

**The Great Recession and Land and Housing Loss in
African American Communities: Case Studies from
Alabama, Florida, Louisiana, and Mississippi**

Part 2: Heir Property

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James Madison once stated on property that: “Government is instituted to protect property of every sort; as well that which lies in the various rights of individuals, as that which the term particularly expresses. This being the end of government, that alone is a *just* government, which impartially secures to every man, whatever is his own” (Chandler, 2005). This has not applied to people of color in the U.S, however, many of whom are on the verge of losing all of their property. A property is a social contract that designates an object’s owner. A property can be valuable depending on how well defined is the social contract. A well defined social contact that organizes and identifies assets in a property system allows for an increase in value (Chandler, 2005). The most common forms of property ownership in the United States that will be discussed in this paper are land and home ownership. Land ownership and land value have become even more controversial for African American families in recent times than ever before. The main reason for this controversy is that most African American land owners and farmers lack record title to their land and so are unable to enjoy the full benefits of their ownership.

A picture of the magnitude of the issue of land ownership and record titles is that in 1910, African American land ownership in the United States reached its peak of 15 million acres with nearly all of it in Mississippi, Alabama and the Carolinas, but by 1997 the numbers had declined drastically to about 2.3 million acres (according to Thomas, Pennick and Gray, 2004 based on data from the U.S. Department of Agriculture)ⁱ. The rate of decline of African-American land holdings far exceeds the loss among other ethnic groups. Comparing the rate of African-American farmland loss to other groups in 1997, Blacks lost fifty-three percent (53%) compared

to 28.8% for other ethnic groups, while Whites experienced steady growth (Civil Rights Action Team, quoted by Gilbert and Sharp, 2002).ⁱⁱ

This study addresses asset stripping through recent land losses and home foreclosures specifically in Alabama, Florida, Louisiana, and Mississippi; and its effects on wealth accumulation in African American communities. We also analyze a variety of current policies and policy options that help to mitigate these losses or reduce the effects of policies that have exacerbated home foreclosures and asset stripping. The study is reported in two parts: Part 1 focuses on home foreclosures in the Black community especially in the four states mentioned above; Part 2 focuses on a form of real property ownership, tenancy in common also known as “heir property” which emerges as a result of intestate succession, as well as farm land ownership and land loss.

This paper, Part 2, explores the issues associated with “heir property” in African American communities. The Emergency Land Fund in 1984 was commissioned by the United States Senate to conduct an extensive study of African-American land loss entitled “The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States” (Federation of Southern Cooperatives, 2003; and Emergency Land Fund, 1984). The study identifies partition sale and voluntary sale as the primary causes of African American land loss both of which stem from ownership of intestate property, or heir property (Federation of Southern Cooperatives, 2003, Pennick 2010). Some of these families, even though they have lived on the land for generations and pay the taxes, still risk losing their property to developers who can afford to buy them out at court-ordered auctions (Chandler, 2005).

Heir Property

The issue of heir property is significant as intergenerational transfers of wealth are important determinants of wealth accumulation and economic development (Deaton, Baxter, and Bratt, 2009). Specifically, Kotlikoff and Summers (1981) argued that intergenerational transfers account for the major portion of wealth accumulation in the United States. It is the significance of intergenerational transfers of wealth in the form of heir property that has been the subject of major controversy in the African American community. Heir property is both a constraint to economic development in predominantly Black communities of the rural South and an important cause of land loss among African Americans (Dyer and Bailey, 2008; Pennick 2010). It has been estimated that “one-third of black-owned land from North Carolina to Mississippi” is in heir property while others have used higher estimates. Gilbert and Sharp (2002) argue that the number could be as high as 40 percent, while Rivers (2006) contends that more than fifty percent of all Black owned property in the rural South is communally owned as heir property (Dyer and Bailey, 2008). Heir property is a result of a lack of legal will left by a land owner when he/she dies. In such cases the state effectively supplies an heir by default through the laws of intestate succession. These laws of intestate succession often lead to a transfer of real property (and generally whatever is erected or growing upon or affixed to the land) creating a tenancy in common (Deaton, Baxter, and Bratt, 2009). The legal definition of a tenancy in common is a specific type of concurrent, or simultaneous, ownership of real property by two or more parties. All tenants in common hold an individual, undivided ownership interest in the property that allows each party the right to alienate, or transfer the ownership of, his/her ownership interest (West’s Encyclopedia of American Law, 2008).

