
FRACTURED AND FORGOTTEN: CHALLENGING EXCLUSIONARY TITLING AND CO-OWNERSHIP REQUIREMENTS THAT DISPLACE “HEIRS PROPERTY” DISASTER SURVIVORS

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In the aftermath of a natural disaster, disaster survivors rely heavily on local and federal relief to rebuild their devastated homes. For households without formal legal title to their home, however, such relief is slower to arrive, leading to displaced families and damaged communities. Due to generations of frustrated access to probate planning and the legal system, Black and Brown individuals are more likely to own a home without clear legal title, or to co-own with other relatives who inherited without a will, leading to a form of fractured, informal homeownership known as “heirs property.”

Older homeowners of color are disproportionately likely to own heirs property, and these same vulnerable older adults are also more likely to live in climate-vulnerable locations, facing growing threats from hurricanes, tornados, floods, and wildfires. And yet, despite their elevated risk of disaster and displacement, heirs property owners face frustrated access to government programs designed to provide disaster relief and recovery funding.

This article surveys the various legal barriers that heirs property owners face in preparing for and recovering from catastrophic natural disasters, namely exclusionary title and co-owner consent requirements. We examine the various impediments to heirs’ climate resilience and document how such impediments easily lead to the displacement of heirs communities of color. To conclude, we propose various policy recommendations to protect heirs property households from home loss, assist heirs attempting to clear title, and extend estate planning options and opportunities for underserved communities. Securing a home remains the central means of promoting physical and financial security for low- and moderate-income families. Yet for many Black and Brown communities, the assumptions of property management that undergird probate and property law and policy prevent families from transferring this security to the next generation. This article urges a more inclusive paradigm for property ownership and management.

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INTRODUCTION

As the climate crisis intensifies, those communities in disaster zones, facing growing threats from hurricanes, tornados, floods, and wildfires, will progressively find themselves subject to cycles of catastrophe and recovery. To weather increasingly frequent, increasingly intense disasters, these communities will need both private and public funds to invest in climate resilience measures, including during “blue sky times,” and to repair or reconstruct their homes post-disaster. Too often, however, local and federal disaster assistance program requirements exclude families with heirs property: inherited homes owned informally, with title divided amongst family members.¹

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Often, disaster assistance programs create barriers to accessing funds to rebuild damaged family homes by basing eligibility on formal title ownership, making relief contingent on the consent of absent co-owners, or by failing to communicate what is needed to document property ownership by heirs. These policies function to unnecessarily and harmfully exclude scores of communities from access to funds that would otherwise improve their ability to prepare for, and recover from, natural disasters—an exclusion that is even more troubling given that many of the older adults of color owning heirs property reside in some of the most climate-vulnerable communities.² While in recent years, eligibility rules of various federal disaster relief programs have been modified to improve accessibility for certain heirs, barriers to accessing disaster assistance still exist across local and federal programs.

These exclusionary disaster relief policies disproportionately burden older Black and Brown homeowners. Informal title owners—be they Latino homeowners in places like Puerto Rico and Texas, or Black homeowners across the South—have struggled to obtain assistance. *The Washington Post* found that applicants for assistance from the Federal Emergency Management Agency (FEMA) in majority-Black counties were twice as likely to be

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¹ See Hannah Dreier & Andrew Ba Tran, ‘*The Real Damage*’: *Why FEMA is Denying Disaster Aid to Black Families that Have Lived for Generations in the Deep South*, WASH. POST (July 11, 2021, at 6:00 ET), <https://www.washingtonpost.com/nation/2021/07/11/fema-black-owned-property/> [https://perma.cc/BDG9-REC8]; Laura Bliss, *These Communities Face a Double Threat from Hurricane Florence and Property Rights*, CITYLAB (Sept. 17, 2018), <https://www.bloomberg.com/news/articles/2018-09-15/hurricane-florence-threatens-the-gullahs-of-south-carolina> [https://perma.cc/VQK4-Y543]; Tifany D. Thomas, *Securing Legacies: Strategies for Resolving Heirs’ Property Issues in Cities*, NATIONAL LEAGUE OF CITIES (Apr. 19, 2024), <https://www.nlc.org/article/2024/04/19/securing-legacies-strategies-for-resolving-heirs-property-issues-in-cities/> [https://perma.cc/5BSY-5JFX]; Sarah Sax, *Black Families Passed Their Homes from One Generation to the Next. Now They May Be Lost*, THE GUARDIAN (Oct. 6, 2021), <https://www.theguardian.com/us-news/2021/oct/06/leading-cause-black-land-loss-how-climate-crisis-supercharging-dispossession> [https://perma.cc/6WRD-ZTPL].

² This correlation is discussed further in Part II.

rejected due to title issues.³ *The Post's* extensive reporting on the subject noted how older Black homeowners in the United States, including some in their late eighties, face barriers to federal assistance funds based on the heirs property status of their homes.⁴

Exclusion from disaster recovery and resilience measures doubly burdens marginalized communities with the costs of managing the climate crisis: in addition to their proximity to disaster-prone areas, they are also at risk of home loss due to historic and present-day differences in property ownership. The privatization of the costs of the climate crisis—whereby the communities least responsible for ecological devastation are those both disproportionately vulnerable to its effects *and* shut out from public support—threatens to intensify the housing insecurity gap.

This article aims both to outline the various obstacles to disaster recovery and resilience faced by heirs property owners and identify the best practices for protecting heirs communities from blight and displacement. In Part I, we provide a brief overview of heirs property and its causes, surveying a now-comprehensive literature on the subject. In Part II, we describe the unique vulnerability to natural disasters that many older heirs property households face, as well as their lack of homeowners insurance. In Part III, we delve into the specific aspects of local and federal disaster relief programs that too often exclude heirs through unnecessary barriers, heightening the risks of displacement. Finally, Part IV argues that, to remedy historic inequities in access to justice and disaster vulnerability for communities with diverse property ownership forms in the United States, local, state, and federal housing and disaster response actors must adopt more inclusive paradigms of property ownership and management, as well as proactively provide on-ramps to mainstream forms of property ownership, should households so choose. Part V also points to various policy reforms that can empower older heirs owners in transferring their property to the next generation.

It is worth noting here that, while this article examines heirs property, with a particular focus on Black communities in the Southeast, many of the barriers covered herein also apply to groups with their own legacies of informal or divided title which may not

³ See Dreier & Tran, *supra* note 1 (noting that this disparity exists “in large part because Black people are twice as likely to pass down property informally”).

⁴ See *id.*

necessarily be heirs property per se, such as immigrant and Latino communities, indigenous communities, and the peoples of U.S. territories. While these particular histories are mostly beyond the scope of this article, they too deserve further study and consideration.

With housing and climate insecurity appearing on state, local, and federal agendas with increasing frequency, policymakers must recognize that both issues—rather than existing in their own siloes—reinforce and intensify each other. If advocates and policymakers are to promote housing preservation and an equitable climate response, they must address the challenges that heirs face in addressing both issues. Programs intended to prevent displacement and provide for equitable disaster recovery must proactively include informal systems of land tenure. Law and policy have often combined to exclude Black and other communities from the physical and financial security afforded by homeownership. It is therefore up to current laws and policies to make right these historic wrongs.

I. HEIRS PROPERTY: A HISTORY OF LEGAL EXCLUSION AND HOME LOSS

Heirs property, sometimes known as “tangled title,” generally refers to property ownership that is both informal and divided among multiple heirs—i.e., the current owners’ ownership interests have not been probated and recorded in the relevant jurisdiction’s land registry, and the property is owned by two or more heirs as tenants in common. Typically, this occurs when a property owner dies without a will, leaving their land to pass via their jurisdiction’s intestacy laws. State intestacy laws, which determine the distribution of a person’s assets, should they die without a will, leave ownership divided amongst heirs, who must then take affirmative steps to consolidate the title—whether in one individual’s name or in a legal tool such as a trust or business entity.⁵ In recent years, the

⁵ See Mavis Gragg, *A Lawyer’s Suggestions for Heirs’ Property Owners*, VT. L. & GRADUATE SCH. 2 (Jan. 2024), <https://farmlandaccess.org/wp-content/uploads/2024/01/SuggestionsForHeirs-FINAL.pdf> [<https://perma.cc/3L9R-VRM6>] (outlining steps heirs property owners can take to consolidate home title). It is worth mentioning that heirs property can also be created via wills that are either not probated or that leave a home to more than one descendant; see also Danaya C. Wright, *Trapped Between the URPTODA and the UHPA: Probate Reforms to Bridge the Gap and Save Heirs Property for Modest-Wealth Decedents*, 127 PENN ST. L. REV. 749, 767 (2023) (citing Danaya C. Wright & Beth Sterner, *Honoring*

challenges faced by heirs property owners have received increased attention. This is due to a combination of shared stories and increased media attention, a growing examination of the history of Black land loss in the 20th century (particularly in the American South), and legislation aimed at remedying the dangers of fractional ownership.⁶

Heirs property is extremely common in Black communities in the U.S. Southeast. According to some estimates, 60 percent of the total real property owned by African Americans in the United States is owned as heirs' property.⁷ The high rate of fractured land ownership in the South is a direct result of a combination of disparate access to legal services and negative interactions with the courts:

Historically, African-American property owners' decisions not to write wills are understandable in the context of local "courthouse gangs" of White lawyers who were not trusted (see Dyer 2007: 20–22). This sense of distrust was captured by a political leader in south Alabama, who described "vulture-like white people [who], through various dubious legal schemes, too often actually steal land from unknowing blacks ..." (Figures 1971: B-7). There are few African-American lawyers working in the rural South even today, and White courthouse gangs are still viewed with understandable suspicion (Duncan 2014; Dyer and Bailey 2008; USDA 2007, 2008).⁸

Post-Reconstruction, newly emancipated men and women, having been deemed property for centuries, found themselves foreclosed from a legal system presumably tasked with protecting their property rights. Consequently, Black Americans, fearing legalized land

Probable Intent in Intestacy: An Empirical Assessment of the Default Rules and the Modern Family, 42 ACTEC L.J. 341, 363 (2017)).

⁶ See e.g., *SILVER DOLLAR ROAD*, Amazon Prime, (Amazon MGM Studios 2023); *GAINING GROUND* (Al Roker Entertainment 2023); Lizzie Prezzer, *Their Family Bought Land One Generation After Slavery. The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It*, PROPUBLICA ProPublica (July 15, 2019), <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south> [<https://perma.cc/3HVQ-EBUT>].

⁷ See *Land Retention*, FED'N OF S. COOP., <https://www.federation.coop/land-retention> [<https://perma.cc/3ADH-XJP9>] (last visited Sept. 9, 2025).

⁸ Connor Bailey et al., *Heirs' Property and Persistent Poverty Among African Americans in the Southeastern United States*, in *HEIRS' PROPERTY AND LAND FRACTIONATION: FOSTERING STABLE OWNERSHIP TO PREVENT LAND LOSS AND ABANDONMENT* 9, 11 (Cassandra Johnson Gaither et al. eds., 2019).

theft, became more likely to avoid interacting with the legal system in either estate planning or formally probating an estate.⁹ One survey of will drafting across demographics shows that 77 percent of Black, non-Hispanic households do not have a will.¹⁰

Heirs property does not exist only in the Southeast. The violence and dispossession that people of color have experienced at the hands of the legal system impacted their likelihood of obtaining a formal probate plan in cities around the country. For instance, according to Pew Charitable Trusts, Philadelphia has at least 10,407 “tangled titles,” comprising 2 percent of the city’s residential properties in predominantly Black, low-income, and high-poverty neighborhoods, and worth over \$1.1 billion.¹¹ The average cost of remedying a tangled title in Philadelphia, moreover, is a barrier to clearing title for heirs: “[w]ithout subsidized legal counsel, fee waivers, or other public assistance, the cost of remedying a tangled title can be significant: about \$9,200 for a home valued at the median of \$88,800.”¹² A recent study of heirs property in Detroit estimated there are at least 5,525 heirs properties worth over \$268 million; notably, the census tracts with the most heirs properties typically have higher shares of Black residents.¹³ In Baltimore, over

⁹ See Lesley Albritton & Jesse Williams, *Disasters Do Discriminate: Black Land Tenure and Disaster Relief Programs*, 29 J. AFFORDABLE HOUS. & CMTY. DEV. L. 421 (2021); Will Breland, *Acre of Distrust: Heirs Property, the Law’s Role in Sowing Suspicion Among Americans and How Lawyers Can Help Curb Black Land Loss*, 28 GEO. J. ON POVERTY L. & POL’Y 377, 401–03 (2021) (“studies indicate that African Americans write wills at a lower rate than their white counterparts—”32 [percent] of [w]hites versus 16.4 [percent] of non-[w]hites in one survey... Additional studies of smaller swaths of Southern land showed that more than half of Black landowners in the South had no wills”).

¹⁰ See Althea Chang-Cook, *Why People of Color Are Less Likely to Have a Will*, CONSUMER REPS. (Aug. 10, 2022), <https://www.consumerreports.org/money/estate-planning/why-people-of-color-are-less-likely-to-have-a-will-a6742820557> [<https://perma.cc/9VS2-5HPF>].

