



Craig Morris through Wikimedia Commons

The Ninth Ward in New Orleans, almost four months after Hurricane Katrina.

SPLITTING HEIRS

The Challenges Posed by Heirs' Property Ownership to Coastal Resilience Planning

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EXECUTIVE SUMMARY

Heirs' property ownership is both a social justice issue for poor African American communities, as well as an obstacle to recovery after their homes and land are damaged by flooding or other weather events. Lack of clear property title in an heirs' property may inhibit the ability of the occupants of the house to apply for federal financial assistance after a natural disaster. In this situation, the occupants may have few to no resources to repair damage to their house.

Identification of where heirs' properties are located and educating property owners about the potential legal issues such lack of clear property title, coupled with incentives by state and local governments, can help heirs' property owners better understand the challenges surrounding this unique form of property ownership.

The goal of this paper is to inform heirs' property owners, as well as state-level policy makers, about this lesser-known issue and suggest potential strategies to address it. A proactive approach could help increase the resiliency of coastal communities and could prevent other heirs' property owners from experiencing the difficulties that plagued Louisianans in the aftermath of Hurricane Katrina trying to rebuild their homes, up to and including homelessness.

Ownership of an heirs' property can be problematic for the property owner. His or her property rights can be threatened by land developers, resulting in a loss of the property and the owner's home. After natural disasters, heirs' property owners are unable to take part in recovery efforts due to the atypical way in which they own their property.

This paper contains four parts. Part I defines heirs' property and the associated legal rights. Part II discusses issues arising out of heirs' property ownership, including land loss, conflicts with coastal developers and environmental resilience. Part III focuses on heirs' property in North Carolina and state-specific concerns. Lastly, Part IV suggests potential strategies for safeguarding the rights of heirs' property owners through various state and local initiatives.

I. HEIRS' PROPERTY OWNERSHIP

Heirs' property is a form of property ownership that is predominantly found in African American communities in the rural South.³ It is an ownership right held by "tenants in common," including the many descendants (i.e., heirs) of families who purchased or were deeded land after the American Civil War.⁴ Due to a lack of access to — and distrust of — the legal system, the original title owners of these properties did not have authenticated, written wills that could later be probated to preserve official title. Instead, the land was to be owned equally by the various descendants of the original title owners through intestate succession.⁵

Tenancy in common in property law refers to an arrangement where multiple tenants own portions of the land in question, potentially of unequal size, yet each tenant has the right to occupy and use all of the property. For example, Tenant A can sell to Tenant C who was previously not a tenant at all. Subsequently, Tenant C can sell that portion to someone else, use the entire property, or, more importantly in the heirs' property context, force a partition sale for the entire property.⁶

Partition in property law simply means to divide rights to a parcel.⁷ This can be done through either a "partition in kind"⁸ or a "partition by sale."⁹ While courts and legislatures tend to prefer the former because such an arrangement retains individual property rights and has less of a chance to go against the will of any specific tenants, "courts often resort to partition by sale to divide co-tenant interests."¹⁰

II. COMPLICATIONS OF HEIRS' PROPERTY OWNERSHIP

Heirs' property ownership often creates conflicts between development interests and landowners, as well as disputes between tenants in common owning the same land. Despite being lawful and legitimate, heirs' property owners may have their property rights jeopardized due to a partition sale.¹¹ The rights of heirs' property owners may be at greater risk if the property is located in particularly desirable locations for development, such as the Lowcountry region of South Carolina.¹² In addition, antidevelopment and environmental interests can spur land-use and conservation plans that also

serve to disenfranchise poor, rural African American families in the South.¹³

A. Land Loss by African Americans in the Rural South

Land loss is a major issue facing the African American community in the rural South. Civil rights activists and social justice advocates allege that partition sales are one of the main driving forces behind this trend.¹⁴ Partition sales often are linked to heirs' property ownership, which could consist of more than 25 percent of black-owned rural property in the United States.¹⁵ Heirs' properties often are sold to development companies in the course of forced partition sales. This problem is exacerbated in coastal areas where there is limited but attractive real estate. In the context of coastal preservation and protection, the goal of protecting marginalized communities sometimes conflicts with state practices and policies on the environment. The public trust doctrine¹⁶ is one example. Scholars such as Faith Rivers, an expert on heirs' property, have argued that applying the public trust doctrine in the same manner to the impoverished and isolated Gullah people in South Carolina, as the doctrine is applied to wealthy beach house owners, could injure the Gullah peoples' tenuous hold on their lands.¹⁷

While partition sales have their origin in English common law, "the remedy took on a different character in the United States."¹⁸ English partition sales were a voluntary form of ownership consolidation that required the agreement of all owners of the property involved.¹⁹ In contrast, American partition sales differed historically because of the policy rationale that there was an "abundance of land" in the New World. In *Pell v. Ball*,²⁰ a South Carolina court of equity decision from 1845, Chancellor Harper stated, "It seldom happens that men will insist on a specific partition of land, as most people are glad, in the abundance of land, to get the proceeds of sale, and purchase for themselves."²¹ This may have been the case when the land of the New World appeared vast, and American development was still in its infancy. However, Rivers suggests this rationale for partition sales in South Carolina still echoes through the nonrecognition of the legal worth of heirs' property today, which leads to African American land loss.²²

Complicating matters was the lack of access to attorneys for black landowners for the decades after the Civil War.²³ South Carolina provides a strong case illustration. While South Carolina had a majority black population at the time,²⁴ blacks did not acquire legal title to property in the Lowcountry region

of South Carolina until 1863.²⁵ The first black attorneys were not admitted to the S.C. State Bar until 1868.²⁶ Over the next 25 years, the number of black attorneys in South Carolina increased from three to 64.²⁷ Even with this increase, the vast majority of black landowners did not write and file wills for probate, and thus ownership of their land was never legally established.²⁸

This problem came to a head in the mid-1900s. Developers began to see land in the Lowcountry as economically valuable, and some began convincing isolated heirs to sell the rights to their property. Once the developers had an interest in the property, they could petition a court to force a partition sale. This phenomenon would become particularly troublesome in attractive coastal areas of the American South.

B. Coastal Development Conflicts

1. Increasing Coastal Development Leading to Greater Coercion of Heirs

The increase in development in cities like Charleston, South Carolina, has led to an exacerbation of the already existing issue of partition sales being coerced by third-party developers.²⁹ In South Carolina, part of the reason heirs were able to hold onto their lands for so long undisturbed was "the undesirable conditions in the lowlands, physical isolation of the islands along the coast, and abandonment of the large plantations in the area."³⁰ However, more and more American citizens are looking at Charleston and its surrounding areas as highly attractive resort destinations. As a result, developers have been quick to build up these areas in recent decades, shifting the African American population in some of the areas from vast majority to small minority.³¹

When developers identify a piece of land to purchase and develop, they must first determine the owner of the land. If the property in question is an heirs' property, then it could be owned by hundreds of people across the country, which makes identifying all of the heirs difficult. Some of the heirs may not even know they hold partial ownership of the property, or if they do, they may have never seen or visited it. If a developer offers to buy one of these remote heir's interest in the property, the person may be more likely to accept the offer, since he or she stands to gain nothing from the land as is. It may be very difficult for the developer to identify all the other heirs and obtain their interest in the land, so the developer can instead force a partition sale. It is sales like these that enable developers to gain ownership over the entire heirs' property.