There are a variety of issues with the transfer of land via tenancy in common especially within the African American community. There are some that assume that heir property provides more flexibility, however, 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;
- 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 (Appleseed, no date).

Pennick (2010: 10-11) also notes that heir property owners are less likely to make home repairs and beneficial property modifications such as irrigation, product diversification, and environmental enhancements (see Federation of Southern Cooperatives/Land Assistance Fund 2009). Heir property owners also tend not to build on the property, implement land improvements or engage in other activities to develop the property or increase productivity (Zabawa 2010). This greatly diminishes the productive capacity of the property (see Pennick 2010, and Vranken and Swinnen, 2004). In addition, a vast majority of heir property owners do not have a will or estate plan themselves, thus perpetuating the cycle and risk of heir property (Pennick 2010: 11).

An example of the consequences of not having a will that spells out how land will be divided is the story of Johnny Rivers, a patriarch of a family of twenty seven children, grand children and great grand children. Johnny Rivers was born on a seventeen acre tract on Clouter Creek near the Cainhoy Peninsula of Charleston, South Carolina. The land was inherited from

his father Hector Rivers, son of a former slave, via heir property who acquired the land in 1888. It had been in the family until 2001 when twenty five family members were evicted by the Berkeley County Sheriff's Department. This happened because Johnny Rivers shared the title of the land with more than thirty family members scattered around the country and when some of his relatives decided to sell the property, there were no legal recourse for Johnny. The court ordered the Rivers family to receive only \$910,000 for a land worth 10 times more than the amount paid by the investor. The land was sold via court order because it is unreasonable and practically impossible to divide the land physically among the heirs. The court usually orders a partition of sale mainly via auction performed privately so that the land is sold to the highest bidder and mostly below market value. For this reason, corporations and investors use the opportunity provided by problematic titles due to heir property by purchasing an interest in the land, and then using the legal system to force families off their land (Chandler, 2005).

There are several disadvantages to partition sales. It is often difficult for joint owners to outbid land speculators, investors and developers who may bid at such a sale. The real property often is sold at a partition sale for far less than it is worth. Though the property is appraised, the value is used for purposes of the non-petitioning heirs to "buy out" the applicant who filed the partition action. There are however no regulations in place to establish a minimum bid when property is subject to partition sale. According to the Federation of Southern Cooperatives/Land Assistance Fund (2003), there are two ways in which a request for a petition takes place:

- An heir may file a petition for partition; or
- An heir, or several heirs, may sell his/her/their fractional interest(s) to someone other than another heir (i.e. land speculator, land developer). The purchaser of the heir's interest will then petition the court for the partition of the property.

Even with this issue, there are several reasons why people especially in the Black community still refuse to write a will: 1) a distrust of the government and legal system; 2) superstition; 3) lack of education; and finally, 4) reluctance to do something that may cause friction between family members (Dyer, 2007). In 2006, the Associated Press presented a series on “land taken from blacks through trickery, violence and murder.” Lewan and Barclay’s (2006) summary of the series reviews how real property was stolen from African Americans in the past. The press did an 18-month investigation which included interviews of more than 1000 people and the examinations of public records in county courthouses and state and federal archives. The reporters also reviewed deeds, mortgages, tax records, estate papers, court proceedings, surveyor maps, oil and gas leases, marriage records, census listings, birth records, death certificates, FBI files and Farmers Home Administration records, which were obtained through the Freedom of Information Act. The Associated Press found 107 cases of land takings in 13 southern and Border States in which 406 black landowners lost more than 24,000 acres of farm and timber land and 85 smaller properties like stores and city lots (Lewan and Barclay, 2006). According to Lewan and Barclay, reporters in some cases found that government officials approved the land takings from Blacks and in other instances, took part in them. Pennick (2010) also notes the negative role played by discrimination in the U.S. Department of Agriculture and other entities that supported white and corporate farmers over small farmers and farmers of color. Here are some examples from the cases found by the Associated Press:

In the 1950s and 1960s, a Chevrolet dealer in Holmes County, Mississippi, acquired hundreds of acres from Black farmers by foreclosing on small loans for farm equipment and pickup trucks. Norman Weathersby, then the only dealer in the area, required the farmers to put up their land as security for the loans, county residents who dealt with him said. And the equipment he sold them, they said, often broke down shortly thereafter. Weathersby's friend, William E. Strider, ran the local Farmers Home Administration - the credit lifeline for many Southern farmers. Area residents, including Erma Russell, 81, said Strider who is now dead, was often slow in releasing farm operating loans to Blacks.