¹¹ See Garrett Hincken, *How ‘Tangled Titles’ Affect Philadelphia*, PEW CHARITABLE TRS. (Aug. 17, 2021), <https://www.pewtrusts.org/en/research-and-analysis/reports/2021/08/how-tangled-titles-affect-philadelphia> [<https://perma.cc/V6YC-DJTC>].

¹² *Id.*

¹³ See Vinita Wagh & Juan Sandoval, *Keeping your Family Home: Addressing the Challenges of Inherited Properties in Detroit*, DETROIT FUTURE CITY, 6 (Feb. 2024), https://detroitfuturecity.com/wp-content/uploads/2024/02/Keeping-Your-Family-Home_Feb-2024.pdf [<https://perma.cc/H7BS-BNCN>] (finding, “the 51

3,000 properties are believed to be “tangled title properties,” accounting for 20 percent of properties in tax sale.¹⁴ Yet the prevalence of heirs property is greatest in the Southeastern areas of the country.

The U.S. legal system makes heirs property easy to create, hard to live with, and even harder to resolve. Should an heir decide to clear title to the property, they will typically need to file a probate court action. Studies show that most Americans vastly underestimate the cost and length of time it takes to complete probate.¹⁵ Even so, over half of Americans already perceive probate as “somewhat or very difficult,” and 65 percent would seek assistance from a probate attorney to navigate the process.¹⁶ Moreover, if multiple generations have died without title being cleared, an heir may need to open probate for multiple decades’ worth of deceased family members, a time-consuming and expensive process that would require locating and obtaining the consent of dozens of heirs.

Where communities have had little say in crafting, or minimal access for participating in, property law regimes, heirs property is likely to exist.¹⁷ The colonial imposition of a European system of land titling did not accommodate or recognize existing traditions or practices of land stewardship, which were typically complex and “incorporated wholly different understandings of the relationships between humans, communities, and land.”¹⁸ With resulting property

census tracts with the most heirs properties account for 42% of all heirs properties in [Detroit], with these tracts having “a higher Black population, ownership rate, and home sales prices compared to other census tracts in the city where heirs properties are located.”)

¹⁴ *No One Should Lose Their Home Over Water Bills*, FOOD & WATER WATCH (Mar. 7, 2024), <https://www.foodandwaterwatch.org/2024/03/07/no-one-should-lose-their-home-over-water-bills/> [<https://perma.cc/WKU7-V8R3>].

¹⁵ *See The State of Probate in America*, TR. & WILL 3 (July 17, 2024), <https://trustandwill.com/documents/probate-study-2024> [<https://perma.cc/4AG7-H7AB>].

¹⁶ *Id.* at 8, 13.

¹⁷ The impacts of this legal exclusion have also been felt in Appalachia, for instance, where hundreds of thousands of heirs properties, worth billions of dollars, exist. *See* Ryan Thomson & Conner Bailey, *Identifying Heirs’ Property: Extent and Value Across the South and Appalachia*, 38 J. RURAL SOC. SCI., 29, 34 (2023).

¹⁸ Jessica A. Shoemaker, *Transforming Property: Reclaiming Indigenous Land Tenures*, 107 CAL. L. REV. 1531, 1542 (2019); *see also* Jessica A.

law systems (at best) indifferent to local needs, informal title and fractured ownership are therefore common in communities in Hawai'i,¹⁹ in territories like Puerto Rico,²⁰ and in uniquely complex ways on indigenous tribal land across the United States.²¹

Negative interactions with a legal system more often used to dispossess Black land than to protect it led to the creation of much heirs property. It has also led a significant number of heirs to shy away from completing probate and formally documenting their ownership structure.²² Some owners conclude that keeping land informally held might protect it from loss by making it less likely to be transferred outside of the family.²³ For some heirs, particularly Black families in the rural South, inherited land may serve as a “sanctuary” for extended families, providing family members a place to stay and reinforcing notions of kinship and communal land

Shoemaker, *No Sticks in My Bundle: Rethinking the Indian Land Tenure Problem*, 63 U. KAN. L. REV. 383, 400 (2015).

¹⁹ See Danae G. Khorasani, *Fractured Ownership and the Tragedy of the Anticommons in Hawai'i*, 10 ECON. ANTHROPOLOGY 223 (2023); See, e.g., Julia Carrie Wong, “‘A Blemish in His Sanctuary’: The Battle Behind Mark Zuckerberg’s Hawaii Estate,” THE GUARDIAN (Jan. 17, 2019), <https://www.theguardian.com/us-news/2019/jan/17/mark-zuckerberg-hawaii-estate-kauai-land-rights-dispute> [<https://perma.cc/TBS5-HYVD>].

²⁰ See Jessica Talbot, Cristina Poleacovschi & Sara Hamideh, *Socioeconomic Vulnerabilities and Housing Reconstruction in Puerto Rico After Hurricanes Irma and Maria*, 110 NAT. HAZARDS 2113, 2117, 2122 (2022); Ivis García, *Deemed Ineligible: Reasons Homeowners in Puerto Rico Were Denied Aid After Hurricane María*, 32 HOUS. POL’Y DEBATE 1, 15–16 (2021).

²¹ Jessica A. Shoemaker, *Like Snow in the Spring Time: Allotment, Fractionation, and the Indian Land Tenure Problem*, 2003 WIS. L. REV. 729, 730 (2003); see also Heather K. Way, *Informal Homeownership in the United States and the Law*, 29 ST. LOUIS U. PUB. L. REV. 113, 152–53 (discussing the impacts of fractionated ownership on Indian reservations). See generally Iris Wilson Engstrand, *Land Grant Problems in the Southwest: The Spanish and Mexican Heritage*, 53 N.M. HIST. REV. 317 (1978) (discussing the problems that arose due to misunderstandings of Spanish and Mexican land grants in the Anglo-American legal system).

²² See Breland, *supra* note 9.

²³ See generally Janice F. Dyer & Conner Bailey, *A Place to Call Home: Cultural Understandings of Heir Property Among Rural African Americans*, 73 RURAL SOC. 31, 328 (2008) (interviewing an heir whose parent intentionally decided against deeding most of the family land in order to prevent it from being sold).

ownership.²⁴ As a result, families may not mind or may even prefer to maintain property in heirs status, rather than consolidate title in a sole heir's name.²⁵

The fact that these power structures created fractured ownership would not necessarily result in such a problem in and of itself. But the U.S. legal system creates and perpetuates harm by discriminating against owners who hold land informally, thereby disfavoring informal and communal ownership structures. Heirs property owners, deprived of the full suite of legal rights typically associated with property ownership, must contend with various challenges to their management and preservation of their land or home. These challenges include obtaining disaster relief, payment arrangements with a mortgage company, and the specter of property loss if one of many owners sells their interest to an investor seeking to force a sale of the property.

One common manifestation of this manufactured vulnerability is forced partition sales. For homes with multiple co-owners, one co-tenant can elect to file a partition action with the court, resulting in either the physical division of the property or, more often, a sale of the property, with the proceeds divided according to the ownership interests of each owner. Heirs properties, where dozens or even hundreds of unknown heirs may exist, are particularly vulnerable to partition sales, as an outside speculator can buy one heir's ownership interest for relatively cheap, subsequently pursue a partition sale, and later buy the property at a discount at the resulting

²⁴ See *id.* at 320.

²⁵ See *id.*; see also Jasmine Simington, *Displaced Trust: Disrupting Legal Estrangement During Disaster Recovery*, 102 SOC. FORCES 771, 782 (2023) (noting that heirs property was historically “used as a protective tool in the South collectively (Mitchell 2014). Historically, heirs’ property was used as a protective tool in the South to keep Black-owned property from being sold to developers and because the ownership arrangement allowed for easier family-farm management” and persists “partly due to cultural preferences [and] distrust toward the legal system that prevents estate planning”).

auction.²⁶ Forced partition sales from speculators are particularly common when the heirs property at issue has a high market value.²⁷

Older heirs owners are also especially vulnerable to property tax foreclosures. Many state and local property tax relief programs exclude heirs property owners in part or wholly from participation, as their names are not on the deed.²⁸ In many states, fractional owner-occupants receive only a percentage of the typical owner-occupant tax relief, or they may be barred from such discounts

²⁶ See Bailey et. al., *supra* note 8, at 14 (“A partition sale also may be initiated by an outsider who is able to buy a family member’s share. This outsider, who is motivated to gain ownership of the land, now owns a fractional share of the heirs’ property and can petition the court for a partition sale. Rural African Americans often are unable to compete in an auction setting with those who forced the partition sale. There is abundant literature documenting not only the loss of family land but also that the property often is sold for a fraction of its true value. To add insult to injury, the family whose land was sold is required to pay court costs and lawyers’ fees, including the costs of the lawyer representing the person forcing the partition sale) (internal citations omitted).

²⁷ See *id.* (“... partition sales are most common where heirs’ property has a high market value, for example along the “Gullah-Geechee coast” of South Carolina. African-American populations were established there long before beachfront property in places like Hilton Head became a valuable commodity. The Coastal Community Foundation in Charleston, SC, estimated that 14 million acres of heirs’ property throughout the “lowlands” of South Carolina and Georgia have been lost since the Civil War through partition sales to speculators or legal takings for failure to pay taxes.) (internal citations omitted). Bailey, citing a study of heirs property in Alabama, also notes that vulnerability to partition sales may disincentivize heirs to make home improvements. See Samantha Maldonado, *Heirs Gain New Shield From Predatory Real Estate Speculators*, THE CITY (July 23, 2024), <https://www.thecity.nyc/2024/07/23/heirs-predatory-real-estate-speculators-partition/> [<https://perma.cc/8Q6C-QAUQ>]. See, e.g., Anna Bradley-Smith, *Court Allows Partition Sale of Bed Stuy Home in Family for 75 Years*, BROWNSTONER (July 18, 2024), <https://www.brownstoner.com/real-estate-market/partition-sale-bed-stuy-brownstone-234-jefferson-avenue/> [<https://perma.cc/W5NP-LPT5>] (describing how a Black family lost a home in Brooklyn’s Bedford Stuyvestant neighborhood that had been in their family for five generations to a partition sale initiated by a Long Island-based property investor. The investor purchased his fractional interest from an estranged uncle for \$300,000 through an LLC and purchased the home at auction for \$1.7 million).

²⁸ See Heather Way, *The Intersection of Residential Heirs’ Property and Property Tax Foreclosure*, U. Tex. Sch. L. 16–18 (2024), https://law.utexas.edu/faculty/uploads/publication_files/way-final-hud-project-report-heirs-property-and-tax-foreclosures.pdf [<https://perma.cc/Z7GS-7Y67>].

altogether due to formal proof of ownership requirements.²⁹ When existing property tax exemptions are removed from a home, heirs are left with a significant payment shock which—absent an opportunity to re-apply for such programs without undergoing a tedious, lengthy probate process—can easily lead to a property tax foreclosure, particularly for older adults who are no longer working and may rely on a smaller, fixed income.³⁰ One study of property tax foreclosures in Dallas and Tarrant Counties in Texas, for instance, found that over half of homes awaiting tax sale were heirs properties.³¹

Finally, even in instances where heirs property owners may not be at direct risk of home loss, their heir status frequently presents a barrier to fully reaping the benefits of homeownership. Without clear and consolidated home title, heirs owners are often unable to sell or mortgage their property:

Because title to heirs' property is unclear, it has little if any value as collateral and so cannot be used to establish businesses, fund a university education, or leverage other investments. Decisions on repairing a home, improving the productivity of farmland, or replanting timberland all are complicated by the difficulty of getting all heirs to agree and contribute towards such investments. Heirs' property represents a serious constraint to the accumulation and intergenerational transfer of wealth.³²

²⁹ See *id.*, at 20–22.

³⁰ See ANDREA BOPP STARK & ODETTE WILLIAMSON, NAT'L CONSUMER L. CTR., PROPERTY TAX FORECLOSURES ON HEIRS PROPERTY: THE DEVASTATING CONSEQUENCES AND RECOMMENDATIONS FOR PREVENTION 11–12 (2023), https://www.nclc.org/wp-content/uploads/2023/08/202308_Property-Tax-Foreclosures-on-Heirs-Property.pdf [<https://perma.cc/FNC8-NX8X>] (depicting a hypothetical Floridian heir who, upon inheriting a family home with an original tax bill of \$1,000, may ultimately end up owing nearly \$10,000 in property taxes and penalties due to the loss of the previous owner's homestead exemption).

³¹ See Heather K. Way & Noah J. Durst, *The Impact of Heirs' Property on Homeowners in North Texas*, ASSET FUNDERS NETWORK (Oct. 2024), https://assetfunders.org/wp-content/uploads/AFN_Impacts_HeirsProperty_Homeowners_NTx_vFinal.pdf [<https://perma.cc/AYN8-T87Q>].