One way some heirs have responded to the pressure to sell their ownership interests to development companies has been to become a development company, or a corporate affiliate of one.³² While this arrangement is comparatively rare,³³ it offers an alternative to the partition of an heirs' property, which often leads to heirs receiving less than the fair market price.³⁴ As one example, Adolph Brown of Hilton Head, South Carolina, formed a limited liability company (LLC) with other heirs to negotiate with a development company, Gateway Development.³⁵ This partnership allowed Brown to turn the ancestral property on Hilton Head into a 26-condominium unit on very attractive land.³⁶ However, this solution is only available when all the heirs agree on a course of action. Otherwise, an heir can force the sale of the entire property to another party, often an unaffiliated developer.³⁷ Additionally, this method may not be seen as a success if the heirs wish to live on the ancestral land.³⁸

Owners of heirs' property have recently seen some support from state legislatures with the introduction of the Uniform Partition of Heirs Property Act.³⁹ Developed by the Uniform Law Commission, the act protects landowners by requiring an independent appraisal for heirs' property that is subject to partition.⁴⁰ It provides all nonpetitioning owners a right of first refusal to purchase the petitioning owner's share and favors a partition-in-kind when doing so would not prejudice the other landowners.⁴¹ If it is necessary for a partition sale to take place, the act protects against the "fire sale" practices of the past and requires that the property be offered for sale at the full appraisal value.⁴² So far, the states of Alabama, Arkansas, Connecticut, Georgia, Hawaii, Montana, Nevada and South Carolina⁴³ have enacted this legislation, and bills have been introduced in Mississippi and West Virginia. While implementation of this new law in states will not help to locate property subject to heirs' ownership, it will provide heirs' owners increased procedural due process when their claims to the land are challenged.

2. Conflicts with Coastal Management Policies

When faced with constant external pressure from developers to force partition sales, some have suggested "anti-growth strategies . . . as a possible solution."⁴⁴ However, there are a number of "conflicting interests" of the various parties involved with heirs' property that must be balanced, such that an "anti-growth" approach does not necessarily mean more justice to heirs than the coercive buy-and-develop approach.⁴⁵ Land-use regulations often have the effect of further weakening heirs' ability to use and enjoy their historic land.⁴⁶ For example, the South Carolina Department of Health and Environmental

Control (DHEC) has advised that small coastal islands off the South Carolina coast would not receive public accommodation to bridges and infrastructure because these islands are "too small or too far from [upland]."⁴⁷ Such a decision was partly guided by the S.C. Coastal Tidelands and Wetlands Act, which authorized the state to regulate access to these areas, as well as the public trust doctrine.⁴⁸ In South Carolina, the public trust doctrine was established by common law and holds that the state retains presumptive title to all land below the high water mark.⁴⁹ Conservationists have encouraged the use of this doctrine to preserve natural resources in coastal and wetland areas. While takings considerations are relevant in the cases of more affluent property owners already enjoying ample infrastructure, they are less relevant to heirs' property that does not currently enjoy infrastructure due to poverty and discrimination.⁵⁰

Rivers has suggested that there should be a more narrowly tailored public trust approach employed by states when heirs' property is implicated, in order to not add further injury to the "already damaged bundle of rights of heirs' property owners."⁵¹ Scholars that take this approach are not anticonservation, but instead believe a compromise can be made between competing interests. One example of a compromise between heirs' property owners and the state is the liberal use of conservation easements combined with a commitment to providing infrastructure to heirs' property owners.⁵² This provides a tax credit to the heirs' property owners.⁵³ However, similar to the rest of the issues regarding this form of ownership, consent would have to be unanimous to approve a conservation easement.⁵⁴

C. Heirs' Property and Environmental Resilience

Heirs' property is not only a social justice issue, but also an obstacle to environmental resilience. The Federal Emergency Management Agency (FEMA) has defined resilience in its training manuals as "the capability of a system to maintaining its functions and structure in the face of internal and external change and to degrade gracefully when it must."⁵⁵

Resilience planning considers an entire system's operation, rather than segmenting off conservation goals for specific tracts of land or encouraging the use of fewer materials to maintain the continued existence of resources.⁵⁶ In the context of coastal resiliency, there are many factors in the overarching coastal system that are hard to accurately model and predict. Thus, we must learn to adapt to unpredictable hardships as they come. As such, the resilience model of environmental law



Lieut. Commander Mark Moran, NOAA Corps, NMAO/AOC

Hurricane Katrina caused massive flooding in New Orleans.

and policy stresses flexibility in the entire system over legal rigidity that prevents long-term adaptation.

The resilience model of governance includes the ability for a community to mitigate damages and quickly rebuild after a large disaster.⁵⁷ When a community is more resilient, rebuilding costs shrink and adverse effects from natural disasters are less severe.⁵⁸ For a strong and growing coalition of academics, environmentalists, nonprofit leaders, and business leaders from various industries, resilience is considered to be the new paradigm of natural resources and environmental management for the 21st century, as the international environmental negotiations in the name of sustainability have consistently met their fate in failure.⁵⁹

The heirs' property model of ownership directly conflicts with resilience principles. This was most clearly established in the wake of Hurricane Katrina, where individuals and families who lacked clear title to their property were denied assistance with rebuilding their homes.⁶⁰ Participation in the Road Home Program in New Orleans, Louisiana, as well as many other FEMA and Housing and Urban Development (HUD) rebuilding grants, after Katrina was contingent on bearing formal title to one's property.⁶¹ However, due to the history of slavery and oppression of African Americans in the South, many people living in New Orleans only had clouded title.⁶² Hence, large numbers of heirs' property owners were permanently displaced from their homes.⁶³

1. Natural Disaster Recovery Issues

A large part of the problem with natural disasters is that they are unpredictable. When a disaster has not occurred in an area

for a long time, people tend to forget that a hurricane, flood or earthquake is always a possibility. The "disaster" part of the phrase "natural disaster" is, arguably, the result of a lack of appropriate preparation. For individuals who live on heirs' property, there often is no sense of urgency to clear up a murky legal title to the land unless someone is threatening a partition sale. Before Hurricane Katrina hit, clearing up legal title to one's land in preparation of a hurricane was the last thing on people's minds.⁶⁴ However, due to the decisions by FEMA and HUD to not offer rebuilding aid to heirs' property owners with clouded titles, the "disaster" experienced by heirs' property owners was compounded.

One solution to this issue is for heirs to proactively clear title. However, there are a variety of problems that could interfere with the process. First, as mentioned previously, many heirs are impoverished and cannot afford legal help, except on a pro bono basis.⁶⁵ Second, if there is no legal will, or there is disagreement among the heirs as to the family line, little can be done. New Orleans' Lower Ninth Ward post-Katrina provides an applicable case study.

2. Hurricane Katrina: A Case Study

The Lower Ninth Ward of New Orleans is a predominantly poor, African American neighborhood within the city.⁶⁶ There is also a large heirs' property ownership problem in the area.⁶⁷ During the early post-Katrina recovery era, heirs often were told by recovery facilitators that they needed to clear their title before applying for assistance through the Road Home Program.⁶⁸ Because of the complexities involved with obtaining clear title, the result was that many affected heirs missed application deadlines for recovery assistance.⁶⁹ The effects of the delays

included: compounded damage, which made any relief money less proportional to the severity of the problem;⁷⁰ loss of motivation and faith in the relief system;⁷¹ and a weakening of important infrastructure due to overgrown vegetation.⁷²

In the wake of Katrina, Southeast Louisiana Legal Services (SLLS) began providing assistance to heirs to navigate the Road Home Program. SLLS was provided a budget by the Louisiana State Office of Community Development largely on an emergency basis to step in to try to force the Road Home applications along.⁷³ However, there was still a significant delay that exacerbated continuing harm to displaced residents.⁷⁴ Such bureaucratic failure during a time of crisis is a large reason that heirs' property complicates and inhibits high levels of institutional resilience.