When cash-poor farmers missed payments owed to Weathersby, he took their land. The AP documented eight cases in which Weathersby acquired Black-owned farms this way. When he died in 1973, he left more than 700 acres of this land to his family, according to estate papers, deeds and court records (Lewan and Barclay, 2006).

In 1964, the state of Alabama sued Lemon Williams and Lawrence Hudson, claiming the cousins had no right to two 40-acre farms their family had worked in Sweet Water, Alabama, for nearly a century. The land, officials contended, belonged to the state. Circuit Judge Emmett F. Hildreth urged the state to drop its suit, declaring it would result in "a severe injustice." But when the state refused, saying it wanted income from timber on the land, the judge ruled against the family. Today, the land lies empty; the state recently opened some of it to logging. The state's internal memos and letters on the case include multiple references to the family's race. In the same courthouse where the case was heard, the AP located deeds and tax records documenting that the family had owned the land since an ancestor bought the property on Jan. 3, 1874. Surviving records also show the family paid property taxes on the farms from the mid-1950s until the land was taken (Lewan and Barclay, 2006).

In 1942, Reverend Isaac Simmons' 141-acre farm in Amite County, Mississippi, was sold for nonpayment of taxes, according to property records. The farm, for which his father had paid \$302 in 1887, was bought by a white man for \$180. Only a partial, tattered tax record for the period exists today in the county courthouse; but that is enough to show that tax payments on at least part of the property were current when the land was taken. Simmons hired a lawyer in February 1944 and filed suit to get his land back. On March 26, a group of whites paid Simmons a visit. The minister's daughter, Laura Lee Houston, now 74, recently recalled her terror as she stood with her month-old baby in her arms and watched the men drag Simmons away. "I screamed and hollered so loud," she said. "They came toward me and I ran down in the woods." The whites then grabbed Simmons' son, Eldridge, from his house and drove the two men to a lonely road. "Two of them kept beating me," Eldridge Simmons later told the National Association for the Advancement of Colored People. "They kept telling me that my father and I were 'smart niggers' for going to see a lawyer. 'Simmons, who has since died, said his captors gave him 10 days to leave town and told his father to start running. Later that day, the minister's body turned up with three gunshot wounds in the back, The McComb Enterprise newspaper reported at the time (Lewan and Barclay, 2006).

The Reverend Simmons' murder was not the first or the last of its kind. Ida B. Wells Barnett, and W.E.B. Du Bois and others in the early 20th century documented lynchings against Black land owners and businessmen as a strategy to gain control of their land and/or undermine their businesses. They demonstrated that lynchings for financial reasons (asset stripping) were

more prevalent than for alleged sexual crimes, and were an effective way to reduce Black land and business ownership (Hine, Hine, and Harrold, 2010). In addition, there are well publicized incidents of land swindles and Black bank failures. It is understandable, therefore, given the many negative experiences, that African Americans are often skeptical about entrusting their real property to the legal system. However, lack of a recorded deed and will are what make intestate succession and the impact of tenancies in common devastating to African Americans - and explain the extent of fractional ownership interests in heir property.

Many African American families have owned property since the late 19th and early 20th centuries, and therefore could have hundreds of co-owners sharing a miniscule interest in the land; this is known as fractional heir property. Fractional heir property is an issue because it creates obstacles to proper management of real property that can result in land loss. It also leads to the unlocatable/ unknown heir syndrome when there are so many descendants of the original owner of the subject properties that are dispersed across the country who may not know or communicate with each other. This makes collective management of heir property difficult, if not impossible.