³² See Bailey et. al., *supra* note 8, at 11. See also Connor Bailey et al., *Heir's Property and Persistent Poverty among African Americans in the Southeastern United States*, in HEIR'S PROPERTY AND LAND FRACTIONATION: FOSTERING STABLE OWNERSHIP TO PREVENT LAND LOSS AND ABANDONMENT 9, 11 (2019),

Vulnerable to predatory partitions, excluded from local property tax relief, and denied financing that traditional homeowners can more readily access, heirs property owners face numerous obstacles in building family wealth. These pre-existing sources of vulnerability leave households all the more exposed to financial ruin when disaster strikes. But nowhere are heirs property owners more disadvantaged than in the realm of disaster recovery policies—an issue we explore further in Part III. First, we discuss the overlay between heirs property ownership and older adults, heirs property ownership and climate vulnerability, and heirs property and uninsurance.

II. HEIRS AND THEIR INTERSECTING VULNERABILITIES

A. *Heirs Property Ownership and Older Adults*

Owners of heirs property are disproportionately likely to be older adults. The majority of heirs are over age 50 at the moment of receiving an inheritance, and one-fourth are over age 60 when they inherit.³³ For heirs who obtain a home in their 50s, the costs associated with completing probate may result in their dealing with heirs property into their elder years.³⁴ The challenges of owning a home as heirs property gradually increase as time passes. Property expenses grow, especially if the property tax bill skyrockets due to the loss of a homestead exemption (a legal protection that limits the amount of the home’s value that can be taxed or shields the property from use by a creditor for debt collection) or a special senior property tax exemption.³⁵ Most heirs would qualify for senior property

https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs244.pdf [https://perma.cc/X956-JP4D].

³³ See Tanza Loudonback, *The Typical American Heir is Now a Middle Class 50-something Who Puts the Money Towards Retirement*, BUS. INSIDER (Nov. 21, 2019).

³⁴ See Amalie Zinn et al., *To Prevent Racial Wealth and Homeownership Gaps from Widening, Break Down Barriers to Estate Planning*, URB. INST. (Oct. 30, 2024), <https://www.urban.org/urban-wire/prevent-racial-wealth-and-homeownership-gaps-widening-break-down-barriers-estate> [https://perma.cc/A946-BR3D] (noting that the cost of legal services may, along with other reasons, deter families of color from estate planning).

³⁵ See STARK & WILLIAMSON, *supra* note 30, at 9–10 (observing that a lack of access to property tax exemptions “increases the likelihood of a tax foreclosure and perpetuates housing instability and loss of generational wealth,” and at 15–16

tax relief as well as the basic homestead exemption, but do not know that they should apply or how to apply. Even when this tax relief is sought, in some states, fractured ownership results in an heir being able to obtain only a fraction of the typically allowed exemption.³⁶ Heirs are shouldering this increased housing expense at a time when they may be living on diminished or fixed income, so they may not have the resources to pay these higher property tax bills.

Older homeowners of color represent a significant portion of heirs property owners,³⁷ whether their family land dates back to Reconstruction³⁸ or was purchased by a parent or grandparent during the mid-century era of significant expansion of Black homeownership.³⁹ As a result, heirs property plays an important role in how Black homeownership looks today.

For older adults who inherited their homes “free and clear,” meaning with the mortgage paid off, other often-invisible costs of homeownership—be they property taxes,⁴⁰ bills for long-term medical services and support,⁴¹ or home repair and resilience

(providing examples of special senior property tax exemptions in Mississippi and Michigan).

³⁶ See WAY, *supra* note 28, at 20, Appendix A (detailing which states impose additional barriers to accessing full property tax relief for heirs and other co-tenants, including through only partial tax exemptions proportionate to an heir’s co-ownership interest).

³⁷ See John Walsh et. al, *Prospective Heirs’ Property among Older Homeowners*, URB. INST. 2 (Oct. 2024), https://www.urban.org/sites/default/files/2024-10/Final_Prospective_Heirs_Property_among_Older_Homeowners.pdf [<https://perma.cc/5FLS-VZEK>].

³⁸ See, e.g., Anna Deen, *What is heirs’ property? A huge contributor to Black land loss you might not have heard of*, THE GRIST (Mar. 17, 2021), <https://grist.org/fix/justice/what-is-heirs-property-a-huge-contributor-to-black-land-loss-you-might-not-have-heard-of/> [<https://perma.cc/TX7C-NG9P>]; see also Prezzer, *supra* note 6.

³⁹ See William J. Collins & Robert A. Margo, *Race and Home Ownership, 1900 to 1990* (Nat’l Bureau of Econ. Rsch, Working Paper No. 7277, 1999), <https://www.nber.org/papers/w7277> [<https://perma.cc/J2CX-GLKX>] (observing that the Black homeownership rate grew from roughly 20 percent at the turn of the 20th century to 52 percent by 1990).

⁴⁰ See, e.g., STARK & WILLIAMSON, *supra* note 30, at 2.

⁴¹ *What States Can Do to Help Consumers: Medicaid Estate Recovery*, NAT’L CONSUMER L. CTR. (May 5, 2025), <https://www.nclc.org/resources/what-states-can-do-to-help-consumers-medicaid-estate-recovery/>.

expenses⁴²—frequently threaten their ability to stay in their homes, contributing to an epidemic of elder homelessness.⁴³ Addressing the obstacles that older heirs of color face in preserving stable, affordable homeownership is therefore paramount to reducing elder displacement. Since a significant number of these older African-American heirs live in the Southeast—i.e., in disaster-prone areas—they are at greatest risk of home loss if government policies at the federal, state and local level fail to accommodate informal property ownership.

B. Heirs Property Ownership and Climate Vulnerability

One increasingly recognized area of vulnerability for heirs is the disaster context.⁴⁴ Natural disasters, intensified by climate change, are a significant driver of property damage in the United States. Between 2003 and 2022, there were “244 billion-dollar disasters with a cumulative, price-adjusted value cost of nearly \$2 trillion.”⁴⁵ For comparison, between 1983 and 2002, there were 96

⁴² See Taylor Mayes & Carlos Martín, *Home Repair Programs Serve Critical Needs for Low-Income and Vulnerable Homeowners*, JOINT CTR. FOR HOUS. STUD. HARV. U. (June 27, 2022), <https://www.jchs.harvard.edu/blog/home-repair-programs-serve-critical-needs-low-income-and-vulnerable-homeowners> [<https://perma.cc/AUC5-RFN8>].

⁴³ See Yolanda Stevens, *Paint by Numbers: Older Americans and Homelessness*, NAT’L ALL. TO END HOMELESSNESS (May 7, 2024), <https://endhomelessness.org/blog/paint-by-numbers-older-americans-and-homelessness/> [<https://perma.cc/LU3J-58F6>] (documenting the rapidly rising rate of elderly Americans experiencing homeless in America).

⁴⁴ See generally Heather K. Way & Ruthie Goldstein, *Heir Property Owners and Federal Disaster Aid Programs: Opportunities for A More Equitable Recovery When Disaster Strikes*, 30 J. AFFORDABLE HOUS. & CMTY. DEV. L. 467 (2022); see Kendall B. Bargeman, *The Heirs’ Property Dilemma: How Stronger Federal Policies Can Help Narrow the Racial Wealth Gap*, 27 N.C. BANKING INST. 320, 320 (2023); see e.g., Daniel Shailer, *Facing Climate Gentrification, an Historic African American Community Outside Charleston, S.C., Embraces Conservation*, INSIDE CLIMATE NEWS (July 7, 2024), <https://insideclimate-news.org/news/07072024/south-carolina-ten-mile-black-community-faces-climate-gentrification/> [<https://perma.cc/E9CN-69WB>].

⁴⁵ *Supporting Heirs Property Owners Through Natural Disaster and Resiliency Programs*, JPMORGAN CHASE POLICYCENTER, at 1, 2 (June 2024), https://www.lisc.org/media/filer_public/7a/6e/7a6e1826-eba1-4943-b04b-495317c15651/062724_jpmorgan_chase_supporting-heirs-property-owners-through-natural-disaster-and-resiliency-programs.pdf [<https://perma.cc/WFR7-HWPN>] (citing Mathew Sanders, *What’s Driving the Boom in Billion-Dollar*

billion dollar disasters costing roughly \$546 billion, marking a nearly four-fold increase.⁴⁶ The Federal Reserve's 2023 Survey of Household Economics and Decisionmaking (SHED) found that, "[nearly] 2 in 10 adults reported being financially affected by natural disasters or severe weather events (such as flooding, hurricanes, wildfires, or extreme temperatures) during the prior 12 months," with 5 percent of adults "moderately affected" and 2 percent "substantially affected."⁴⁷ One in ten adults experienced property damage from such disasters.⁴⁸ For heirs property owners, both the escalating frequency and cost of natural disasters, combined with the preexisting barriers to wealth-building and home preservation, threaten their ability to preserve the physical and financial security of homeownership.

Communities with disproportionate amounts of heirs property are likely to be at the frontlines of increasingly devastating climate disasters. As prior studies of heirs property prevalence have indicated, heirs property in the United States is predominantly—though not exclusively—located in southeastern states, many of which are coastal.⁴⁹ With extreme flooding in the South projected to rise by 26 percent by 2050, and nearly a quarter of adults living in the South already financially affected by natural disasters, heirs are already and will continue to be left exposed to catastrophic climate disasters.⁵⁰ One study of Hurricane Irma's impacts on heirs property owners in Georgia, for instance, found that counties with high

Disasters? A Lot, PEW CHARITABLE TR. (Oct. 12, 2023), <https://www.pew.org/en/research-and-analysis/articles/2023/10/12/whats-driving-the-boom-in-billion-dollar-disasters-a-lot> [<https://perma.cc/HK87-VZ5F>].

⁴⁶ *See id.* at 2.

⁴⁷ BD. GOVERNORS FED. RESERVE SYS., ECON. WELL-BEING U.S. HOUSEHOLDS 2023 49 (2024).

⁴⁸ *See id.*

⁴⁹ *See* G. Rebecca Dobbs & Cassandra Johnson Gaither, *How Much Heirs' Property Is There? Using LightBox Data to Estimate Heirs' Property Extent in the U.S.*, 38 J. RURAL SOC. SCI. 10, 19 (2023); *see* NATASHA MOODIE, KEITH WILEY & LANCE GEORGE, A METHODOLOGICAL APPROACH TO ESTIMATE RESIDENTIAL HEIRS' PROPERTY IN THE UNITED STATES 23–24 (Kelly Cooney, Leslie Strauss & Louie Sheridan Jr. eds., 2023).

⁵⁰ *See* Bargeman, *supra* note 44, at 322; BD. GOVERNORS FED. RESERVE SYS., ECON. WELL-BEING U.S. HOUSEHOLDS 2023, *supra* note 47.

concentrations of heirs property were vulnerable to flooding.⁵¹ Similarly, U.S. island territories are at significant risk of severe weather events, a reality that has led many residents of these areas to move from their homes.⁵² For older adults in these regions, decreased mobility and limited income, not to mention the non-economic considerations for living in a long-time neighborhood—the deeply-rooted social connections, networks, and capital borne of generations spent as part of a community—present additional challenges to environmental displacement.

The displacement that too often arises in the wake of so-called “natural” disasters is the foreseeable consequence of human-made social vulnerabilities. Thus, challenges faced by homeowners with heirs property are layered on top of this existing social context. After Hurricane Katrina, roughly 1.5 million Gulf Coast residents, 400,000 of whom were from New Orleans, left the region.⁵³ Thousands of these residents never returned.⁵⁴ A 2007 study estimated that nearly 200,000 residents “remained displaced or had not returned to New Orleans one year after Katrina.”⁵⁵ Green, Kouassi, and Mambo note that 70 percent of those displaced were Black, with nearly 40 percent of the overall displaced population living in poverty.⁵⁶ By 2010, Black New Orleanians accounted for 84 percent of

⁵¹ See SHAKIRAH ROGERS, ET AL., EVALUATING THE IMPACT OF HURRICANE IRMA ON GEORGIA HEIRS PROPERTY OWNERS USING NASA EARTH OBSERVATIONS (2023).

⁵² See James Kent Pugh & Justin V. Palarino, *A Sizable Share of Island Areas Residents Who Moved From 2015 to 2020 Cited Natural Disasters as Main Reason*, U.S. CENSUS BUREAU (Feb. 15, 2024), <https://www.census.gov/library/stories/2024/02/disasters-and-island-areas-moves.html> [https://perma.cc/TL2G-2CHH].

⁵³ See *Resilient Affordable Housing, Anti-Displacement & Gentrification*, GEO. CLIMATE CTR.: EQUITABLE ADAPTATION LEGAL & POL’Y TOOLKIT <https://www.georgetownclimate.org/adaptation/toolkits/equitable-adaptation-toolkit/resilient-affordable-housing-anti-displacement-gentrification.html?chapter> (last visited Sept. 9, 2025) [https://perma.cc/9FAU-Y2WM] (hereinafter *Resilient Affordable Housing*).

⁵⁴ See *id.*

⁵⁵ See Rodney D. Green, Marie Kouassi & Belinda Mambo, *Housing, Race, and Recovery from Hurricane Katrina*, 40 REV. BLACK POL. ECON. 145, 152 (2011).

