:

- are at risk of losing their property through abusive practices like those outlined above;
- cannot secure a mortgage on the land;
- may not be eligible for federal funding for housing or repairs from FEMA and HUD;
- may not be eligible for other programs that require a clear title, such as Small Business loans and various agriculture programs;
- experience difficulty getting property annexed into a city;

- experience great difficulty in communicating with other family member-owners about managing or disposing of the land because each generation that dies without a will results in an increased number of heirs; and,
- hold a reduced interest in the property as the number of heirs increase.

Hurricane Katrina Exposed the Heir Property Fault Line to Appleseed

Prominent New Orleans heir property lawyer and Louisiana Appleseed pro bono counsel Malcolm Meyer understands that the heir property ownership problems that surfaced after Hurricane Katrina were not caused by the storm, but exposed by it. Meyer recognized, "Indeed, we discovered that this was a major systemic problem throughout the country, but particularly acute in Louisiana, Texas and throughout the southeast."

After Hurricane Katrina struck, Appleseed learned that thousands of Alabama, Louisiana, Mississippi and Texas residents whose homes were destroyed could not qualify for Federal Emergency Management Administration (FEMA) or other federal home rebuilding grants because they could not prove clear title to their land. In urban New Orleans, of the approximately 180,000 families applying for Road Home rebuilding grants, some 25,000 families lived on heir property. Most of these Gulf Coast households were low-income (i.e. average income for a family of four applying for rebuilding funds in Mobile County, Alabama is \$19,000) and minority property owners. A large number of those households had disabled family members and were headed by an elderly, single mother. Clearly, this was a population that most needed rebuilding assistance. However, most members of this group could not qualify for rebuilding grants because they lived on heir property and could not prove the required clear title to their land.

Hurricane Katrina's aftermath unearthed even more problems for families and communities with several heir properties. Although the Road Home program ultimately waived requirements for people with title issues, in part through the advocacy efforts of the Appleseed network, if most of the homeowners on a given block repaired their homes and two or three homes were not repaired because the applicant couldn't prove ownership, the neighborhood suffered. The applicant could not sell the home because of that title problem. Neither could the applicant borrow against the value of the home to make repairs. Carpenters and workers who would make the repairs have no work, and thus, the entire neighborhood continued to suffer from community decay months and years after the storm.

With the support of the AARP Foundation, the Alabama State Bar, Alabama Civil Justice Foundation, AT&T, Alabama Power and others, Appleseed set out to identify means to help these families in Alabama. The particular problem Appleseed began to address was the great difficulty heir property owners experience in accessing the equity of their land so as to qualify for disaster rebuilding benefits. However, as Appleseed's network became more engrossed in this problem we established connections with other low-

income housing organizations, poverty law lawyers and other groups to develop a clear assessment of the magnitude of this problem — and the potential it held for fundamental, community-level economic development.

Attaching a Price Tag to Heir Property Assets

Alabama

Craig Baab puts heir property ownership in Macon County, Alabama — the home of Tuskegee University located in east-central Alabama — into easily understood terms. Macon County is one of the 12 counties comprising Alabama’s Black Belt — the rich swath of black earth stretching from Georgia to Mississippi where huge cotton plantations and their slave workers were the economic engines over 140 years ago. Today, this same area is home to large farms, ranches and timber companies — and the overwhelmingly low-wealth descendants of those slaves. Over 84 percent of Macon County is African-American and of those citizens, over 94 percent live in poverty and only 14 percent have at least a high school diploma or GED.

Janice Dyer of Auburn University recently conducted a study of land ownership in Macon County. Dyer found that some 16,000 acres of land are “heir property” and this land holds an appraised value of \$44 million. Assuming similar findings across the other Black Belt counties, the total value of “unused” land exceeds \$500 million. If there were comparable findings across the other 66 counties in the state of Alabama (excluding population centers), heir property could be valued at approximately \$2.64 trillion dollars. Since the land’s equity can not be used, it is not surprising that such an overwhelmingly poor population does not have the resources to build or improve housing. The median year of the most recent home improvements in Macon County is 1960, which reflects the fact that heir property owners may live on the land, but they can’t tap into the land’s value to improve it.

Louisiana

According to Malcolm Meyer’s article “Louisiana Heirship Property: Solutions for Establishing a Title,” that appeared in the February—March 2008 Louisiana Bar Journal, heir property issues are encountered in urban areas. Approximately 25,000 residents in urban New Orleans lacked a clear title to their home after Hurricane Katrina devastated the area. Meyer anticipates this is not a New Orleans phenomenon and will reveal itself as a deep-rooted statewide problem. He estimates that there is a 15 percent divergence between owners holding heir property and owners holding recorded titles, both rural and urban. This estimate means that approximately 100,000 homes in Louisiana could have unclear titles.