III. NORTH CAROLINA: STATE-SPECIFIC CONSIDERATIONS

A. Legal Aspects of Heirs' Property Ownership in North Carolina

In North Carolina, heirs' property is not a legal concept specifically enumerated by statute. Instead, heirs' property ownership exists as a byproduct of the general laws of intestate succession. The laws governing the shares of descendants where there is no surviving, identified spouse are located in N.C. Gen. Stat. § 29-15 and N.C. Gen. Stat. § 29-16.⁷⁵ Specifically, the precondition of N.C. Gen. Stat. § 29-15(4) triggers the application of N.C. Gen. Stat. § 29-16, which most directly creates heirs' property rules.⁷⁶

The basic rules regarding intestate succession via multiple descendants, which is the case with heirs' property, are as follows. The intestate must have lineal descendants.⁷⁷ Then, the shares are divided equally among each heir. For the children of the intestate, one must "divide the property by the number of surviving children plus the number of deceased children who have left lineal descendants surviving the intestate."⁷⁸ For grandchildren, one must then "divide [the remaining] property by the number of such surviving great-grandchildren plus the number of deceased great-grandchildren who have left lineal descendants surviving the intestate."⁷⁹ The remaining property here means the property left unclaimed by the children, i.e., where the father of a grandchild has died and hence cannot claim his or her share. This continues down the line of succession to great-great-grandchildren and so on.⁸⁰

As previously mentioned, there has been a movement to create a uniform partition law in order to mitigate some of the issues with a joint tenancy in common between heirs owning property in equal shares in this fashion.⁸¹ The Uniform Partition of Heirs Property Act was drafted in 2010.⁸² While this uniform act has not been passed in North Carolina, it has been passed in numerous other states and is, therefore, worth considering how scholars have proposed a change to the current law. In addition, a number of other states have passed or introduced the model act to alleviate heirs' property issues.⁸³

1. The Context for Heir's Property in North Carolina

The narrative of North Carolina poverty issues often focuses on the rural areas of the state.⁸⁴ This is because rural North Carolina had robust and resilient textile and agrarian manufacturing industries, but in recent decades these industries have been outsourced overseas.⁸⁵ The result is that many of North Carolina's rural areas, especially in the eastern part of the state, have challenges attracting economic development.⁸⁶ In coastal areas, the tourism industry provides some relief, but these jobs are often seasonal, leaving workers impoverished for months at a time.⁸⁷ The commercial fishing industry also provides jobs at the coast, though large percentages of young people are opting out and choosing to move to rapidly developing economic centers such as Charlotte and Raleigh.⁸⁸

In addition, much of the North Carolina's minority population resides in the eastern part of the state.⁸⁹ While these residents may be "house-rich" because of homes being in the family for generations,⁹⁰ these residents are also likely to have very little in the way of liquid assets.⁹¹ As such, these residents are highly vulnerable to disasters, especially if they cannot easily receive aid to rebuild their homes.⁹² Multiple obstacles prevent disaster resilience in these areas. These include the way insurance policies are written⁹³ and local disaster mitigation policies, but also extend to the way land is sometimes owned by poor African American communities: namely, heirs' property ownership.

Looking at demographic information at the North Carolina coast, it is certainly possible that a natural and bureaucratic disaster like that in the Lower Ninth Ward could occur in North Carolina. In fact, examples on a smaller scale already exist in the state. When hurricanes Fran and Floyd hit Kinston, emergency management professionals attempted to use an acquisition/relocation strategy to mitigate the disaster.⁹⁴ This strategy is implemented through the government purchasing

flood-prone property from owners, which allows owners to purchase housing elsewhere.⁹⁵ However, in the aftermath of Fran and Floyd, using this strategy for heirs' properties strained aid efforts at the local level. Because of the need to track down all the owners of heirs' property before the government could acquire it via purchase, "[t]he result was that the first property acquired in Kinston did not occur until April 1998, over one year and six months after Hurricane Floyd."⁹⁶

In North Carolina, there have been a few public interest law firms that have assisted heirs' property owners with the protection of their lands according to their specific needs. These groups include the Land Loss Prevention Project (LLPP), the Southern Coalition for Social Justice (SCSJ), and the University of North Carolina Center for Civil Rights. In 2012, the Lawyers' Committee on Civil Rights compiled a list of cases for a report to the American Bar Association's Real Property/Trust and Estate Law Section.⁹⁷

The information provided in the appendix of that report is important for two main reasons. First, it shows the various legal techniques that can be employed to combat different problems with heirs' property ownership. Second, it provides a sampling of the kinds of heirs' property issues that have existed in North Carolina, as well as an indication of continued prevalence of these issues. Some are simple, such as the case where the LLPP assisted a terminally ill Macon County farmer. The farmer owned heirs' property and had provided upkeep for the land.⁹⁸ LLPP was able to help the farmer draft a will that deeded the property to a specific relative, which was sufficient in that case to avoid typical heirs' property difficulties.⁹⁹ However, some cases are much more complex and do not always end well for the heirs, such as the case of Freeman Beach.¹⁰⁰

2. Freeman Beach, LLC v. Freeman Heirs: A Case Study

Freeman Beach in New Hanover County, today called Freeman Park, was once "one of two North Carolina beaches available to African Americans in the state during the Jim Crow era."¹⁰¹ Former slaves had acquired approximately 99 acres of the land, then undeveloped beachfront.¹⁰² A later descendant acquired an extra 2,500 acres at \$1 an acre.¹⁰³ From the 1920s to the 1960s, the beach became a bustling cultural center for African Americans in the south.¹⁰⁴ Then, two main events forced the area into a swift decline. First, Hurricane Hazel and other geological changes in the 1950s created major damage and erosion to the beach.¹⁰⁵ Second, desegregation during the Civil Rights era and beyond opened up a plethora of other beach options for African Americans.¹⁰⁶ As a result, most of the African American community moved on, but historical fondness remained for those who had been to the beach during its heyday.¹⁰⁷

The SCSJ teamed up with law firm Kilpatrick Townsend & Stockton LLP to protect the Freeman family's interest in the land.¹⁰⁸ However, SCSJ learned that the majority stake in ownership was already held by Freeman Beach, LLC, which had no historical ties to the property.¹⁰⁹ Instead, the company had accumulated the land by individual deals with separate family members.¹¹⁰ Then, it attempted to force a partition sale to obtain the rest of the land and develop all of it.¹¹¹ The family wanted to look into the possibility of a conservation trust.¹¹² The outcome of the case is unclear, but it seems that it was settled and thus the result when unpublished. Now, called Freeman Park, the beach seems to be facilitated by the Town of Carolina Beach.¹¹³



Public domain image

An unidentified African American family on Freeman Beach circa 1945.



Susan Alredondo

Today, off-road vehicles are common at Freeman Park.