⁵⁶ See *id.*

the city's population decline since 2000.⁵⁷ Of the 175,000 Black residents that left the city after the storm, over 75,000 never returned;⁵⁸ meanwhile, the Black share of the city population, 66 percent in 2005,⁵⁹ is now 54 percent as of the 2020 census.⁶⁰

Notably, higher rates of homeownership did not shield Black residents from displacement, as demonstrated by the experiences of neighborhoods such as the Lower Ninth Ward. While prior to Katrina, New Orleans's homeownership rate, at 47 percent, was 20 percent less than that of the national average of 67 percent (with Black and low-income residents on average less likely to own a home than their White and higher-income counterparts, the Lower Ninth Ward (96 percent Black), New Orleans East (86 percent Black), and Gentilly (70 percent Black) neighborhoods boasted homeownership rates of 54, 55, and 72 percent, respectively.⁶¹ However, with between a quarter and two-thirds of homeowners in these neighborhoods lacking flood or hazard insurance, Black households struggled to rebuild their communities after Katrina.⁶² Many of these communities, moreover, due to generations of informal home transfer, were unable to provide clear proof of property ownership to obtain recovery funds from the state's Road Home program.⁶³ A full decade after Katrina, the available public housing stock remained at only 40 percent of its pre-hurricane numbers, and barriers to building affordable housing remain in bastions of Black

⁵⁷ See *id.* at 152–53.

⁵⁸ See Ben Casselman, *Katrina Washed Away New Orleans's Black Middle Class*, FIVETHIRTYEIGHT (Aug. 24, 2015), <https://fivethirtyeight.com/features/katrina-washed-away-new-orleans-black-middle-class/> [https://perma.cc/9ZJP-TF65].

⁵⁹ See *id.*

⁶⁰ See Allison Plyer, *Changing New Orleans Neighborhoods*, DATA CTR. (Sept. 14, 2021), https://www.datacenterresearch.org/reports_analysis/changing-new-orleans-neighborhoods/ [https://perma.cc/G7M7-W86F].

⁶¹ See TRACY L. WASHINGTON, BRIAN D. SMEDLEY & JASON REESE, HOUSING IN NEW ORLEANS: ONE YEAR AFTER KATRINA, 9, 16 (2006).

⁶² See *id.* at 16.

⁶³ See Gary Rivlin, *Why the Lower Ninth Ward Looks Like the Hurricane Just Hit*, NATION (Aug. 13, 2015), <https://www.thenation.com/article/archive/why-the-lower-ninth-ward-looks-like-the-hurricane-just-hit/> [https://perma.cc/W3VP-EE9R].

homeownership such as the Lower Ninth Ward.⁶⁴ Given the tightly intertwined nature of Black property ownership and disaster vulnerability, climate recovery and resilience programs that exclude heirs property owners from access will ultimately continue to fuel land loss in marginalized communities.

Some researchers have even suggested that heirs property status itself should be included in social vulnerability considerations.⁶⁵ Social vulnerability “refers to the demographic and socioeconomic factors that contribute to communities being more adversely affected by public health emergencies and other external hazards and stressors that cause disease and injury” and can therefore represent a helpful tool for understanding the heightened risks that certain communities face in economic and/or ecological disasters.⁶⁶ The Centers for Disease Control and Prevention and Agency for Toxic Substances and Disease Registry Social Vulnerability Index (CDC/ATSDR SVI) utilizes 16 U.S. census variables to determine community vulnerability, with the variables covering socioeconomic status, household characteristics, racial and ethnic minority status, housing type, and transportation access.⁶⁷ Emrich et. al., surveying many of the risks heirs property owners face post-disaster, note that, “like other indicators of vulnerability, heirs property may be represented by current components of the social vulnerability index, yet conceptually it stands out as a factor that should be considered for inclusion in such models.”⁶⁸

C. Heirs Property Ownership and Homeowners Insurance Gaps

Perhaps the clearest example of increased climate risk, for heirs and non-heirs alike, is the rapidly decreasing availability of

⁶⁴ See *Resilient Affordable Housing*, *supra* note 5353.

⁶⁵ CHRISTOPHER EMRICH ET AL., ASSESSING THE CONCEPTUAL AND EMPIRICAL EVIDENCE FOR INCLUSION OF AN HEIR’S PROPERTY VARIABLE IN THE SOCIAL VULNERABILITY INDEX (Sept. 9, 2024).

⁶⁶ CTRS. FOR DISEASE CONTROL & PREVENTION & AGENCY FOR TOXIC SUBSTANCES & DISEASE REGISTRY, CDC/ATSDR SOCIAL VULNERABILITY INDEX (SVI) FACT SHEET (2024), <https://www.atsdr.cdc.gov/place-health/media/pdfs/2024/07/SVI-Fact-Sheet-H.pdf> [<https://perma.cc/WNG6-PG97>].

⁶⁷ See U.S. Department of Health and Human Services, *Social Vulnerability Index*, ASTDR (July 22, 2024), <https://www.atsdr.cdc.gov/place-health/php/svi/index.html> [<https://perma.cc/6DAH-9KAT>].

⁶⁸ EMRICH ET AL., *supra* note 65, at 15–16.

homeowners insurance throughout the country. The Consumer Federation of America (CFA), which researches consumer issues and conducts economic and policy analysis, observes the following regarding the importance of insurance⁶⁹:

Homeowners insurance is essential for homeowners to successfully repair or rebuild their homes after a loss. Indeed, insurance is key to what researchers and advocates have called “sustainable homeownership,” the ability for homeowners to maintain and stay in their homes long-term. Almost all mortgage issuers, including for all Fannie Mae and Freddie Mac conforming mortgages and for government-backed loans such as Federal Housing Administration (FHA) mortgages, require homeowners to keep homeowners insurance for the duration of their mortgage. Those living in Federal Emergency Management Agency (FEMA)-designated flood zones or hurricane-prone areas may be required to buy additional types of insurance that cover these kinds of events.⁷⁰

For heirs owners, homeowners insurance is particularly inaccessible. The Southern Rural Development Center notes that, for non-vacant heirs properties, requirements in homeowners’ insurance policies that the homeowner “be listed on the policy and that the owners reside on the property,” present an obstacle for heirs owners who, unable to show clear title, may find it “difficult, if not impossible ... to secure a policy to protect the property in an era of increasing disasters, with growing consequences for rural and urban communities alike.”⁷¹ One researcher notes the following:

People living in heir’s property face several challenges in obtaining homeowners insurance as insurers prefer to insure properties with clear and unambiguous title. With multiple heirs, insurers are unsure how to assess the risk of the property when it is unclear who has the legal authority to insure the property and the

⁶⁹ See *About CFA*, CONSUMER FED. OF AM. (accessed Oct. 17, 2025), <https://consumerfed.org/about-cfa/>.

⁷⁰ SHARON CORNELISSEN, DOUGLAS HELLER & MICHAEL DELONG, CONSUMER FED. OF AM., *EXPOSED: A REPORT ON 1.6 TRILLION DOLLARS OF UNINSURED AMERICAN HOMES* 6 (2024), <https://consumerfed.org/reports/exposed-a-report-on-1-6-trillion-dollars-of-uninsured-american-homes/> [<https://perma.cc/GZ9N-PSGC>].

⁷¹ S. RURAL DEV. CTR., *A QUICK GUIDE TO ADDRESSING HEIRS’ PROPERTY IN YOUR COMMUNITY* 7 (2023), https://srdc.msstate.edu/sites/default/files/2023-06/A-Guide-to-Addressing-Heirs-Property_Final.pdf [<https://perma.cc/B4GQ-YPB6>].

potential for disputes on property maintenance among multiple co-owners. The perceived complexity and risk associated with heirs' property lead many insurers to charge higher premiums, an economic burden for heirs with limited financial resources, or not to insure heirs' properties point blank. This often leaves heirship properties and their heirs particularly exposed to uninsured losses in the case of a damaging event. An unclear or "tangled" title can also present challenges to heirs in cashing insurance checks if issued.⁷²

Shut out of insurance, heirs property homeowners "face serious risks of not only losing their homes, but also their most valuable financial asset," turning an uninsured household almost overnight into an "unhoused family or leav[ing] them living in the wreckage of a dangerous, damaged house."⁷³

CFA reports that one in thirteen U.S. homeowners, or 7.4 percent, are uninsured, totaling over 6.1 million homeowners.⁷⁴ While there are no estimates of how many of these homeowners are heirs property owners, nearly 30 percent of people who have inherited their homes report having no home insurance.⁷⁵ This is particularly notable because, while only 4 percent of U.S. homeowners have inherited their home, Black homeowners are twice as likely to have inherited a home.⁷⁶ Homes that were built before the year 2000 are also nearly twice as likely to be uninsured compared to their post-2000 counterparts.⁷⁷ This suggests that heirs property owners, living in inherited homes built decades ago, prior to modern climate-resiliency building standards, are at a greater risk of suffering costly damages as a result of natural disasters and will need to rebuild without the insurance necessary to make them whole. Research by the Urban Institute, for instance, has found that inherited homes are more likely to be both older and in "physically inadequate

⁷² E-mail from Hannah Friedrich to Nketiah Berko and Alys Cohen (Jan. 31, 20254) (on file with authors).

⁷³ CORNELISSEN, HELLER & DELONG, *supra* note 70, at 6.

⁷⁴ *See id.*

⁷⁵ *See id.* at 14.

⁷⁶ *See id.* at 14–15.

⁷⁷ *See id.* at 11.

conditions,” thereby increasing the likelihood that they will suffer damage post-disaster.⁷⁸

Uninsurance rates, much like heirs status, tracks other forms of social vulnerability. CFA notes that homeowners “making under \$50,000 a year are twice as likely as the general population to be uninsured (15 percent).”⁷⁹ Moreover, homeowners of color are disproportionately uninsured: over one in five Native American, nearly one in seven Hispanic, and roughly one in nine Black homeowners are estimated as having no homeowners insurance.⁸⁰ Of these individuals, older Black and Hispanic adults were more likely to not have home insurance than younger adults, an age disparity which does not exist for White households.⁸¹ As CFA notes, this increased risk of uninsurance for older adults of color, many of whom “live on limited or fixed incomes, such as Social Security,” and may also “deal with mobility issues or health challenges,” further complicates their capacity to respond to a natural disaster.⁸² Uninsurance “may jeopardize their ability to stay in their house as they age in place,” contributing to displacement, potentially even homelessness, and “[deepening] racial wealth and homeownership gaps.”⁸³

Other indices of the uninsured population suggest an overlay with heirs property prevalence. Rural areas, where heirs property parcels predominantly reside, report nearly twice the rate of uninsurance (12 percent) compared to a national average of 7.4 percent.⁸⁴ And of the metropolitan areas for which CFA had data, the regions with the highest rate of uninsurance were Miami (15 percent) and Houston (10 percent)—both located in the U.S. Southeast and in states with recurring and devastating natural disasters, such

⁷⁸ Michael Neal, Amalie Zinn & John Walsh, *Inherited Homes Are Most Likely to Be Poor Quality, Compounding Racial Wealth and Housing Gaps*, URBAN INSTITUTE (Nov. 12, 2024), https://www.urban.org/urban-wire/inherited-homes-are-most-likely-be-poor-quality-compounding-racial-wealth-and-housing?utm_source=urban_ea&utm_campaign=heirs_property_fact_sheet_blog_2&utm_id=housing&utm_content=general&utm_term=housing [https://perma.cc/9PB4-84YJ].

⁷⁹ CORNELISSEN, HELLER & DELONG, *supra* note 70, at 5.

⁸⁰ *See id.*

⁸¹ *See id.* at 14.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*, at 15.

as hurricanes and floods.⁸⁵ In fact, of the ten states with the highest percentage of uninsured homeowners, seven are located in the South, a hotbed of heirs property parcels.⁸⁶ The Federal Reserve reports that “more than 2 in 10 homeowners in the South with an income less than \$50,000 did not have homeowners insurance,” a proportion that soars to nearly four in ten “[i]f limiting . . . to only those homeowners who own their home free and clear.”⁸⁷ One study has found that households in the top 20 percent places at risk of disasters in the United States “paid on average, 82 [percent] more than those in the 20 [percent] lowest climate risk zip codes.”⁸⁸ Advocates in New Mexico and Louisiana, for instance, observe significant levels of under- and uninsurance in their states, which in some instances prevent homeowners from participating in state-level home resiliency grant programs.⁸⁹

Altogether, roughly \$1.6 trillion worth of U.S. homes are uninsured, and \$339 billion of this value belongs to Hispanic-owned homes and \$206 billion to Black-owned homes.⁹⁰ Given the disproportionate rate of inherited and older homes, as well as of Black and Brown households in the uninsured population, plus the geographic

⁸⁵ *Id.*

⁸⁶ *See id.* at 21. The seven states are Mississippi, Louisiana, West Virginia, Alabama, Oklahoma, Florida, and Texas. Additionally, New Mexico, which has the second highest rate of uninsured homeowners, is home to communities with informal or communal title; *see also* Video Conferencing Interview with Samuel Hitchcock, Edna Sprague, and Mara Yarbrough (Apr. 19, 2024); for heirs property concentration in the South, *see generally* THOMSON & BAILEY, *supra* note 17.