Texas

Texas Appleseed has done work on heir property with Colonias on the border and expanded its work in the aftermath of Hurricanes Katrina and Rita. Between 60 and 70 percent of initial applications for homeowner disaster recovery assistance in southeast Texas, the area of the state most devastated by Hurricane Rita, had some type of title or ownership issue. After Hurricanes Dolly and Ike struck Texas, Appleseed continued to examine gaps in long-term housing recovery, the usage of disaster recovery block grant funds and address ongoing heir property issues. At this time, Texas Appleseed is working to ensure that the State of Texas' Action Plan for \$1.3 billion in federal Community Development Block Grant (CDBG) disaster recovery funding prioritizes rebuilding affordable housing and that recovery programs are accessible to low income homeowners.

Appleseed in Action

Appleseed Centers are engaging in important work to assist low-income, African-American homeowners protect their heir property. South Carolina Appleseed had previously identified this as a low-wealth housing issue and obtained funding to partner with another organization to prepare a public education DVD and pamphlet. South Carolina also is advocating for law reforms to better protect low-income families.

Texas Appleseed had done work on heir property with Colonias on the border, and expanded its work in the aftermath of Hurricanes Katrina and Rita. Louisiana Appleseed substantially expanded public exposure to the difficulty encountered by heir property owners, spearheading a legislative effort to convene a legislative study committee to fashion legal means to help heir property owners save their land from loss to unscrupulous speculators. In 2008 Georgia Appleseed was awarded a two-year fellowship at the University of Georgia Law School, the recipient of which is working full time to establish a clinical element at the school and to undertake state-wide public education. Alabama Appleseed established a partnership with the Alabama Cooperative Extension System (Auburn and Alabama A & M Universities) and conducted two-hour public education presentations in 30 of the state's 67 counties to over 850 low-income, primarily African-American residents.

During the last year, Centers in Louisiana and Texas, in collaboration with national Appleseed have engaged in the following homeownership preservation activities:

- At Louisiana Appleseed's urging, the Louisiana legislature passed a resolution that formed a state committee to study the effects of heir property ownership and issue legislative recommendations for the 2009 legislative session.
- Louisiana Appleseed drafted proposed policy changes to ease title clearing for low-wealth families; thus, enabling those families to preserve homeownership and build wealth. Louisiana Appleseed will host meetings with leading stakeholders

in the state and will advocate for the passage of these changes during the 2009 legislative session.

- Louisiana Appleseed and its board played a pivotal role in persuading the Louisiana Recovery Authority to lift the proposed Road Home program's September 2008 application deadlines. As a result of this effort, thousands of low-wealth homeowners who have been unable to access the funds due to title clearing issues have the opportunity to access these rebuilding funds.
- Texas Appleseed's early involvement in Gulf Coast Recovery work involved setting up clinics in Houston to assist evacuees with filing appeals to receive housing benefits, which included working with heir property owners. Texas Appleseed also co-sponsored a Hurricane Housing Forum in Houston that attracted over 800 hurricane evacuees.
- Working with a network of state and local organizations, Texas Appleseed succeeded in convincing the Texas Community Development Block Grant (CDBG) Disaster Recovery Program to dramatically shorten its application for disaster relief and accept an Affidavit of Heirship as proof of ownership interest in damaged property – therefore removing a major obstacle to timely repair of low-income housing.
- Craig Baab was named and serves as an official observer to the National Conference of Commissioners on Uniform State Laws' (NCCUSL) Drafting Committee on Heir Property. NCCUSL provides states with non-partisan, well-drafted legislation that brings clarity, stability and some type of consistency to different areas of the law. In November 2008, this committee completed its final draft of the proposed model state legislation to better protect low-income heir property owners from losing their family land. The draft is already being reviewed by other Appleseed Centers for possible applicability in their states. Work on this draft will continue through the summer of 2010.
- In May 2008, Baab testified before a U.S. House of Representatives subcommittee investigating post-Katrina rebuilding problems. One of the issues he identified was the difficulty of heir property owners qualifying for and receiving rebuilding assistance.
- Appleseed was an organizing member of the Heirs' Property Retention Coalition, a group of state and national organizations committed to developing and advancing new model legislation that will make it easier for families to preserve and protect heir land. This coalition's fall 2008 expansion includes member organizations in six southeastern states. The American Bar Association provided three years of seed funding to the Heirs' Property Retention Coalition to organize a North Carolina-based clearinghouse to assist heir property owners.