IV. PROMOTING RESILIENCE BY SAFEGUARDING HEIRS' PROPERTY: POTENTIAL STRATEGIES

The challenges associated with heirs' property cannot be resolved by circumventing the legal system. Whereas certain aspects of resilience to natural hazards or adaptive capacity can be managed through legislation and policy (such as insurance),¹¹⁴ or implemented by carefully integrating physical and social vulnerability data into local and regional planning,¹¹⁵ the heart of the heirs' property obstacle is access to justice.¹¹⁶ However, there are ways in which states, cities and localities can lighten the load on heirs' property owners. Steps include developing a systematic tool for locating heirs' property, increasing access to education and the courts, incentivizing state and local governments to fund pro bono efforts, and establishing a widely accepted city resilience index to encourage local participation. These measures would serve to (1) inform heirs' property owners why it is important to clear up title and ownership interest before a natural disaster strikes; and (2) provide legal help to clear up cloudy title, which would increase heirs' resilience to future natural disasters.

A. Develop a Systematic Tool for Locating Heirs' Property

While locating heirs' property alone is not a panacea to solving the issue, it can be instrumental in demonstrating the greater need for focus in this area, as well as for helping practitioners know who might need help clearing up title. Highly respected work is underway to integrate social vulnerability indices into environmental hazards planning.¹¹⁷ If social scientists are able to locate tracts of land where heirs' property most often occur, then it may be possible to integrate heirs' property as a factor in pre-existing social vulnerability indexes. However, short of canvassing entire regions of the South, it will be hard to determine even an approximation of where heirs' property is generally located.

B. Increase Knowledge of Heirs and State and Local Governments

Educating policy makers in state and local governments, as well as lawyers and actual heirs, will be crucial in removing heirs' property ownership as an obstacle to disaster recovery and to resilience. Since little is known about where heirs' properties generally are located and about specific tracts throughout the South, public interest lawyers must rely on client-driven contact in order to learn about heirs' property tracts. As such, until there is a comprehensive mapping tool

made available, potential clients must learn of heirs' property issues so they: (1) can confirm they own heirs' property; (2) know what they can do to clear up title; and (3) actually seek to clear up title to secure their ownership and future entitlement in the event of a natural disaster.

Educating and informing interested parties on heirs' property issues can be a challenge given it is a unique form of property ownership, and it may be difficult to locate all heirs particularly after a natural disaster. More likely than not, those conducting outreach about heirs property would have to rely on local newspapers and television commercials to spread the word about heirs' property and the effect it can have during the aftermath of a natural disaster. In addition, there may be pushback or apathy from intended audiences due to the remoteness in time of a natural disaster. There is already ample evidence that the American public resists calls for disaster preparation when the anticipated event is marked by high risk and low probability.¹¹⁸ State and local governments may resist making space in the budget to address issues with heirs' properties when there already are other critical issues for rural communities, such as consistent and perpetual underemployment and poverty.¹¹⁹

Advocates can focus on contacting or advertising to public interest law firms that already work in social justice areas regarding race and ethnicity and would potentially be interested in expanding their work to heirs' property issues. Alternatively, because there are already multiple groups that work in this area, such as SCSJ, Center on Heirs' Property, LLPP, UNC Center for Civil Rights, and others throughout the Carolinas, the focus may be diverted to funding a greater scope of projects.

C. Incentivize States and Local Governments to Fund Additional Pro Bono Efforts

Yet another step to alleviating the challenges associated with heirs' property would be to secure greater funding for those performing pro bono legal work. State and local governments in particular need to create the financial infrastructure to help poor African American families in the South gain access to the courts. This would allow them access to title searches, attorney expertise and legal representation. In turn, this step would encourage public interest and nonprofit law firms, as well as small local firms, to conduct more work in this area. However, there is only limited federal funding provided to legal aid,¹²⁰ and so it is up to the states and local governments to fill this financial gap.

The post-Katrina New Orleans example provides precedent for creating funding to clear title for heirs' property owners. As noted above, the Louisiana State Office of Community Development set aside a significant sum post-Katrina to fund legal aid efforts to clear title for heirs' property owners so that they could qualify for the Road Home Program.¹²¹ However, that example was reactive rather than proactive. An example of a more proactive approach would be to design and fund a program that would identify heirs' property at risk to natural disasters and work toward clearing the title before a disaster hits.

The grants from the American Bar Association, Real Property Section, to the Heirs' Property Retention Coalition were an encouraging step toward this approach, but the ABA and state-level bar associations could provide more funds for heirs' property work, given the potential scope of the issue.¹²² This case will be made stronger if practitioners and professional groups actually can locate the geographic areas affected and understand the scope of the heirs' property issue.

To incentivize state and local governments, those active in education about heirs' property issues could stress that being proactive in clearing title will be less expensive and create fewer displaced people after a natural disaster than taking a reactive approach or no mitigation approach at all. The humanitarian crisis of New Orleans post-Katrina could have been partially averted through a comprehensive approach being developed beforehand. Local governments may not have to build additional affordable housing to respond to houses being destroyed and then not rebuilt, if a workable system of clearing title on a large scale is in place.

D. Establish a Widely Accepted City Resilience Index to Encourage Local Participation

While this aspect of an heirs' property "management plan" is more speculative, building a recognizable City Resiliency Index would be ideal for encouraging cities and localities to better understand and mitigate heirs' property issues. A City Resiliency Index would take into consideration a variety of factors that can be used to evaluate a city and its ability to bounce back from negative events, whether they are environmental, economic or something else in nature. The Rockefeller Foundation already has explored this possibility,¹²³ and legal experts have discussed it as well.¹²⁴

The Rockefeller Foundation's City Resilience Index is a response to the increased uncertainty of global problems, most specifically climate change, combined with a scaling of many of these problems to the city infrastructure level.¹²⁵ The foundation defines city resilience as "the capacity of cities to function, so that the people living and working in cities — particularly the poor and vulnerable — survive and thrive no matter what stresses or shocks they encounter,"¹²⁶ and develops a set of factors to judge the resilience of different cities.¹²⁷ Under its model, resilient cities should be "Reflective," "Robust," "Redundant," "Resourceful," "Inclusive," and "Integrated."¹²⁸

Similar to the Social Vulnerability Index — developed by Susan Cutter, the director of the Hazards and Vulnerability Research Institute at the University of South Carolina — that uses different synthesized indices for social vulnerability in the face of environmental hazards,¹²⁹ the Foundation's City Resilience Index condenses many variables into 12 primary indicators for the purposes of generally determining a city's level of resiliency.¹³⁰ These 12 indicators are:

1. Minimal human vulnerability;
2. Diverse livelihoods and employment;
3. Adequate safeguards to human life and health;
4. Collective identity and mutual support;
5. Social stability and security;
6. Availability of financial resources and contingency funds;
7. Reduced physical exposure and vulnerability;



This house in the Upper 9th Ward was damaged during Hurricane Katrina.

Amerique through Wikimedia Commons

8. Continuity of critical services;
9. Reliable communications and mobility;
10. Effective leadership and management;
11. Empowered stakeholders; and
12. Integrated development planning.¹³¹

If the Rockefeller Foundation's City Resilience Index became the determinative metric, a large percentage of heirs' property ownership in a city could significantly and adversely lower a city's score for resilience. Heirs' property ownership increases human vulnerability in a way that echoes America's racial past.¹³² It interferes with the ability for heirs to recover after a large disaster such as Hurricane Katrina. Without access to home rebuilding, heirs can be displaced either for long periods or permanently. In addition, this reality can significantly affect heirs' property owners' ability to access other crucial social services after a natural disaster. All of these factors would bode poorly according to the 12 Rockefeller resilience factors.