⁸⁷ BD. OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM, *supra* note 47, at 50 (“More than 2 in 10 homeowners in the South with an income less than \$50,000 did not have homeowners insurance. . . . If limiting the former group to only those homeowners who own their home free and clear, the share of low- and moderate-income homeowners in the South without insurance is nearly 4 in 10.”).

⁸⁸ Oliver Milman, *US Homeowners in Disaster-Prone States Face Soaring Insurance Costs*, THE GUARDIAN (Jan. 22, 2025), <https://www.theguardian.com/environment/2025/jan/22/us-homeowners-insurance-costs-climate-crisis> [<https://perma.cc/NW3N-WUND>].

⁸⁹ *See* Hitchcock, Sprague, & Yarbrough, *supra* note 86; Video Conferencing Interview with Hannah Friedrich (July 11, 2024) (noting how the Louisiana Department of Insurance’s grant program Fortify Homes requires applicants to have home insurance, *see* Fortify Homes, Louisiana Department of Insurance, <https://ldi.la.gov/fortifyhomes>); Video Conferencing Interview with Courtnei Carter (May 14, 2024).

⁹⁰ *See* CORNELISSEN, HELLER & DELONG, *supra* note 70, at 5.

distribution of uninsurance, millions if not billions of heirs properties remain uninsured—vulnerable to the financial devastation wrought by a natural disaster.⁹¹

III. HOW DISASTER RELIEF PROGRAMS OVERLOOK HEIRS

Given under- and uninsurance, as well as the aforementioned financial vulnerabilities to which older heirs property owners are subject, federal repair and reconstruction funds play a disproportionate role in funding post-disaster repairs for the many heirs who experience home damage from a disaster. Despite the importance of federal funds, however, the nation's two largest federal disaster relief grant programs—FEMA's Individuals and Households Program (IHP) and the Department of Housing and Urban Development's (HUD's) Community Development Block Grant - Disaster Relief (CDBG-DR) program—fail to provide older heirs owners with full access to program fundings. These unnecessary exclusions frustrate the ability of heirs communities to recover from disasters—communities which, due to various demographic and socioeconomic factors, are already socially vulnerable to external public health and financial stressors.

A. FEMA and HUD: Short-Term and Long-Term Disaster Recovery Support

Prior to the establishment of FEMA in 1979, no comprehensive, coordinated legal framework for disaster recovery existed in the United States.⁹² With FEMA's creation and the subsequent passage of the Stafford Disaster Relief and Emergency Assistance Act of 1988, however, the federal government increasingly embraced a more proactive role in natural disaster response.⁹³ Households seeking to rebuild homes rendered uninhabitable after a disaster and with

⁹¹ See, e.g., Adam Mahoney, *Black Communities Left to Sink as Insurance Companies Abandon the South*, CAP. B (Sept. 26, 2024), <https://capitalbnews.org/rural-alabama-black-homeowners-flooding-insurance-crisis/> [<https://perma.cc/3KZ7-S7XG>].

⁹² See *id.*

⁹³ See HeinOnline Blogger, *The History of Disaster Relief in America*, HEINONLINE BLOG (Nov. 28, 2022), <https://home.heinonline.org/blog/2022/11/the-history-of-disaster-relief-in-america/> [<https://perma.cc/6V6L-3KH6>].

repair needs not covered by insurance may apply for Individuals and Households Program (IHP) assistance.⁹⁴ In some instances, households may need to demolish a structure that has faced extensive damage, and which is either unsafe for repair or otherwise poses a threat to public safety. In those limited instances, FEMA may also provide state, local, territorial, and tribal governments with funds to demolish private structures through its Public Assistance Program, as well as to remove debris from private property.⁹⁵ FEMA funds are intended to “meet [recipients’] basic needs,” such as for temporary housing or home repair for homes rendered unsafe, unsanitary, or non-functional due to a disaster.⁹⁶

HUD’s CDBG-DR program, by contrast, is tasked with providing “long-term recovery efforts for disaster-impacted areas,” supplementing other short-term disaster assistance such as FEMA and Small Business Administration (SBA) funding.⁹⁷ CDBG-DR is not a standing program; instead, CDBG-DR funds are allocated pursuant to Congressional supplemental appropriations after each disaster, with HUD tasked with setting regulations at each instance.⁹⁸ The CDBG-DR program “provides flexible block grants to cities, counties, and states for a broad array of disaster recovery items related to

⁹⁴ See FED. EMERGENCY MGMT. AGENCY, INDIVIDUALS AND HOUSEHOLDS PROGRAM 1 (2024), <https://www.fema.gov/fact-sheet/individuals-and-households-program> [<https://perma.cc/YST7-TUV7>].

⁹⁵ See FED. EMERGENCY MGMT. AGENCY, PUBL. ASSISTANCE PROGRAM AND POL’Y GUIDE VERSION 5.0 128, 154 (2025), https://www.fema.gov/sites/default/files/documents/fema_pa_pappg-5.0-amended.pdf.

⁹⁶ FED. EMERGENCY MGMT. AGENCY, INDIVIDUAL ASSISTANCE PROGRAM AND POLICY GUIDE VERSION 1.1 6, 43 (2021), https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf [<https://perma.cc/8C38-H29B>].

⁹⁷ Stephanie Espinoza & Owen Minott, *Breaking Down CDBG-DR Spending*, BIPARTISAN POL’Y CTR. (Nov. 28, 2023), <https://bipartisanpolicy.org/blog/breaking-down-cdbg-dr-spending/> [<https://perma.cc/V4PR-UKAU>].

⁹⁸ See Way & Goldstein, *supra* note 44, at 474; DISASTER HOUS. RECOVERY COAL., WHAT IS THE CDBG-DR PROGRAM? 1 (2022), https://nlihc.org/sites/default/files/DHRC_What_is_the_CDBG-DR_Program.pdf [<https://perma.cc/ZCW8-TBE2>]. The “Reforming Disaster Recovery Act” (Senate Bill 1686) introduced in the 118th Congress would permanently authorize the CDBG-DR program, allowing HUD to more quickly send recovery assistance to disaster-affected regions, see *Permanently Authorize HUD’s Community Development Block Grant-Disaster Recovery (CDBG-DR) Program*, BIPARTISAN POL’Y CTR ACTION, <https://bpcaction.org/wp-content/uploads/CDBG-DR-Fact-Sheet-2023.pdf> [<https://perma.cc/CVG5-CNVQ>].

disaster relief, long-term recovery, restoration of infrastructure and housing, and economic revitalization in areas affected by major disasters.”⁹⁹ Homeowners can apply to local grantee agencies to receive assistance ranging from home repair to replacement housing “at a new, less-disaster prone site.”¹⁰⁰ HUD CDBG-DR funds typically trail FEMA aid, with housing recovery activities “tak[ing] an average of 3.8 years to complete.”¹⁰¹ Local governments sometimes provide this assistance as a grant, and other times as a forgivable loan with a recorded lien.¹⁰²

Together, both the FEMA and HUD CDBG-DR allocations represent two of the primary sources of federal funds available to homeowners seeking to repair and reconstruct in the wake of a natural disaster. Given their importance, it is all the more concerning that studies have increasingly shown consistent disparities along income, race, and region when it comes to disaster relief disbursement.¹⁰³ The communities most affected by natural disasters are thus

⁹⁹ Way & Goldstein, *supra* note 44, at 473.

¹⁰⁰ *Id.* at 474.

¹⁰¹ *Id.*

¹⁰² See, e.g., *2019 CDBG-DR Reimbursement Program Guidelines*, OKLA. DEP’T COM., at 6 (2021), <https://www.okcommerce.gov/wp-content/uploads/2019-CDBG-DR-Reimbursement-Program-Guidelines.pdf> [<https://perma.cc/B3FQ-X82R>]; *Owner Occupied Rehabilitation and Rebuilding Program: Policies and Procedures*, CONN. DEP’T. HOUS. (Sept. 30, 2015), https://portal.ct.gov/-/media/doh/sandy_relief_docs/owner-occupied-rehab-program-policies---guidelines-revised-93015.pdf?la=en [<https://perma.cc/5B59-TPL2>]; *CDBG-DR Public Action Plan*, CITY OF PHILA., at 83–85 (2023), <https://www.phila.gov/media/20230713131125/CDBG-DR-Action-Plan-Full-20230713-EN.pdf> [<https://perma.cc/KVH3-HWKE>].

¹⁰³ See Christopher Flavelle, *Why Does Disaster Aid Often Favor White People?*, N.Y. TIMES (Oct. 27, 2021), <https://www.nytimes.com/2021/06/07/climate/FEMA-race-climate.html> [<https://perma.cc/2GZ8-9YSJ>] (reporting that “[c]ounties with a significant share of Black, Hispanic or Native American residents often receive less money from FEMA than mostly white counties, even when suffering the same amount of damage, according to a study published in 2019 by Simone J. Domingue, then a researcher at the University of Colorado, Boulder, who analyzed FEMA grants to 1,621 counties from 2012 through 2015”; that “[t]he higher the percentage of Black residents living in a specific ZIP code, the less likely applicants there were to get an inspection, without which FEMA typically will not fund repairs”; that, “[e]ven when disaster victims in African-American neighborhoods were able to get a damage inspection, 11 percent had their

often the same communities denied equitable post-disaster assistance, while, at the same time, they generally bear relatively little responsibility for the significant carbon emissions that produce the warming temperatures that fuel these intensified storms.¹⁰⁴ Junia Howell, a sociologist studying federal disaster aid, argues that these inequities are, in part, a consequence of FEMA's focus on property over people: relief flows to those who can prove they owned property, excluding many of those who have been most harmed.¹⁰⁵ This approach is demonstrated by both the FEMA and CDBG-DR program's treatment of heirs property owners applying for assistance post-disaster. In particular, both exclusionary proof of ownership and co-owner consent requirements unnecessarily disadvantage forms of property ownership disproportionately held by marginalized communities.

As noted above, Black communities are historically more likely than other groups to hold property in heirs status, intensifying the post-disaster barriers to recovery that these communities already face. This insight is borne out by the experience of prior disasters; for instance, after Hurricane Katrina struck the Gulf Coast, 20,000

requests denied with no reason given," compared to "4 percent of homeowners in white neighborhoods"; that FEMA awarded homeowners in Black areas "between 5...and 10 percent less" than applicants in White areas; and that "White people in counties with significant disaster damage that received FEMA help saw their personal wealth jump years later while Black residents lost wealth"); Rebecca Hersher & Ryan Kellman, *Why FEMA Aid Is Unavailable to Many Who Need It the Most*, NPR (June 29, 2021), <https://www.npr.org/2021/06/29/1004347023/why-fema-aid-is-unavailable-to-many-who-need-it-the-most> [https://perma.cc/49DL-NQY3] ("FEMA analysts found that the agency was twice as likely to deny assistance to lower-income disaster survivors because of insufficient storm damage to their home."); see also Nicole Acevedo, *Audit Shows Persistent Disparity in Puerto Rico Post-Hurricane Housing Aid Versus Florida, Texas*, NBC NEWS (Mar. 20, 2020), <https://www.nbcnews.com/news/latino/audit-shows-persistent-disparity-puerto-rico-post-hurricane-housing-aid-n1164416> [https://perma.cc/49DL-NQY3] (regarding disparities in Puerto Rico CDBG-DR funds disbursement compared to Texas and Florida).

¹⁰⁴ See e.g., EPA, EPA 430-R-21-003, CLIMATE CHANGE AND SOCIAL VULNERABILITY IN THE UNITED STATES: A FOCUS ON SIX IMPACTS (2021), <https://www.epa.gov/cira/social-vulnerability-report> [https://perma.cc/56GH-UWHL].

¹⁰⁵ See Hersher & Kellman, *supra* note 103; see y Junia Howell & James R. Elliott, *Damages Done: The Longitudinal Impacts of Natural Hazards on Wealth Inequality in the United States*, 66 SOC. PROBS. 448, 457 (2018).

heirs property owners were denied federal disaster relief.¹⁰⁶ Advocates note the following regarding intestate succession in Louisiana prior to Katrina:

After the 2005 hurricanes, some Louisiana residents were hit with another problem—they were unable to receive Federal and State aid for property damage caused by these disasters. These residents owned their homes; most even paid property taxes. Legal documents, however, did not list them as the owners of the property. Residents lacked “clear title.” Their homes were passed down through generations by family agreement but not through the legal system with the correct paperwork. ... [I]f immovable property was part of the decedent’s estate, heirs had to file a succession in court and obtain a Judgement of Possession before heirs could obtain clear title. Many heirs, especially low-income heirs inheriting small estates, could not afford the necessary legal paperwork due to high court costs.¹⁰⁷

Post-Katrina, nonprofit and other organizations attempting to rebuild parts of New Orleans, such as the predominantly Black Ninth Ward, found themselves frustrated, as the state recovery program Road Home denied applications for rebuilding funds for which an applicant could not prove their ownership.¹⁰⁸ At a moment where homes and important documents had been lost in the storm and family members dispersed across the country, households could hardly obtain the paperwork necessary to initiate probate in order to clear title and establish formal homeownership. Similarly, in Puerto Rico, where generations of residents have passed down land to their descendants without formal documentation,¹⁰⁹ over 80,000 households were denied FEMA assistance due to title issues in Hurricane Maria’s aftermath.¹¹⁰ The social vulnerability of heirs owners intensified by human-made federal and state obstacles to disaster relief programs thus barred thousands of these households from obtaining a rapid, equitable recovery. These past and present failures

¹⁰⁶ See Dreier & Tran, *supra* note 1.