Heir property issues have become more significant after Hurricane Katrina. New Orleans and the Gulf Coast had relatively high percentages of Black home ownership (over 40% in 1995 (Bureau of the Census, 1995, pp. 2 & 3), for example), but significant homes and property have been lost since the Hurricane in 2005. According to Appleseed (no date), after the devastation left by the hurricane, heir property owners in Alabama, Louisiana, Mississippi and Texas whose homes were damaged or destroyed by the storms could not qualify for various Federal Emergency Management Administration (FEMA) and the Housing and Urban Development (HUD) rebuilding grants unless and until they could provide a clear title to their land.ⁱⁱⁱ In urban

New Orleans, of the approximately 180,000 families applying for Road Home rebuilding grants, some 25,000 families lived on heir property (Appleseed, no date). The federal government and the state of Louisiana funded the Road Home Program with the main goal of helping compensate property owners for their losses (Meyer, 2008). The task of title searching and checking was assigned to First American Title Insurance Company of Louisiana (FATIC-L) by the Road Home Program. The FATIC-L discovered that approximately 15 percent of the property titles did not have record owners who corresponded to the named claimants. Through the works of Appleseed and other community organizations, the Road Home program ultimately waived requirements for people with title issues (Appleseed, no date). The criteria used by the Road Home Program for home repairs are severely different from the requirements for loans stipulated by commercial banks. The funds provided by FEMA and state agencies are grants that are assigned specifically for natural disasters and can therefore afford to waive the issues created by heir property. Commercial banks on the other hand cannot afford such liberties because of the high risk an unclear title ownership represents.

Heir property remains a serious issue and continues to contribute to asset stripping in African American communities, particularly in the southeast. The value of heir property as an asset is limited because heir property cannot be adequately documented, and thus cannot be used as collateral for a loan nor can it be used as a share against an investment (Pennick 2010: 11). Such land is even less liquid than other property, and cannot be traded widely (outside a narrow group of local people who know and trust each other) (Pennick 2010). “Not only is this land underutilized and uncaptialized, it also represents a drain on local services, such as education and healthcare, from lack of taxes” (Pennick 2011: 11). Therefore, heir property does not contribute

to wealth, drains rather than enhances resources, and often cannot even be used for collateral or subsistence farming.

Farm Land Ownership and Land Loss

In 1998, a lawsuit was filed against the US Department of Agriculture on behalf of Black farmers in regards to been denied loans and other assistance that had been routinely extended to white farmers (Johnson, 2009). The period covered by the law suit was from 1981 to 1999 and exposed how USDA personnel were hostile to Black farmers. There were about 925,000 African American farmers (owners, tenants, croppers) in the 1920s, but by 1997 the number of Black farmers had dropped to 18,451 (Johnson, 2009). Much of the problem resulted because Black farmers were not represented on local USDA committees, and both federal and private lending agencies were unresponsive to the needs of Black farmers (Gilbert and Sharp, 2002). A report conducted in 1997 by the Civil Rights Action Team (CRAT) of the U.S. Department of Agriculture included listening forums for minority farmers to share their experiences of treatment by the USDA. According to Gilbert and Sharp (2002), CRAT discovered discriminatory behaviors by the USDA, “including loans arriving long after planting season, arbitrary reductions in loan amounts, and a much higher rejection rate than white applicants received” (Gilbert and Sharp, 2002). The USDA was also accused

of ignoring research that would help small-scale and limited-resource farmers and of failing to include minority populations in outreach efforts to raise awareness of federal programs. Finally, minority farmers said that official complaints of discrimination were processed slowly, if at all; and that the USDA often continued with foreclosure proceedings even when a relevant discrimination complaint had been filed. Overall, the CRAT Report found little accountability within the USDA: Employees and county committees that discriminate against minority farmers are not punished for their illegal behavior (Gilbert and Sharp, 2002).

According to Cower and Feder (2011), “other findings showed that (1) the largest USDA loans (top 1%) went to corporations (65%) and white male farmers (25%); (2) loans to black males averaged \$4,000 (or 25%) less than those given to white males; and (3) 97% of disaster payments went to white farmers, while less than 1% went to black farmers.” In settlement of the lawsuit, called the Pigford Case, the USDA offered each certified claimant two options; one, a settlement of \$50,000 plus possible forgiveness of debt owed to the USDA. Secondly, the claimants could also choose arbitration, in which the settlement is equal to actual cash damages. Because this option requires more proof of damages, the majority of claimants have chosen the first option (Gilbert and Sharp, 2002). After the settlement proceeding, there were many complaints about the structure of the agreement causing a lot of applicants to file a late claim. Almost a decade later, the 2008 farm bill “included a provision that permitted any claimant who had submitted a late-filing request under Pigford and who had not previously obtained a determination on the merits of his or her claim to petition in federal court to obtain such a determination” (Cowan and Feder, 2011). The bill provided a maximum of \$100 million in mandatory spending for payment of the claims; the multiple claims that were subsequently filed were consolidated into a single case, In “re Black Farmers Discrimination Litigation” and are commonly referred to as Pigford II (Cowan and Feder, 2011). Then again, on February 2010, Attorney General Holder and Secretary of Agriculture Vilsack announced a \$1.25 billion settlement for the Pigford II claims but since only \$100 million was made available in the 2008 farm bill, the settlement was contingent upon congressional approval of an additional \$1.15 billion in funding. The Senate passed the Claims Resolution Act of 2010 (H.R. 4783) that provided the \$1.15 billion appropriation by unanimous consent on November 19, 2010; the bill was then passed by the House on November 30 and signed by the President on December 8,