If a metric such as the Rockefeller index was implemented, it could encourage cities to be more proactive in helping heirs to

clear up title in order to promote a better and more attractive public image. As such, experts in the field should promote the establishment of such an index in a similar way to Cutter's Social Vulnerability Index if possible. The result could lead to further action by localities to remedy other lasting social issues that are exacerbated by environmental forces.

V. CONCLUSION

Education is the key to resolving issues created by heirs' property ownership. Property owners and policy makers must become aware of the problems with clouded property titles before enacting conservation plans that take away land from vulnerable populations. A widespread awareness of heirs' property issues also will spur additional resources to locate heirs' property and assist poorer populations in clearing the title to their lands. Strengthening the discussion will allow social justice and resiliency concerns to be addressed and will allow at-risk populations to have a seat at the table as climate-change adaptation solutions are formulated.

ENDNOTES

¹Rory Fleming conducted this work while he was a 2014 law fellow with the N.C. Coastal Resources Law, Planning and Policy Center. He graduated from the University of North Carolina's School of Law in 2015. Jack Williams and Rebecca Neubauer were 2016 law fellows with the center.

²Lisa Schiavinato is the co-director of the N.C. Coastal Resources Law, Planning, and Policy Center, and coastal law, policy and community development specialist for North Carolina Sea Grant.

³See "What is Heirs' Property?," CENTER FOR HEIRS' PROPERTY PRESERVATION, *available at* <http://www.heirsproperty.org/who-we-are/what-is-heirs-property>.

⁴*Id.*

⁵*Id.*

⁶See Gina L. Lacagnina, "Breaking Up is Hard to Do: Avoiding Partition for Tenants in Common," NEIL DYMOTT ATTORNEYS, *available at* <http://www.neildymott.com/breaking-hard-do-avoiding-partition-tenants-common> (explaining that "it only takes one tenant in common to force a sale. Even if a partial owner would prefer not to sell, a disgruntled partial owner can force a sale through a partition action.").

⁷See "Rights and Duties of Co-Tenants," NATIONAL PARALEGAL COLLEGE, *available at* http://nationalparalegal.edu/public_documents/courseware_asp_files/realProperty/ConcurrentOwnership/RightsDutiesofCoTenants.asp (defining "partition" as "[t]he act of dividing").

⁸*Id.* (defining "partition in kind" as "The act of dividing a parcel of property by physical division so that each party obtains physical control, possession and ownership of a portion of the property that he or she formerly owned as a member in a co-tenancy.").

⁹*Id.* (defining "partition by sale" as "The act of dividing a parcel of property by selling the parcel and splitting the proceeds among the erstwhile co-tenants.").

¹⁰See Faith Rivers James, Section by Section Analysis in “Uniform Partition of Heirs Property Act,” *available at* http://www.elon.edu/docs/e-web/law/faculty/Faith_Rivers_James_Section_by_Section_Analysis_Uniform_Partition_of_Heirs_Property_Act.pdf.

¹¹See “What is Heirs’ Property?,” *supra* note 3.

¹²Of particular note is Charleston, South Carolina, and surrounding elite beachfront communities, such as Isle of Palms, Daniel Island and Mount Pleasant. These are considered destination cities and towns that are known for tourism and are continuing to grow in development density. See Bobby Magill, “The Front Lines of Climate Change: Charleston’s Struggle,” CLIMATECENTRAL (Jan. 9, 2014), *available at* <http://www.climatecentral.org/news/the-front-lines-of-climate-change-charlestons-struggle-16934> (explaining that, in 2010, “The state environment department created the committee to address a ‘crisis’ on the state’s beaches, where little direction existed to deal with chronic erosion, gradual sea-level rise, increased shoreline development, population growth and a lack of comprehensive beachfront planning.”).

¹³See Faith R. Rivers, “The Public Trust Debate: Implications for Heirs’ Property Along the Gullah Coast,” 15 SE. ENVTL. L.J. 147, 161 (explaining that “[t]here are a number of preservation strategies that may be utilized to conserve heirs’ property ownership without threatening the traditional land use patterns or denying the health and welfare needs of the Gullah people who reside on these lands.”). The Gullah people referred to are “the descendants of the slaves who worked on the rice plantations in South Carolina and Georgia. See Joseph A. Opala, *Origin of the Gullah* in “The Gullah: Rice, Slavery, and the Sierra Leone-American Connection,” YALE UNIVERSITY, *available at* <http://www.yale.edu/glc/gullah/04.htm>.

¹⁴See “Land Loss,” AUBURN UNIVERSITY COLLEGE OF AGRICULTURE, *available at* <http://www.ag.auburn.edu/agec/heir-property/landloss.php>; see also “Heirs’ Property Retention Coalition,” SOUTHERN COALITION FOR SOCIAL JUSTICE, *available at* <http://www.southerncoalition.org/hprc/>; see also Andrew Batt, “Black Farmers Still Looking for Justice,” IPTV.ORG, *available at* http://www.iptv.org/mtom/story.cfm/feature/5124/mtom_20080215_3324_feature/video (discussing apparent USDA racial discrimination in farm loan policies and the Pigford v. Glickman civil rights class action suit); see also Pigford v. Glickman, 185 F.R.D. 82 (D.D.C. 1999) (civil rights case successfully alleging USDA discrimination and gaining a \$1.25 billion settlement for the certified class of black farmers); but see Thomas W. Mitchell, “Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism,” WIS. L. REV. 557, 586–87 (2005) (explaining that “certain scholars have made unqualified or very thinly supported claims about the nature of partition sales more generally . . . notwithstanding the fact that these claims lack much, if any, empirical support. . . . [C]ertain activists have made claims about partition sales of black-owned property that are hard to evaluate given the lack of empirical support for these claims.”).

¹⁵See Mitchell, *supra* note 14, at 583 (citing “The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States,” THE EMERGENCY LAND FUND, INC. (1980), at 62–63).

¹⁶The public trust doctrine states that “that certain natural and cultural resources are preserved for public use, and that the government owns and must protect and maintain these resources for the public’s use,” Legal Information Institute, Cornell University Law School, *available at* https://www.law.cornell.edu/wex/public_trust_doctrine.

¹⁷See Rivers, *supra* note 13, at 157–58.

¹⁸See Faith Rivers, “Inequity in Equity: The Tragedy of Tenancy in Common for Heirs’ Property Owners Facing Partition in Equity,” 17 TEMP. POL. & CIV. RTS. L. REV. 1, 56 (explaining the remedy of voluntary partition in kind among coparceners in England).

¹⁹*Id.* at 57.

²⁰Pell v. Ball, 18 S.C. Eq. (1 Rich. Eq.) 361 (1845).

²¹See Rivers, *supra* note 13, at 57 (citing Pell, 18 S.C. Eq. (1 Rich. Eq.) 361, 373).

²²*Id.*

²³See *id.* at 27 (detailing the extremely poor ratio of black attorneys to black citizens in the years immediately after the Civil War).

²⁴*Id.* at 26.

²⁵*Id.*

²⁶*Id.*

²⁷*Id.*

²⁸See *id.* at 27–28.

²⁹See “Coastal Heirs Get Help to Protect Land,” ACCESSNORTHGA.COM, available at <http://accesswdun.com/article/2005/12/134276>.

³⁰See Rivers, *supra* note 18, at 29.

³¹Hilton Head, South Carolina, went from 90 percent African American to less than 15 percent between 1950 and 1975. See *id.* at 30.