¹⁰⁷ Christy Kane, Stephanie Beagh & Gerren Sias, *Addressing Heirs’ Property in Louisiana: Lessons Learned, Post-Disaster*, in HEIRS’ PROPERTY AND LAND FRACTIONATION: FOSTERING STABLE OWNERSHIP TO PREVENT LAND LOSS AND ABANDONMENT 89, 90 (Cassandra Johnson Gaither et al. eds., 2019).

¹⁰⁸ See *id.*

¹⁰⁹ See García, *supra* note 20, at 5, 10–11.

¹¹⁰ See Dreier & Tran, *supra* note 1.

exacerbate levels of distrust that marginalized communities have for government officials and formal avenues of assistance, such as legal services organizations, leaving communities further isolated from the resources they need to recover, and intensifying inequitable recoveries.¹¹¹

B. Informal Exclusion

Too often, federal disaster relief programs either explicitly require proof of ownership standards that unnecessarily exclude heirs property owners from participation or effectively deter heirs property owners without said proof of ownership. The evolution of FEMA policy on this front is demonstrative of the barriers heirs owners face on this front.

FEMA regulations define an owner-occupied residence, for purposes of qualifying for home repair assistance, as one occupied by the following:

- (1) The legal owner with verifiable documentation; or
- (2) A person who does not hold formal title to the residence and pays no rent, but can produce verifiable documentation demonstrative of legal responsibility including tax payment receipts; receipts for major repairs, maintenance, or improvements of the residence; court documents, a letter from a public official, or, for mobile home or travel trailer owners residing in a commercial park, a letter from the mobile home park owner or manager; or
- (3) A person who has verifiable documentation of lifetime occupancy rights with formal title vested in another.¹¹²

FEMA regulations, in other words, do not require occupants to provide specific title documentation. Prior to 2021, however, FEMA policy “required all applicants to provide more rigorous proof of title, such as a deed in the owner’s name, and routinely denied

¹¹¹ See, e.g., Hitchcock, Sprague, & Yarbrough, *supra* note 86 (describing how monolingual, low-income Spanish speakers in New Mexico residing on land grant properties often did not trust FEMA, leading to few referrals to legal services organizations; additionally, large landowners received the bulk of post-disaster FEMA funding, due to their relative ease in navigating the post-disaster administrative system); see also Brianna Sacks & Kevin Crowe, *Some N.C. Residents Distrust FEMA So Much They’re Hesitant to Apply for Hurricane Aid*, WASH. POST (Dec. 15, 2024), <https://www.washingtonpost.com/weather/2024/12/15/some-nc-residents-distrust-fema-so-much-theyre-hesitant-apply-hurricane-aid/> [<https://perma.cc/RY86-2GKQ>].

¹¹² 44 C.F.R. § 206.111 (2024).

applicants who could not provide such documentation,” as the experiences of homeowners post-Hurricanes Katrina and Maria, among other disasters, show.¹¹³ Consequently, the pre-2021 requirements would often put onto heirs the responsibility of either clearing title—a complex task in the best of times, and one made even more so in the aftermath of a storm that may have destroyed household records or dispersed family members even further away from each other—or foregoing crucial disaster assistance.

Advocacy from local organizations in Puerto Rico led FEMA to eventually accept a self-declarative statement of ownership, though this form was limited to “applicants living in insular areas, islands, or tribal lands”¹¹⁴ until 2021, when administration policy and bipartisan pressure from Congress expanded this policy change to heirs generally.¹¹⁵

The self-declarative statement to prove ownership must include the following information, per FEMA’s website:

...the address of the disaster-damaged residence; [l]ength of time [the heir] lived in the disaster-damaged home ... prior to the Presidential disaster declaration; [the heir-applicant] name and signature; a copy of the decedent’s death certification; and the major elements of the following statement with additional explanation: “I have made a good faith effort, in coordination with FEMA, to obtain and provide a copy of acceptable ownership documentation. I was unable to obtain this documentation

¹¹³ Way & Goldstein, *supra* note 44, at 469, 471.

¹¹⁴ *Id.*, at 472.

¹¹⁵ See FED. EMERGENCY MGT. AGENCY, FP 104-009-03, INDIVIDUALS ASSISTANCE PROGRAM AND POLICY GUIDE VERSION 1.1 53 (May 26, 2021), https://www.fema.gov/sites/default/files/documents/fema_iappg-1.1.pdf [<https://perma.cc/6C92-DPNR>]; U.S. DEP’T OF HOMELAND SEC., AMENDMENT TO FP 104-009-03, INDIVIDUAL ASSISTANCE PROGRAM AND POLICY GUIDE, VERSION 1.1, 5, 8 (2021), https://www.fema.gov/sites/default/files/documents/fema_iappg-policy-amendments-memo.pdf [<https://perma.cc/B8Q3-WCJV>]; Owen Minott, *Addressing Burdensome Ownership and Occupancy Requirements to Improve Disaster Assistance*, BIPARTISAN POL’Y. CTR. (Mar. 2, 2022), <https://bipartisanpolicy.org/explainer/addressing-burdensome-ownership-and-occupancy-requirements-to-improve-disaster-assistance/> [<https://perma.cc/TJ5E-XZR2>] (noting the bipartisan advocacy of Senators Tim Scott (R-SC) and Jon Ossoff (D-GA) to expand FEMA’s acceptable forms of ownership documentation). See generally Way & Goldstein, *supra* note 44, at 471–73 (The new policy also allows disaster survivors who own and occupy mobile homes or travel trailers to use self-declarative statements).

because [provide an explanation of the circumstances that prevent standard ownership verification].”¹¹⁶

The statement must also include the major elements of the following statement:

As the nearest relative of the deceased in the line of succession, my ownership includes all the rights and obligations of the deceased. The decedent’s name is _____, and they died on _____. I understand I must submit the death certificate along with this declaration. I hereby declare under penalty of perjury that the foregoing is true and correct.¹¹⁷

Thus, FEMA requires applicants to include the decedent’s death certificate with the self-declarative statement,¹¹⁸ a challenge for many heirs property owners, and especially so after a natural disaster when the family home and many important documents may have been destroyed.¹¹⁹ In addition, while the 2021 policy reform greatly expanded program eligibility for heirs property owners, as of August 2025, no template form exists for heir-applicants or their advocates to use, thereby requiring advocates to draft their own template forms for disaster-affected heirs.¹²⁰

Advocates have reported that heirs, despite the policy change, are not made aware of what information or documents they need to provide, leading to preliminary denials and forcing applicants to navigate the “difficult and time-consuming” FEMA appeals process.¹²¹ Despite changes to FEMA policy, homeowners with heirs property face significant challenges accessing assistance. Between

¹¹⁶ See *Verifying Home Ownership Or Occupancy*, FEMA (Aug. 12, 2025), <https://www.fema.gov/assistance/individual/after-applying/verifying-home-ownership-occupancy> [<https://perma.cc/P5DL-KGSL>].

¹¹⁷ *Id.*

¹¹⁸ *See id.*

¹¹⁹ *See id.*

¹²⁰ *See id.*; see Ayuda Legal Huracán María (ALHM), *Declarative Statement/Declaración Bajo Juramento* (2018), <https://fundacionfondoaccesoaljusticia.org/wp-content/uploads/2018/08/Sworn-Statement-for-Ownership-Verification-FINAL-07.30.18.pdf> [<https://perma.cc/KLK6-3E4P>], for an example of a template form drafted by an advocacy organization.

¹²¹ See *Letter to FEMA Regarding Barriers to Assistance in Puerto Rico after Hurricane Fiona*, NAT’L LOW INCOME HOUS. COAL. (Oct. 22, 2024), https://nlihc.org/sites/default/files/Letter-to-FEMA_Title-Issues_Hurricanes-Fiona-and-Ian_10172022.pdf [<https://perma.cc/GK3R-NQ4V>]; see e-mail from Kathy Grunewald to Nketiah Berko (Feb. 6, 2024) (on file with authors).

2022 and 2025, for example, the problem of FEMA homeowner-applicants being denied assistance due to ownership verification issues remained a persistent problem: in six presidentially-declared disasters across seven states, homeowners with problems proving title were rejected for assistance with a median rejection rate of roughly 6.7 percent, and with rejection rates as high as 9.21 percent for Hurricane Fiona in Puerto Rico and 10.36 percent for Hurricane Francine in Louisiana.¹²² Without sample self-declarative statements, and facing initial denial decisions, heirs owners are likely to be discouraged in their efforts to obtain FEMA relief funds, despite the policy change.

Unlike FEMA, HUD has not established requirements for acceptable forms of proof of ownership under its CDBG-DR program, allowing grantees the discretion to set their own eligibility criteria.¹²³ While in recent years HUD has issued informal guidance encouraging CDBG-DR grantees to “identify multiple methods that allow households to provide proof of homeownership,” such as “self-certification, tax receipts, home insurance, [and] utility bills,” states have historically not been required to make their CDBG-DR programs accessible to heirs owners,¹²⁴ and HUD’s position has not been prominently conveyed to states. With responsibility for the program thereby fissured between the federal government and local grantees, heirs’ accessibility has been largely left to the discretion of local administrators, with no requirement to justify their choices, thereby increasing the likelihood that said choices are neither rooted in programmatic necessity nor thoughtfully considered to prevent disparate impacts across communities.

Notably, in 2025, HUD issued a Universal Notice requiring states and local governments receiving CDBG-DR funds with proof of ownership requirements to ensure that disaster survivors have a variety of alternative methods to traditional title documentation,

¹²² See e-mail from John Laycock (Aug. 8, 2025, at 18:30 ET) (on file with authors). In addition to the disaster/regions cited above, the data includes FEMA application information from the following disaster/state pairings: Hurricane Fiona/Puerto Rico; Hurricane Idalia/Florida; Hurricane Debby/Florida; Hurricane Francine/Louisiana; Hurricane Helene/Georgia; Hurricane Helene/Virginia; Hurricane Helene/Tennessee; and the 2025 central Texas floods/Texas.

¹²³ See Way & Goldstein, *supra* note 44, at 474.

¹²⁴ *Id.* at 475 (citing DEP’T HOUS. & URB. DEV., *DRSI DIGEST (JULY EDITION)* 3 (2021), <https://www.hud.gov/sites/dfiles/CPD/documents/DRSI-Digest-Volume-3-%28July%202021%29.pdf> [<https://perma.cc/STX3-WZH2>]).

such as an affidavit of heirship or self-certification, to prove ownership of their home.¹²⁵ In the Notice, HUD strongly recommends that title documentation options include: “deed, title, mortgage documentation, tax receipts or bills, home insurance, home purchase contracts, will or affidavit of heirship naming them as heir, receipts of major repairs completed prior to the disaster, court documents, letter from a manufactured housing community owner or public official, self-certification, or utility bills.”¹²⁶ Having only recently been published, however, it is unclear how states and local governments will respond to the Notice.

Historically, as Way and Goldstein note, state CDBG-DR programs “can be difficult for applicants to access and are often either silent or vague about what types of documents heirs can submit when they lack recorded title.”¹²⁷ Describing Florida’s CDBG-DR policies, for instance, they note the following:

Florida’s CDBG-DR Housing Repair and Replacement Program has a policy of verifying ownership through tax records, title searches, or an applicant’s provision of a warranty deed, while allowing for other ownership documentation on a case-by-case basis. The policy, however, does not define what types of alternative documentation are acceptable.¹²⁸

Other states’ CDBG-DR programs more explicitly exclude heirs property owners from participation: New York, for example, after Superstorm Sandy, Hurricane Irene, and Tropical Storm Lee, required applicants to the CDBG-DR program to have a deed recorded in their name to prove ownership over their home.¹²⁹

C. Fractured Decision-Making

In addition to restrictive proof of ownership requirements, state and local requirements of either title consolidation or co-consent

¹²⁵ See DEP’T HOUS. & URB. DEV., COMMON APPLICATION, WAIVERS, AND ALTERNATIVE REQUIREMENTS FOR COMMUNITY DEVELOPMENT BLOCK GRANT DISASTER RECOVERY GRANTEES: THE UNIVERSAL NOTICE 105 (Mar. 19, 2025), <https://www.hud.gov/sites/default/files/CPD/documents/CDBG-DR/Updated-6489-N-01-CDBG-DR-UN-Compliance-with-Memo-25-02-English-PDF.pdf> [<https://perma.cc/X5QB-KBZ4>] [hereinafter *Universal Notice*].

¹²⁶ *Id.*

¹²⁷ Way & Goldstein, *supra* note 44, at 474–75.

¹²⁸ *Id.* at 475.