2010 (P.L. 111-291) (Cower and Feder, 2011). Even after the settlement of the Pigford case, the USDA's policies are still the same. There is little research available as to whether or not the USDA has made the necessary adjustments to prevent further discrimination of minority farmers.

For some black farm owners, the settlement from the USDA would not compensate for the loss of their land. These farmers lost more than their lands; they may have been stripped of their family history and legacy through the sale of the land. There is also the issue that discrimination by the employers of the Department of Agriculture started before 1981. Some of these farmers or land owners have left their land abandoned or rented it out. With better policies and incentives, black land owners and farmers can be lured back to a better management of their property.

[See Appendix A for a sample of Heir Property Laws in the four states: Alabama, Louisiana, Mississippi and Florida.]

Recommendations

Better knowledge about the problem and how to solve it is the first area of need. In 1984 and 2008 the U.S. Department of Agriculture (USDA) Rural Development division provided grants to five community-based organizations, including the Federation of Southern Cooperatives/Land Assistance Fund. The purpose of these grants was "to develop recommendations on how to solve the title issues associated with heir property so that the land could become eligible for USDA resources especially housing" (Pennick 2010: 12). The USDA, however, did not follow up on the 100 recommendations. The USDA Risk Management Agency has recently provided grants to community-based organizations to provide outreach and education about heir property, and to provide free estate planning. Pennick (2010) suggests that this is an important model to replicate and expand. He also recommends a department-wide

program at the USDA to address African American Land Loss; and cross sector collaborations to provide comprehensive services to Black land owners and heir property owners (13). The 2008 Farm Bill included some provisions that have begun to help Black farmers recoup losses and provide future loans. However, “many if not most of those farmers are not aware of or do not know how to access those resources”; and continued discrimination by USDA (Pennick 2010: 20).

Pennick (2010) also suggests collaborations between community-based organizations, 1890 Land Grant Institutions and government financial and technical resources, with legal teams and foundation grants (14). These collaborations would pool resources from a variety of areas to better educate the public about these issues, to address and remedy past and current USDA (and other federal and state government) discrimination against Black farmers and land owners, and to provide competent and affordable legal advice. Pennick’s plan includes connecting these groups to an annual African American Land Tenure Summit to develop a long term, outcome based strategic plan for addressing heir property issues. The Summit would also include continuous evaluation of progress in this area (14), and be a way to publicize the issues and educate people about them. Another aspect of Pennick’s recommendation addresses the financial needs of tenants in common who need legal advice and representation. He suggests that groups provide financial support through a revolving loan fund to increase availability of credit (a project the FSC/LAF already has undertaken) (Pennick 2010: 14).

Additional policy recommendations from Pennick (2010: 15) include passing a Uniform Partition of Heir Property Statute and Mandatory mediation for tenants in common. Legal Services regulations should be modified to allow heir property owners who already own land to use Legal Aid services (even if their asset holdings would normally price them out of receiving

the free service). Because there are not enough attorneys in rural areas, student loan forgiveness for young lawyers who agree to work in rural areas for a certain period of time is another recommendation. Pennick concludes that: “Solving those problems will require significant organizing and policy initiatives. This could best be accomplished through an African-American Rural Policy Center that would bring together experts including advocacy groups, students, academics and politicians to forge a solid base representing African-Americans in the rural south in the political dialogue while developing a cadre of new and emerging leaders” (2010: 22).