³²In such a case, a development company will purchase one heir’s interest in specific heirs’ property land and then pressure the other landowners to sell or develop, or else the developer will take them to court to force the sale. When heirs have started their own development companies to oversee the development of their family lands, this strategy has better allowed heirs to control the destiny of their family property while receiving a fairer portion of the fiscal benefits. See, e.g., Bruce Smith, “Heirs Defy History of Blacks Losing Land,” ASSOCIATED PRESS (Oct. 15, 2006), available at http://usatoday30.usatoday.com/news/nation/2006-10-15-slave-descendants_x.htm.

³³See *id.* (“While other owners of heirs’ property have formed limited liability corporations, Jennie Stephens, executive director of the Center for Heirs’ Property Preservation, says she knows of no other development firms working with heirs as does Gateway.”).

³⁴See Rivers, *supra* note 18, at 58 (explaining that “[t]ypically, a court-ordered sale draws less than optimal market value because of the forced, timed conditions of the court sale. In these situations, developers who force partition sales are able to capture the property at bargain prices and realize high financial gains when the land is sold at a higher price with consolidated title.”).

³⁵See Smith, *supra* note 32.

³⁶*Id.*

³⁷*Id.*

³⁸*Id.*

³⁹See “Uniform Partition of Heir’s Property Act,” UNIFORM LAW COMMISSION, available at <http://www.uniformlaws.org/Act.aspx?title=Partition%20of%20Heirs%20Property%20Act>.

⁴⁰*Id.*

⁴¹*Id.*

⁴²*Id.*

⁴³H.B. 3225, 121st Gen. Assemb., Reg. Sess. (S.C. 2016).

⁴⁴See Rivers, *supra* note 13, at 161.

⁴⁵*Id.*

⁴⁶*Id.*

⁴⁷*Id.* at 157.

⁴⁸*Id.*

⁴⁹Port Royal Mining Co. v. Hagood, 30 S.C. 519, 9 S.E. 686 (1889).

⁵⁰*Id.*

⁵¹*Id.* at 169.

⁵²*Id.* at 166.

⁵³*Id.*

⁵⁴*Id.* Some government bodies and task forces also have used conservation easements as a compromise between environmental conservation and the retention of heirs’ property. See “Virginia CZM Program 2010 Coastal Grant Project Description and Final Summary,” VIRGINIA DEPARTMENT OF ENVIRONMENTAL QUALITY, available at <http://www.deq.state.va.us/Programs/CoastalZoneManagement/Funds,Initiatives,Projects/2010Projects/2010VirginiaCZMGrantProjectTask9510.aspx> (mentioning as a compromise between heirs’ land retention and protection of an environmentally important area); see *Appendix D* in “Final Report to the Governor and Maryland General Assembly,” TASK FORCE ON MINORITY PARTICIPATION IN THE ENVIRONMENTAL COMMUNITY, at 29, available at <http://dnr2.maryland.gov/Education/Documents/MinorityParticipationTaskForceReport.pdf> (discussing partnership between African American Land Trust and Maryland Environmental Trust to accept land donations and easements from heirs’ property owners, to meet the following purposes: “Protect family

legacy and keep land in the family; Retain family businesses; Peace of mind knowing that a special place will always remain the same; and Save on taxes”). Georgia Appleseed mentions a similar idea in its heirs’ property attorney training manual. See “Heir Property in Georgia: Attorney Training Manual,” GEORGIA APPLESEED, *available at* https://gaappleseed.org/media/docs/heirproperty_attorney.pdf.

⁵⁵See B. Wayne Blanchard, “Guide to Emergency Management and Related Terms, Definitions, Concepts, Acronyms, Organizations, Programs, Guidance, Executive Orders & Legislation,” FEDERAL EMERGENCY MANAGEMENT AGENCY (2008), *available at* <https://training.fema.gov/hiedu/docs/terms%20and%20definitions/terms%20and%20definitions.pdf> (citing Brad Allenby and Jonathan Fink, “Toward Inherently Secure and Resilient Societies,” *SCIENCE* 309.5737 (2005): 1034–1036).

⁵⁶See Robin Kundis Craig & Melinda Harm Benson, “Replacing Sustainability,” 46:4 AKRON L. REV. (2013), at 841, 846 (differentiating sustainability from resiliency and explaining that sustainability “leads to laws and policies that limit human activity in and consumption of the natural environment to levels that can be continued on a long-term basis with minimal harm to either side of the equation[,]” whereas resiliency takes into consideration the fact that the environment is in constant flux).

⁵⁷See *generally* John Travis Marshall & Ryan Max Rowberry, “Urban Wreckage and Resiliency: Articulating a Practical Framework for Preserving, Reconstructing, and Building Cities,” *IDAHO L. REV.*, Vol. 50 (2014), at 49.

⁵⁸*Id.*

⁵⁹See Craig et al., *supra* note 56, at 841.

⁶⁰See John Ydstie, “No Title? No Easy Access to Post-Katrina Aid,” NPR.ORG, *available at* <http://www.npr.org/templates/story/story.php?storyId=90005954>. The Road Home is a program run by the state of Louisiana that “funnels federal Katrina aid to homeowners for rebuilding.” *Id.*; see also “The Road Home Program Overview,” THE ROAD HOME PROGRAM, *available at* <https://www.road2la.org/Default.aspx>.

⁶¹See “Heir Property: Education, Advocacy, Reform,” APPLESEED (2012), at 2, *available at* http://www.appleseednetwork.org/wp-content/uploads/2012/05/Heir-Property_Executive-Summary.pdf.

⁶²*Id.* at 4. Georgia Appleseed defines “clouded title” in the heirs’ property context as:

This Booklet sometimes uses the term “clouded title” in an informal way to refer to property that, from the perspective of one of the heir property owners, has so many owners due to the passage of ownership without benefit of a will that the title is no longer “clearly” in the hands of the heir property owner in question, but is, in effect, “clouded.” The legal definition, however, of the term “clouded title” is an encumbered land title or one with an outstanding claim (for example, land with a lien against it or for which an ownership interest is not documented).

See “Heir Property in Georgia,” GA APPLESEED (2nd ed. 2010), at 27, *available at* <https://gaappleseed.org/media/docs/heir-property.pdf>.

⁶³See “Unlocking Heir Property Ownership: Assessing the Impact on Low and Mid-Income Georgians and Their Communities,” GA APPLESEED (2013), at 9, *available at* <https://gaappleseed.org/media/docs/unlocking-heir-property.pdf> (“Approximately 25,000 of the 185,000 displaced New Orleans residents who applied for rebuilding assistance were identified as heir property owners.”) (citing “Heir Property Project,” ALABAMA APPLESEED, *available at* http://www.alabamaappleseed.org/uploads/4/3/3/1/4331751/heir_long.pdf).

⁶⁴See Ydstie, *supra* note 60.

⁶⁵The term “pro bono,” which is short for pro bono publico, is a Latin term that means “for the public good.” Work done pro bono is work done for free. “Pro Bono and Community Service,” GEORGETOWN LAW, *available at* https://www.law.georgetown.edu/careers/opics/pro-bono/what_is_pro_bono/.