¹²⁹ *See id.*

among property owners often undermine the ability of heirs to manage and maintain their homes. In Georgia, for example, homeowners applying for CDBG-DR funding must “consolidate all title to the property into the applicant’s name within one year of the application for CDBG-DR assistance.”¹³⁰ Before a 2024 settlement with HUD and Legal Aid North Carolina, North Carolina’s Office of Recovery and Resiliency required applicants to ReBuild NC Homeowner Recovery Program, the state’s HUD CDBG-DR program, to “attest by signing the Homeowner Grant Agreement that no other party has the right to claim ownership or everyone who has the right to claim ownership has agreed to participate in the program or could not be located.”¹³¹

Way and Goldstein note that the Georgia requirement of heirs applicants to “identify and locate every co-owner of the property and to then get each co-owner to transfer their interest in the property to the applicant within a year of the application”¹³² which imposes a considerable burden on heirs owners whose homes have been transferred intergenerationally via intestacy for decades, potentially leading to dozens if not hundreds of heirs. The former North Carolina requirement, while not mandating title consolidation, likewise imposed an obstacle to heirs who might not be aware of or able to locate other heirs to notify prior to receiving funds.¹³³

In some Southern states with significant concentrations of heirs property, co-consent and formal proof of ownership requirements can frustrate reconstruction efforts, even where the home is uninhabitable in its current state. One case handled by the Georgia Heirs Property Law Center demonstrates a typical situation:

Mr. Howard* lived with his 92-year-old mother in her Atlanta home until it was crushed by a tree during a tropical storm. Mr.

¹³⁰ *Id.*

¹³¹ U.S. DEP’T OF HOUS. & URB. DEV., TITLE VIII CONCILIATION AGREEMENT/TITLE VI & SECTION 109 VOLUNTARY COMPLIANCE AGREEMENT BETWEEN [REDACTED], (COMPLAINANT) AND NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY (RECIPIENT) AND UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT 112 (Apr. 18, 2024), https://legalaidnc.org/wp-content/uploads/2024/04/NCORR-Heirs-Property-CA-VCA-signed_Redacted_Final-Final.pdf [<https://perma.cc/7QBN-DSWN>].

¹³² Way & Goldstein, *supra* note 44, at 475.

¹³³ See Video Conferencing Interview with A.D. Skaff, Supervising Attorney, Legal Aid of North Carolina’s Fair Housing Project (Nov. 13, 2024).

Howard's two siblings had both passed away within the previous year, so he and his mother moved in with another relative until they could rebuild and return to the neighborhood they had loved for over 40 years. Before any progress could be made, however, Mr. Howard's mother passed away. Mr. Howard, a niece, and two nephews became co-owners of his mother's home. Because Mr. Howard was not able to show formal ownership, he could not even complete the demolition of the home or negotiate with the insurance company.¹³⁴

Advocates in several states report heirs' difficulties in removing debris from their land, as well as in demolishing a structure as a precursor to rebuilding.¹³⁵ While FEMA requires local applicants to have obtained permission from the property owners for demolition of private structures, suggesting a need for co-owner consent, debris removal requires the local government applicant to certify they have "legal authority and responsibility to remove debris from private property" and to cite "all applicable sources of authority (law, ordinance, code, contract, etc.)."¹³⁶ FEMA thus defers to state and local authorities regarding the requirements for entering private property in order to voluntarily remove debris, an issue we turn to in the next subsection.

1. Local Barriers to Heirs' Recovery: The Need for Unanimous Consent

State and local governments often require co-owners to obtain the consent of all other co-owners before any work can be done affecting the home, including after a disaster. For instance, in Louisiana, where FEMA Public Assistance funds were made available for debris removal from private property and demolition of private structures after Hurricane Ida, some parish program requirements stated that all co-owners to a property might be required to sign the

¹³⁴ Skipper G. StipeMaas, *The Georgia Heirs Property Law Center, Inc.: Addressing Tangled Title and Economic Security for Georgians*, in *HEIRS' PROPERTY AND LAND FRACTIONATION: FOSTERING STABLE OWNERSHIP TO PREVENT LAND LOSS AND ABANDONMENT*, 104 (Cassandra Johnson Gaither et. al., 2019).

¹³⁵ See Skaff, *supra* note 133; see also Video Conferencing Interview with Steven Reed and Elizabeth Hammant, Staff Attorneys at Southeast Louisiana Legal Services (October 17, 2023); see also Carter, *supra* note 89.

¹³⁶ PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE VERSION 5.0, *supra* note 95, at 128, 154.

application and right-of-entry for purposes of debris removal.¹³⁷ As for the demolition of private structures, as noted above, FEMA does require applicants to “provide documentation to confirm [their] legal authority and responsibility to enter private property and demolish privately-owned unsafe structures,” which may be read as requiring the affirmative consent of all co-owners.¹³⁸ Advocates in North Carolina, for instance, note that they have encountered resistance from county governments when attempting to obtain permits to demolish and rebuild damaged mobile homes.¹³⁹

The rationale for requiring such consent is presumably to respect the ownership interests of all co-owners; however, in the case of storm-damaged homes, the very properties that are now precluded from private repair or reconstruction today may very well face municipal condemnation tomorrow.¹⁴⁰ Of course, there are contexts where ensuring co-owner or co-heir cooperation makes sense. For instance, one co-owner may want to prevent another from selling a home out from under them, or to prevent a co-owner from alienating the home through a mortgage. In other cases though, requiring the affirmative consent of all co-owners may ironically harm any hypothetical property interest. Where an heir-occupant may have

¹³⁷ See *PPDR Program Details Announced*, CITY LAKE CHARLES, <https://www.cityoflakecharles.com/egov/apps/document/center.egov?view=item;id=6357> [<https://perma.cc/J946-HUZ8>]; see also *St. James Parish: Private Property Debris Removal Program (PPDR) for Hurricane Ida*, ST. JAMES PAR. GOV'T COMM'NS at 1, 4 (Apr. 21, 2022), <https://stjamesla.com/DocumentCenter/View/1295/St-James-Parish-Government-announces-Private-Property-Debris-Removal-Program-PPDR-for-Hurricane-Ida?bidId=> [<https://perma.cc/QY27-U7HV>]; see also *St. John Parish Begins Private Property Debris Removal Program*, ST. JOHN BAPTIST PAR. (Aug. 5, 2022), <https://www.sjbparish.gov/News-articles/St.-John-the-Baptist-Parish-Begins-Private-Property-Debris-Removal-Program> [<https://perma.cc/K5SR-L4JB>]; Reed and Hammant, *supra* note 135 (describing the challenges heirs property mobile homeowners in St. John the Baptist parish faced in removing damaged trailers from their lot. Without consent from all heirs to demolish the damaged home, heirs owners were unable to move new trailers onto the lot).

¹³⁸ PUBLIC ASSISTANCE PROGRAM AND POLICY GUIDE VERSION 5.0, *supra* note 95, at 154.

¹³⁹ See Skaff, *supra* note 133.

¹⁴⁰ See Rita Lebleu, *City Council: Decision to Condemn, Demolish Structures Not Made Lightly*, AM. PRESS (June 22, 2023), <https://www.americanpress.com/2023/06/22/city-council-decision-to-condemn-demolish-structures-not-made-lightly/> [<https://perma.cc/SZG7-KE4U>].

dozens or even hundreds of co-heirs due to intestate succession over generations, co-owner consent requirements place an arduous obstacle to repairing or rebuilding a property that, absent vital recovery funds, is likely to languish in disrepair, providing no benefit to the heir-occupant, absentee heirs, or the surrounding community.¹⁴¹

The common law doctrine of waste exemplifies how requirements for unanimous consent among heirs are unfounded in this context. The concept of waste “prevents acts or omissions [by a party with a property interest] that would impair the market value of the property or alter the nature of the property ... irrespective of their effect on the property’s market value, because the parties are presumed to have intended for property be preserved in its original condition, unless they provide otherwise.”¹⁴² In the co-owner context, as with heirs who are tenants in common, a co-owner typically “may not contravene the rights of other co-owners or alter the property to the injury of his co-owners without their unanimous consent.”¹⁴³ Notably, waste is not a strict liability cause of action; instead, the party accused of waste “must have taken some action, or failed to take some action, that a court finds unreasonable under the circumstances,” taking into account “the language of [any] agreement, the customary use for that specific type of property, and whether the costs of the action or inaction exceed the benefits.”¹⁴⁴

Repairing a home, particularly one that has been damaged by a natural disaster, clearly neither impairs the market value of a property nor alters its nature. If anything, receipt of repair funds is meant to preserve both the market value and nature of the damaged home. In cases where the property has been nearly or completely destroyed, demolition and reconstruction of the structure likewise fulfills this purpose, preserving the property for future use. Even where a deed restriction accompanies assistance, as is the case with some

¹⁴¹ *See id.* The problematic nature of co-ownership consent requirements also appears in the mortgage loss mitigation context, whereby individuals experiencing domestic violence face difficulties obtaining loan modifications to their mortgage loan without the signature of their co-borrower, who is often their abuser. For more on this, *see*, for example, Sarah Bolling Mancini & Alys Cohen *Surviving the Borrower: Assumption, Modification, and Access to Mortgage Information After a Death or Divorce*, 43 PEPP. L. REV. 345, 351 (2016).

¹⁴² Restatement (Fourth) of Property § 5.1 (Vol. 4) TD No 3 (2022).

¹⁴³ *Id.*

¹⁴⁴ *Id.*

CDBG-DR programs,¹⁴⁵ any loss of rights a co-owner might conceivably suffer pales in contrast to the complete erasure of their property interest, particularly as heirs are unlikely to have any alternative to government assistance, such as insurance or private financing.

Co-owner consent requirements privilege the hypothetical and unlikely “harm” of absentee co-owners who, in the heirs context, may not even be aware of their ownership interest over the right to the use, occupancy, and enjoyment of the property, to which an heir-occupant is also entitled. If property rights are indeed a “bundle of rights,” as is often alleged, then, in the conflict of an heir-occupant’s rights to those of a hypothetical absentee heir, state and local laws too often weigh the rights of absentee heirs over those of heir-occupants, to both their detriment and that of the surrounding community.¹⁴⁶ This artificial conflict dis-privileges the communal ownership of family property, placing a premium on the effort needed to manage and preserve these homes. In Louisiana, for instance, these co-owner consent requirements, as often alleged by local officials, have prevented mobile-home owners from demolishing damaged trailers, impeding their efforts to move new trailers onto their lots.¹⁴⁷

D. How Heir-Exclusive Policies Facilitate a Disaster-to-Displacement Pipeline

Finally, heirs face heightened risk due to the elevated risk of blight from unrepaired or condemned homes, property tax foreclosure, or code enforcement risk brought on by a combination of climate impacts and fractured ownership. In the area of property taxes, rising property values caused by climate resiliency investments may interact with a disproportionate number of heirs property owners not receiving available owner-occupant tax relief. With respect to code

¹⁴⁵ See, e.g., CAL. DEP’T OF HOUS. & CMTY. DEV., CALIFORNIA 2020-2021 DISASTER RECOVERY GRANT REPORTING SYSTEM ACTION PLAN 3, <https://www.hcd.ca.gov/sites/default/files/docs/grants-and-funding/dr/drgr-action-plan-2020-2021.pdf> [<https://perma.cc/8C34-EXEJ>] (an example of a state CDBG-DR action plan with deed restrictions).

¹⁴⁶ For property rights as the aggregation of a “bundle of rights,” whereby ownership interests implicate multiple parties and social relationships, see, for example, Jane B. Baron, *Rescuing the Bundle-of-Rights Metaphor in Property Law*, 82 U. Cin. L. Rev. 57, 58 (2014).

¹⁴⁷ See Reed and Hammant, *supra* note 135.

enforcement and the risk of condemnation or demolition, heirs may struggle to obtain public home repair funds due to clouded title, and they may be forced out of their homes when unable to repair after disaster strikes.¹⁴⁸ Even if they remain in their neighborhoods, their communities, beset by damaged or abandoned buildings, may suffer from economic and social disinvestment.

Climate conditions in general, and natural disasters in particular, fundamentally alter the physical and financial landscape of communities in ways that intersect with pre-existing socioeconomic vulnerabilities, thereby intensifying inequity. The Georgetown Climate Center observes the following:

Climate hazards like urban heat and flooding can exacerbate housing insecurity, most directly when extreme weather events or disasters decrease the availability of housing stock and displace residents. However, the very process of enhancing resilience to climate change impacts—for example through building retrofits—can increase the cost of construction and market value of a home and, replicated across a neighborhood, render entire communities less affordable for both renters and homeowners. Additionally, climate change can also increase the total cost of housing for residents, for example, when energy costs are increased due to the need for additional cooling during heat waves, or when insurance rates increase for homeowners living in flood-prone or wildfire-prone areas.¹⁴⁹

In their paper on climate gentrification in Miami-Dade County, Florida, Keenan, Hill, and Gumber parse out three different pathways by which climate change affects or displaces existing

¹⁴⁸ See StipeMaas, *supra* note 134 (“Heirs property can also prevent individuals from qualifying for home repair programs offered by nonprofits and municipalities... After her parents died, Ms. Wright and her six siblings inherited the property as co-owners and agreed that Ms. Wright could live there if she paid the taxes. Decades later, Ms. Wright is now elderly and, due to medical issues, has had to move in with her daughter and grandchildren. The roof on the home is badly damaged, and Ms. Wright’s limited income from social security is not enough to pay for a new one. The other owners will not contribute to the repairs, and Ms. Wright cannot get a loan or qualify for a rehab program because she is not the sole owner of the property. The city code enforcement is now inundating Ms. Wright with code violation notices, and Ms. Wright fears that she will be arrested and the home in which she was raised and lived most of her life will be demolished.”).