Thus, the need for comprehensive policies at a variety of levels: Changes need to be made in the USDA and at the federal level in terms of existing policies and continued discrimination. Laws about tenancy in common need modification. More lawyers need to be trained in this area, and need to be available and affordable to land owners and joint land owners particularly in rural areas. The public also need much more information about these issues and their solutions. Programs and projects that combine remedies and work together under one strategic plan will be most effective.

While many of the recommendations are focused on federal policies, states could also adopt these policies, as advocates work toward changes at the federal level. State governments could provide technical assistance with legal and estate planning to help families avoid and resolve heir property issues, and promote the development of attorneys in rural areas. Some of the existing state laws do help to qualify what tenants in common can and cannot do. The best state laws should be replicated and all states should have programs that help their citizens avoid and resolve such joint ownership challenges. State agencies could take the lead in establishing annual African American Land Tenure Summits and state wide workshops, and pulling together

various community groups and state and federal agencies to participate. At the very least, state agencies can begin with a coordinated public education campaign about the issues.

Appendix: Heir Property – Four States

Alabama

The Code of Alabama 1975

Title 35 PROPERTY, Chapter 6 PARTITION.

Article 4A Purchase of Interest of Joint Owner Filing for Partition

Section 35-6-100 Court to provide for purchase of filing joint owners' interests; notice by prospective purchasers.

Upon the filing of any petition for a sale for division of any property, real or personal, held by joint owners or tenants in common, the court shall provide for the purchase of the interests of the joint owners or tenants in common filing for the petition or any others named therein who agree to the sale by the other joint owners or tenants in common or any one of them. Provided that the joint owners or tenants in common interested in purchasing such interests shall notify the court of same not later than 10 days prior to the date set for trial of the case and shall be allowed to purchase whether default has been entered against them or not.

Section 35-6-101 Appointment of appraisers; report.

In such circumstances as described in section 35-6-100, and in the event the parties cannot reach agreement as to the price, the value of the interest or interests to be sold shall be determined by one or more competent real estate appraisers or commissioners, as the court shall approve, appointed for such purpose by the court. The appraisers or commissioners appointed under this section shall make their report in writing to the court within 30 days after their appointment.

Section 35-6-102 Payment of appraised value into court; time period; transfer of title.

After the report of the appraisers or commissioners, the tenants in common or joint owners seeking to purchase the interests of those filing the petition shall have 30 days to pay into the court the price set as the value of those interests to be purchased. Upon such payment and approval of same by the court, the clerk shall execute and deliver or cause to be executed and delivered the proper instruments transferring title to the purchasers.

Section 35-6-103 Effect of failure to pay purchase price.

Should the joint owners or tenants in common fail to pay the purchase price as provided in section 35-6-102, the court shall proceed according to its traditional practices in such cases as described in section 35-6-100.

Section 35-6-104 Costs of appraisal.

The costs of the appraisers or commissioners shall be taxed as a part of the cost of court to those seeking to or purchasing the interests.

Louisiana:

Civil Code

CHAPTER 7. OF PARTITIONS MADE BY PARENTS AND OTHER ASCENDANTS AMONG THEIR DESCENDANTS

Art. 1724. Right of parents and ascendants to partition property among descendants Fathers and mothers and other ascendants may make a distribution and partition of their property among their children and

descendants, either by designating the quantum of the parts and partitions [portions] which they assign to each of them, or in designating the property* that shall compose their respective lots.
Acts 2004, No. 26, §1.

Mississippi

The Code of Mississippi 1972 Title 11: Civil Practice and Procedure; Chapter 21: Partition of Property, 1-81

§ 11-21-3. Partition by decree of chancery court

Partition of land held by joint tenants, tenants in common, or coparceners, having an estate in possession or a right of possession and not in reversion or remainder, whether the joint interest be in the freehold or in a term of years not less than five (5), may be made by judgment of the chancery court of that county in which the lands or some part thereof, are situated; or, if the lands be held by devise or descent, the division may be ordered by the chancery court of the county in which the will was probated or letters of administration granted, although none of the lands be in that county.

However, any person owning an indefeasible fee simple title to an undivided interest in land may procure a partition of said land and have the interest of such person set apart in fee simple free from the claims of life or other tenants, remaindermen or reversioners, provided the life or other tenants, and other known living persons having an interest in the lands, are made defendants if they do not join in the proceeding as plaintiffs.