⁶⁶See “I’m Carolyn Parker: The Good, The Mad, and the Beautiful,” PBS.ORG, *available at* <http://www.pbs.org/pov/carolyn-parker/photo-gallery-in-context/2/> (explaining that “In New Orleans, poverty was concentrated in low-lying places like the Lower Ninth Ward, and Hurricane Katrina exposed the intertwined problems of racial discrimination, segregation and poverty in the city. Eighty percent of the city’s African-American residents lived in these flood-prone areas, compared to 54 percent of the city’s white population.”).

⁶⁷See Richard Kluckow, “The Impact of Heir Property on Post-Katrina Housing Recovery in New Orleans,” unpublished M.A. thesis, Colorado State University (2014), *available at* http://disaster.colostate.edu/Data/Sites/1/cdra-research/cdra-thesesanddissertations/kluckow_richard.pdf.

⁶⁸*Id.* at 31.

⁶⁹*Id.*

⁷⁰*Id.* at 69.

⁷¹*Id.* at 70.

⁷²*Id.* at 71.

⁷³*Id.* at 31.

⁷⁴*Id.*

⁷⁵See Carolyn L. Bird, “Who Gets Your Property If You Die Without a Will?,” NORTH CAROLINA COOPERATIVE EXTENSION, at 2, available at <http://www.ces.ncsu.edu/depts/fcs/pdfs/Pub%20W540-5%20Who%20Gets%20Your%20Property.pdf>.

⁷⁶See N.C. Gen. Stat. § 29-15(4) (“If the intestate is not survived by children or lineal descendants or by a parent, the brothers and sisters of the intestate, and the lineal descendants of any brothers or sisters, shall take as provided in G.S. 29-16”).

⁷⁷See N.C. Gen. Stat. § 29-16(a). If there are no living relatives, the estate is returned to the State of North Carolina. See Bird, *supra* note 75.

⁷⁸See N.C. Gen. Stat. § 29-16(a)(1).

⁷⁹*Id.* § (a)(2).

⁸⁰*Id.* § (a)(5).

⁸¹See “Uniform Partition of Heirs Property Act,” APPLESEED NETWORK, available at <http://appleseednetwork.org/wp-content/uploads/2012/05/Fact-Sheet-Uniform-Partition-Of-Heirs-Property-Act.pdf> (explaining that the Model Act seeks to protect families from property loss through “[i]mproving notification practices before forced sales”; “[b]roadening judicial considerations before forcing low-wealth families out of their homes”; “[e]xtending legal alternatives to forced sales”; and “[e]stablishing priorities for buy-outs and physical divisions of land before a forced sale is permitted”).

⁸²See “Partition of Heirs Property Act,” UNIFORM LAW COMMISSION, available at <http://www.uniformlaws.org/Act.aspx?title=Partition%20of%20Heirs%20Property%20Act>.

⁸³Montana, Nevada, Arkansas, Alabama, South Carolina, Connecticut and Georgia have enacted the Model Act. It has been introduced in the state legislatures of Mississippi, West Virginia and Hawaii. See *id.*

⁸⁴See William High & Todd Owen, “North Carolina’s Distressed Urban Tracts: A View of the State’s Economically Disadvantaged Communities,” UNC CENTER FOR URBAN AND REGIONAL STUDIES 4 (2014), available at <https://curs.unc.edu/files/2014/02/NC-Distress-Update-final.pdf> (discussing problem of assuming the worst poverty in North Carolina is in rural areas).

⁸⁵See John Quintero, “North Carolina’s Unfinished Transformation: Connecting Working Families to the State’s Newfound Prosperity,” N.C. BUDGET & TAX CENTER, at 2, available at http://www.workingpoorfamilies.org/small_states/assessment/north_carolina.pdf (“Negatively, North Carolina has been overwhelmed by the speed of recent economic developments, specifically the decline of the manufacturing sector and its devastating impact on rural communities.”); see also Michele Nash-Hoff, “How Free Trade Agreements Lead to Job Loss and Wealth Gaps,” SAVINGMANUFACTURING.COM, available at <http://savingusmanufacturing.com/blog/outourcing/how-free-trade-agreements-lead-to-job-loss-and-wealth-gaps/>.

⁸⁶See Billy Ray Hall, “Poverty’s Enduring Tradition in Rural North Carolina: How Do We Respond?,” POPULAR GOVERNMENT, Vol. 68, No. 3 (Spring/Summer 2003), 25–31, available at <http://sogpubs.unc.edu/electronicversions/pg/pgspsm03/article3.pdf> (discussing the lack of jobs in the rural, coastal North Carolina, and stating that “A major part of the problem is jobs, or rather, the lack of jobs in a county that still relies heavily on traditional farming, fishing, and forestry trades while the world increasingly becomes more technology driven.”).

⁸⁷See Joseph A. Polich, “Community Portraits: Elizabeth City,” UNC CENTER ON POVERTY, WORK & OPPORTUNITY, available at <http://www.law.unc.edu/centers/poverty/projects/portraits>. Polich explains:

When you just drive through, you don’t learn much about the economic health of a place. Sometimes, the numbers don’t help much. With an overall poverty rate of 12.5% in 2012, and year-long unemployment averages near the best in the state, Currituck appears to be a community with an enviable economic position relative to other counties. What is unique about Currituck County and other coastal communities is that year-long poverty

measures, inflated poverty values, and unemployment rates that are averaged over the course of a year mask the disturbing effect that seasonality plays on the economic health of the local community. The result is that outsiders don't think of Currituck as "poor." Neither does the State of NC: according to the NC Department of Commerce, Currituck is a Tier 2 county.

Id. Tier 2 refers to the N.C. Department of Commerce ranking the economy of each county in the state, with Currituck County ranked at an intermediate tier. The Tiers are ranked from 1 to 3, from most to least distressed. See <http://www.nccommerce.com/research-publications/incentive-reports/county-tier-designations>.

⁸⁸See Devika Banerji, "Moving Fish: Supply and Demand in North Carolina's Seafood Industry," COASTWATCH (Holiday 2014), available at <http://ncseagrant.ncsu.edu/coastwatch/previous-issues/2014-2/holiday-2014/moving-fish-supply-and-demand-in-north-carolinas-seafood-industry/>.

⁸⁹See "Racial Wealth Disparity in North Carolina," UNC CENTER ON POVERTY, WORK, AND OPPORTUNITY (2010), at 1, available at http://www.law.unc.edu/documents/poverty/publications/racial_wealth_disparity_in_nc_unc_cpwo.pdf ("Asset poverty appears to be concentrated in the eastern part of North Carolina, where a high proportion of residents are African American.").

⁹⁰See High et al., *supra* note 84, at 14 ("Urban distressed tracts in North Carolina have lower rates of homeownership (38 percent) than the state as a whole (68 percent) and nearly one-third lower rates than rural distressed tracts (55 percent)"). The High report focuses on why urban poverty in North Carolina should not be neglected, and specifically concludes that the intense pockets of urban poverty in North Carolina actually are more dire than that faced by their rural counterparts. However, in the context of disaster resilience, it should be noted that (1) there are few major metro areas at the N.C. coast, and (2) old rural homes at the coast are highly susceptible to destruction during a major weather event, and the majority of rural household income in poor areas in North Carolina is in the home. See, e.g., "The Saffir-Simpson Hurricane Wind Scale," LEE COUNTY EMERGENCY OPERATIONS CENTER, available at <http://www.leegov.com/publicsafety/emergency-management/plan/ahg/pg1>.

⁹¹See Andrea Levere, "You Think Income Poverty Is Bad? Take a Look at Asset Poverty in the U.S.," CFED (June 2, 2010), available at http://cfed.org/newsroom/in_the_news/cfed/you_think_income_poverty_is_bad_take_a_look_at_asset_poverty_in_the_us/.