HISTORY: SOURCES: Codes, 1857, ch. 36, art. 48; 1871, § 1811; 1880, § 2553; 1892, § 3097; 1906, § 3521; Hemingway's 1917, § 2833; 1930, § 2920; 1942, § 961; Laws, 1946, ch. 317, § 1; Laws, 1991, ch. 573, § 48, eff from and after July 1, 1991.

§ 11-21-5. Parties to proceedings for partition

Any of the parties in interest, whether infants or adults, may institute proceedings for the partition of lands or for a partition sale thereof, by judgment of court as herein provided. All persons in interest must be made parties except (a) in cases where a part of the freehold is owned by persons owning a life estate therein or a life tenancy therein subject to the rights of remaindermen or reversioners, then, in such event, it shall only be necessary that the person or persons owning or claiming a life estate or life tenancy therein be made parties; and (b) in cases where the partition is for the surface of the land only, it shall not be necessary that persons owning divided or undivided interests in the minerals in the land be made parties unless such persons also have an interest in the surface of the land. An infant, or person of unsound mind, may sue by next friend as in other cases; but if the infant, or non compos mentis, have a guardian, the guardian must appear as next friend, unless good cause to the contrary be shown. Where an infant or non compos is made a party defendant, the guardian, if any, of such infant or non compos shall also be made a party, whether the infant or non compos be resident or nonresident and whether the guardian be a resident or a nonresident; and the said guardian may appear and answer the complaint. The summons to the defendants, including the guardian aforesaid, shall be made pursuant to the Mississippi Rules of Civil Procedure. The word "guardian," where used in this section, shall be held to apply also to all persons who, under the laws of any other state or country, stand in that relation whether known as curator, tutor, committee or conservator, or by whatever other name or title such person may be known.

History: Codes, Hutchinson's 1848, ch. 42, art. 2 (1); 1857, ch. 36, art. 48; 1871, § 1814; 1880, §§ 2556, 2557; 1892, § 3098; 1906, § 3522; Hemingway's 1917, § 2834; 1930, § 2921; 1942, § 962; Laws, 1918, ch. 130; Laws, 1946, ch. 317, § 2; Laws, 1983, ch. 378, § 1; Laws, 1991, ch. 573, § 49, eff from and after July 1, 1991.

Florida:

2011 Florida State Statutes Title VI Chapter 64 Partition of Property 64.011- 64.091

64.071 Sale where non-divisible.—

- (1) Order of Sale—If the commissioners report that the lands of which partition is directed are so situated that partition cannot be made without prejudice to the owners and if the court is satisfied that such report is correct, the court may order the land to be sold at public auction to the highest bidder by the commissioners or the clerk and the money arising from such sale paid into the court to be divided among the parties in proportion to their interest.
- (2) Conditions of Sale—For good cause the court may order the sale made on reasonable credit for part or all of the purchase money, but at least one-third of the purchase money shall be paid down unless all parties consent to credit otherwise. The purchase money not paid down shall be secured by a mortgage on the land and such other security as the court directs.
- (3) Confirmation of Sale and Conveyance—The sale shall be reported to the court, unless sold by the clerk under s. 45.031, and the money arising there from paid into court and the sale approved by the court and a conveyance ordered before any conveyance pursuant to the sale is made.

History.—ss. 8, 9, 10, Mar. 14, 1844; RS 1496; GS 1945; RGS 3208; CGL 5000; s. 19, ch. 67-254.

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Notes

ⁱ Studies vary in their findings of exact number of acres owned by African Americans in the 20th and 21st centuries. Gilbert, Wood and Sharp 2002 estimated slightly higher acreage in the early 1900s and slightly more Black-owned land in the early 21st century. Thomas, Pennick and Gray (2004) report data from several Department of Agriculture surveys. Also in 1999, African American rural land ownership was estimated at 7.7 million - an increase from the 1997 amount, but still only one percent (1%) of all privately owned rural land in the U.S. (Thomas, et. al, 2004, based on the National Agricultural Statistics Service's 1999 "Agricultural Economics and Land Ownership" Survey (Department of Agriculture). The significant fact is that African Americans own less than 1% of land in the US.

ⁱⁱ Also see the source: Civil Rights Action Team (Feb., 1997).

ⁱⁱⁱ In addition, most of the households applying for the funds and grants were low-income families. . In Mobile County, Alabama, for example, the average income for a family of four applying for the rebuilding fund is \$19,000 and most are property owners of color (Appleseed, no date).