⁹²See UNC POVERTY CENTER, *supra* note 89. Asset poverty generally refers to one's lack of ability to stay above the poverty line in the face of a personal financial shock, such as a natural disaster. See Levere, *supra* note 91.

⁹³See Donald T. Hornstein, "The Balkanization of CAT Property Insurance: Financing and Fragmentation in Storm Risks," RUTGERS J.L. & PUB. POL'Y Vol. 11, No.1 (2013), at 9, 17–18.

⁹⁴See Monica Olivera McCann, "Case Study of Floodplain Acquisition/Relocation Project in Kinston, NC after Hurricane Fran (1996) and Hurricane Floyd (1999)," unpublished M.A. thesis, UNC-Chapel Hill (2006), available at <https://cdr.lib.unc.edu/indexablecontent/uuid:e9430c54-d2c0-4747-ad8a-edb5d893250c>.

⁹⁵*Id.* at 12.

⁹⁶*Id.* at 27.

⁹⁷See generally "Heirs' Property RC Report to the American Bar Association Real Property Trust and Estate Law Section," AMERICAN BAR ASSOCIATION (2012), available at http://www.americanbar.org/content/dam/aba/events/real_property_trust_estate/leadership/spring_2012/aba_rpte_s12_141d_cncl_pptf_lawyers_committee_report_to_rpte_final_march_2012.authcheckdam.pdf.

⁹⁸*Id.* at 11.

⁹⁹*Id.*

¹⁰⁰*Id.* at 12–13; see also Anna Stolley Persky, "In the Cross-Heirs," ABA JOURNAL (May 2, 2009), available at http://www.abajournal.com/magazine/article/in_the_cross-heirs/.

¹⁰¹See Ronald J. Stephens, "Freeman Beach/Seabreeze, Wilmington, North Carolina (ca. 1885-)," BLACKPAST.ORG, available at <http://www.blackpast.org/aah/freeman-beach-seabreeze-wilmington-north-carolina-ca-1885>.

¹⁰²*Id.*

¹⁰³*Id.*

¹⁰⁴*Id.*

¹⁰⁵See Herbert L. White, "Oceanside Divide," OUR STATE, available at <http://www.ourstate.com/oceanside-divide/>.

¹⁰⁶*Id.*

¹⁰⁷*Id.*

¹⁰⁸See HEIRS' PROPERTY RC REPORT, *supra* note 97, at 12–13.

¹⁰⁹*Id.*; see also “Kilpatrick Stockton,” THE AMERICAN LAWYER (Jun. 19, 2009), available at <http://www.americanlawyer.com/id=1202431472014/Kilpatrick-Stockton?slreturn=20150317153115> (explaining that “In an October 2008 petition filed with the Superior Court of New Hanover County, developer Freeman Beach LLC laid its own claim to the beach, saying that it owned 72 percent interest because of a 1940 judgment on a defaulted loan by some of Robert Freeman’s heirs, and through buyouts of current heirs.”).

¹¹⁰ *Id.*

¹¹¹*Id.* at 12–13.

¹¹²*Id.* at 13.

¹¹³See “Freeman Park,” TOWN OF CAROLINA BEACH, available at http://www.carolinabeach.org/visitors/freeman_park/; see also “Council Adopts Restrictions for Alcohol, Camping at Freeman Park,” ISLAND GAZETTE (Nov. 12, 2014), available at <http://www.islandgazette.net/news-server9/index.php/news/local-news1/item/720-council-adopts-restrictions-for-alcohol-camping-at-freeman-park>. In addition, it is possible that Meghan Pridemore was discussing Freeman Beach without disclosing its name in her article, “Tides, Torrens, and Family Trees.” See Meghan E.B. Pridemore, “Tides, Torrens, and Family Trees: Heirs Property Preservation Challenges,” PROB. & PROP. (May/June 2009), at 25. This article for the ABA detailed her experience working as an extern with SCSJ. She wrote:

A second family owned not only beachfront property but also the beach itself. Popular among tourists for sunbathing, swimming, crabbing, bonfires, and camping, this land now is maintained by the city as a park. The city does not claim ownership of the land but charges an entrance fee of \$10 per car. Having received none of this revenue, the family was concerned that, if something were not done to protect the land, it would eventually be lost to the city. Little action had been taken, however, because of a fragmented family tree that boasts one hundred or more heirs, including many whose identity and whereabouts are unknown.

Id. The lack of news in recent years may lead to the reasonable assumption that the legal fight against the town’s ownership has been abandoned.

¹¹⁴See generally Hornstein, *supra* note 93.

¹¹⁵See generally Susan L. Cutter, Bryan J. Boruff & W. Lynn Shirley, “Social Vulnerability to Environmental Hazards,” SOCIAL SCIENCE QUARTERLY, 84: 242–261 (2003), doi:10.1111/1540-6237.8402002, available at <http://onlinelibrary.wiley.com/doi/10.1111/1540-6237.8402002/abstract>.

¹¹⁶“Access to justice” refers to the accessibility of the civil courts for poor and otherwise disadvantaged parties. See Carrie Johnson, “Rights Advocates See ‘Access to Justice’ Gap in U.S.,” NPR.ORG (Mar. 10, 2014), available at <http://www.npr.org/blogs/thetwo-way/2014/03/10/288225649/rights-advocates-see-access-to-justice-gap-in-u-s>.

¹¹⁷See Cutter et al., *supra* note 115.

¹¹⁸See, e.g., Jennifer Wiggins, “Flood Money: The Challenge of U.S. Flood Insurance Reform in a Warming World,” PENN. ST. L. REV., Vol. 119, No. 2, (2014).

¹¹⁹See *supra* Part III(B)(2).

¹²⁰See Johnson, *supra* note 116 (quoting Risa Kaufman of Columbia Law’s Human Rights Clinic, “We’re really recommending the U.S. government step up ... that it support state level efforts to establish a right to counsel in certain civil cases, that the U.S. ease restrictions and increase funding for the Legal Services Corporation, the main way federal legal aid is delivered for poor Americans”).

¹²¹See Kluckow, *supra* note 67, at 31.

¹²²See HEIRS' PROPERTY RC REPORT, *supra* note 97, at 10.

¹²³See “City Resilience Framework,” ROCKEFELLER FOUNDATION (2014), available at <http://www.rockefellerfoundation.org/uploads/files/0bb537c0-d872-467f-9470-b20f57c32488.pdf>.

¹²⁴See Marshall et al., *supra* note 57.

¹²⁵See ROCKEFELLER, *supra* note 123, at 3.

¹²⁶*Id.*

¹²⁷*Id.* at 7.

¹²⁸*Id.* at 5.

¹²⁹See Cutter et al., *supra* note 115; *see also* <https://www.orau.gov/dhssummit/2007/Presentations/Cutter.pdf>. The Social Vulnerability Index examines access to physical resources, information and technology, political power, and representation. It also takes into account social capital, which includes social networks, connections, beliefs and customs.

¹³⁰See Rockefeller, *supra* note 123, at 7.

¹³¹*Id.*

¹³²See Rockefeller, *supra* note 123, at 3. The human vulnerability elements of the Rockefeller Foundation's City Resilience Index relate to basic needs being met. They include safe and affordable housing, adequate affordable energy supply, inclusive access to safe drinking water, effective sanitation, and sufficient affordable food supply.

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