¹⁴⁹ *Resilient Affordable Housing*, *supra* note 53.

communities.¹⁵⁰ These are community disinvestment, heightened property costs, and raised property values due to resilience measures. These pathways capture the varied ways in which post-disaster recovery places socially vulnerable communities at risk of displacement.

The first pathway, the Superior Investment pathway, facilitates displacement via “the substitution of property from an inferior to a superior location.”¹⁵¹ Keenan, Hill, and Gumber describe this pathway as “[describing] a behavior of moving financial capital to a geography that offers superior risk-adjusted returns for accommodating real estate and infrastructure ... with the caveat that some households may otherwise be trapped for a lack of resources to relocate or because of outstanding mortgage liabilities.”¹⁵² In other words, regions deemed by the market to be at risk of natural disasters will see diminishing investment, leading to population flight for those who can afford to relocate—and neighborhood blight for those households that are trapped in place, unable to leave.

This picture is not an uncommon one for heirs communities. Due to the aforementioned difficulties heirs face in obtaining either public or private financing, heirs often are unable to rehabilitate homes in need of repair, resulting in neighborhoods often considered blighted: properties in disrepair, abandoned, or otherwise unsafe to inhabit. Even when heirs owners are not excluded from recovery programs, because financial assistance is likely to be based on the pre-disaster value of the home,¹⁵³ disinvested heirs communities previously starved of capital may not receive funds sufficient to completely rebuild, especially since they are likely to live in

¹⁵⁰ See Jesse Michael Keenan, Thomas Hill & Anurag Gumber, *Climate Gentrification: From Theory to Empiricism in Miami-Dade County, Florida*, 13 ENV'T RSCH. LETTERS, 1, 2–4 (2018).

¹⁵¹ *Id.* at 2.

¹⁵² *Id.*

¹⁵³ See also Rivlin, *supra* note 63 (“the [federally funded, state-run Road Home] program was undermined by the fact that payouts were determined by the pre-Katrina value of a home, not the post-Katrina rebuilding costs.”); NAACP LEGAL DEF. & EDUC. FUND, FACT SHEET: FAIR HOUSING AND CIVIL RIGHTS GROUPS FILE FEDERAL LAWSUIT IN POST-KATRINA HOUSING DISCRIMINATION CASE (2008), https://www.naacpldf.org/wp-content/uploads/road_home_fact_sheet.pdf [<https://perma.cc/PWM3-K6GY>].

older, less climate-resilient housing, which may require additional resilience improvements.¹⁵⁴

Unable to repair damaged properties, communities with large concentrations of heirs property may linger in disinvestment limbo. In Lake Charles, Louisiana, for instance, a combination of uninsured inherited homes, insufficient funds for home repair, and exclusion from post-disaster assistance led the town in 2020 to boast “the largest outward migration of any city in the United States last year, with about 7 [percent] of residents leaving,” according to U.S. Postal Service data.¹⁵⁵ Low- and middle-income FEMA applicants with

¹⁵⁴ Heirs property owners who, faced with the threat of future disaster, decide to enter into a buyout program, may face similar dynamics—assuming, that is, that they are eligible for such programs in the first place. *See, e.g.*, Way & Goldstein, *supra* note 44, at 476 (discussing that in Texas, for instance, heirs face difficulties proving ownership sufficient to qualify for the state’s disaster relocation program). While not the focus of this paper, buyouts as a response to disaster recovery and climate crisis have at times raised concerns over their effect on lower-income communities and their residents. *See, e.g.*, Flavelle, *supra* note 103 (“[B]uyouts can leave people worse off, especially lower-income families who may not have enough money to purchase a home in a safer location. Buyouts can also hurt a community by hollowing it out, making it less attractive while also shrinking the tax base.”); *see also* Carter, *supra* note 89 (describing how a public buyout program doesn’t offer enough money for applicants to purchase a house in the region). The decision of which neighborhoods to rebuild versus which ones to abandon and offer buyouts is itself fraught with racial and class prejudices. *See* Rivlin, *supra* note 63 (describing how the Lower Ninth Ward, a bastion of low-income Black homeownership, was continually and falsely assumed to be “too vulnerable to rebuild” post-Katrina, despite being above sea level and outside FEMA flood map danger zones, unlike other more affluent, Whiter communities that nonetheless were allowed to reopen and rebuild sooner); *see also* Flavelle, *supra* note 103 (referencing James R. Elliott, a sociology professor at Rice University, who with his colleagues examined FEMA buyouts across the United States from 1990 to 2015 and found that FEMA “seems to be disproportionately demolishing homes in communities of color”). Nonetheless, many areas disproportionately inhabited by heirs and marginalized communities, due to centuries of environmental racism, may need to relocate. *See generally* Yuliya Panfil & Tim Robustelli, *Retreating From the Coasts Makes Sense, But Our Current Approach Isn’t Working*, SHELTERFORCE (Aug. 6, 2024), <https://shelterforce.org/2024/08/06/we-must-relocate-to-prepare-for-climate-change-and-we-must-do-it-now/> [<https://perma.cc/HB4Z-TVAW>] (arguing that a pre-disaster, managed-retreat approach is necessary to minimize the harms and costs of intensifying disasters).

¹⁵⁵ Hersher & Kellman, *supra* note 103; *see* Alena Maschke, *Four years after Hurricane Laura, Lake Charles has recovered—but many are left behind*, CURRENT (Aug. 30, 2024), <https://thecurrentla.com/2024/four-years-after-hurricane-laura-lake-charles-has-recovered-but-many-are-left-behind/>

smaller homes and fewer rooms, moreover, may obtain “smaller average awards than more wealthy applicants with larger homes,” potentially frustrating a complete recovery for households with few other resources to rely upon.¹⁵⁶ Consequently, over time, depending on a program’s proof of ownership requirements, heirs may even forgo making requests for any disaster funds whatsoever, affecting the total amount of disaster funds allocated to a region by FEMA or HUD, further frustrating regional revitalization.

In instances where heirs are unable to fully repair their homes, the municipal government may condemn the property, seizing it from the heir occupant and slating the home for demolition, displacing some families and further depressing the property values of those who remain. Facing a vicious cycle of disinvestment and abandonment, those unable to leave and trapped in capital-starved regions, like many of the homes languishing in disrepair, are left abandoned and forgotten. As a result, many communities that were formerly neighborhoods with strong civic connections and active local cultures become hollowed out.¹⁵⁷

The second pathway, the “Cost-Burden Pathway,” points out that in many disaster-prone areas, “the overall cost of living can only be feasibly borne by wealthier and wealthier households.”¹⁵⁸ The Cost-Burden Pathway describes the process whereby less wealthy populations are forced to relocate from their homes “due to the increased costs of insurance, property taxes, special assessments,

[<https://perma.cc/7FQR-5HGT>]; Friedrich, *supra* note 72; *see also* Alena Maschke, ‘Twilight Zone’: Families Caught Up in Push to Demolish Storm-Damaged Houses in Lake Charles, THE ADVOCATE (May 28, 2023), https://www.theadvocate.com/lake_charles/lake-charles-families-caught-in-push-to-raze-damaged-homes/article_6284d5e2-fa76-11ed-8ae0-1bbe8ff5d8b3.html [<https://perma.cc/MUR3-34HZ>].

¹⁵⁶ Individual Assistance Program Equity, 89 Fed. Reg. 3990, 4013 (Jan. 22, 2024) (to be codified at 44 C.F.R. pt. 206).

¹⁵⁷ *See, e.g.*, Jake Bittle, *Climate Change Has Forced America’s Oldest Black Town to Higher Ground*, GRIST MAG. (July 10, 2024), <https://grist.org/extreme-weather/princeville-north-carolina-fema-grant-army-corps/> [<https://perma.cc/2W5U-MKDX>], for one example of a North Carolina town hollowed out by neighborhood disinvestment post-disasters; *see generally* Justin H. Vassallo, *The Bold Idea To Move Millions to Climate Havens*, NOEMA (Sept. 27, 2023), <https://www.noemamag.com/the-bold-idea-to-move-millions-to-climate-havens/> [<https://perma.cc/6SQV-X3A2>] (noting that outmigration borne of the climate crisis will “permanently hollow out the worst-affected neighborhoods....”).

¹⁵⁸ Keenan et. al., *supra* note 150, at 3.

property repairs, transportation and consumer goods, as well as a loss in overall productivity (e.g., sitting in traffic in water-clogged streets).”¹⁵⁹ While more affluent households may be able to bear the financial burdens associated with living in desirable yet disaster-prone areas, others have little choice but to leave.¹⁶⁰ Under this form of climate displacement, heirs, who already struggle with higher rates of property tax foreclosure due to reduced access to relief programs, as well as limited access to homeowners insurance and property repair grants, may find that the cost burden of living in a family home eventually becomes unbearable.

In several Florida cities, for instance, efforts meant to combat neighborhood blight have

had the opposite effect. In particular, code violation foreclosures meant to remedy the presence of damaged homes have targeted majority-Black neighborhoods, leading to the loss of heirs properties.¹⁶¹ Low-income heirs who, due to unclear title, are blocked from access to home repair programs may therefore face particular risk of condemnation due to unremedied home damage. Furthermore, heirs property owners impacted by disasters are actively targeted by investors who seek to purchase their homes at below market value. A Texas advocate observed how real estate developers, preying on heirs’ post-disaster vulnerabilities, sometimes seek out heirs owners in flood-prone areas of Houston for buyouts, in order to sell these homes to affluent families who are more likely to be able to bear the costs of living in a flood-prone neighborhood.¹⁶²

¹⁵⁹ *Id.*

¹⁶⁰ *See id.* (The authors, citing prior studies, note Venice, Italy, as a climate-vulnerable locale whose class diversification has been undermined by the cost burden to lower-income residents of remaining in the city).

¹⁶¹ *See* Amelia Winger, *Heirs to Black-Owned Homes Face Ramped-Up Foreclosures. Here’s Who’s Pushing Back*, MIAMI HERALD (Sept. 2, 2024), <https://www.miamiherald.com/news/business/real-estate-news/article273093600.html> [<https://perma.cc/5CYB-3GER>]; *see also* Ben Wieder, Shirsho Dasgupta & Sheridan Wall, *Families Lose Homes After Florida Cities Turbocharge Code Enforcement Foreclosures*, MIAMI HERALD (Mar. 20, 2023), <https://www.miamiherald.com/news/business/real-estate-news/article276644691.html> [<https://perma.cc/AJ2K-UJPD>].

¹⁶² *See* Video Conferencing Interview with Amanda Bosley, Managing Att’y, Lone Star Legal Aid (February 29, 2024).

Relatedly, heirs are at risk of being displaced due to pre-disaster climate mitigation efforts. The “Resilience Investment Pathway” describes the “underlying property increases in value” that result from investments in climate-resilient infrastructure,¹⁶³ such as stronger building materials, raised structures, or improved drainage systems. The consequence of rapid property valuation increases has long been captured in the literature on property taxes, particularly the effects of over-assessed homes on the property tax bills of Black households.¹⁶⁴ Displacement occurs not due to deteriorating environmental conditions, but instead from the otherwise positive resilience measures adopted by local governments. Put plainly, low-income, predominantly elderly, and Black homeowners may very well find that, post-climate investment, the cost of living in their homes rises to an untenable level, eventually forcing them to relocate voluntarily or, via property tax foreclosure, involuntarily. The rising tide of property values, it turns out, leaves some homeowners underwater, even when the proposed investments are meant to ensure otherwise.¹⁶⁵

¹⁶³ Keenan et. al., *supra* note 150, at 3–4 (citing the St. Kjeld Climate District in Copenhagen, where “a broader resilience strategy to revitalize a neighborhood led to some displacement from increased rents and the marginalization of existing homeowners... derivative of the well-developed concept of ‘Green Gentrification,’ wherein investments in sustainability amenities and infrastructure are unevenly distributed or otherwise associated with gentrification”).

¹⁶⁴ See Bernadette Atuahene, *Our Taxes Are Too Damn High: Institutional Racism, Property Tax Assessments, and the Fair Housing Act*, 112 NW. U.L. REV. 1501, 1514 (2018); Carlos F Avenancio-León & Troup Howard, *The Assessment Gap: Racial Inequalities in Property Taxation*, 137 Q. J. ECON. 1383, 1385 (2022). See also Cameron LaPoint, *Property Tax Sales, Private Capital, and Gentrification in the U.S.* (Sept. 15, 2022), <https://ssrn.com/abstract=4219360> [<https://perma.cc/SNL6-WW7M>] (“Underrepresented minority homeowners are more likely to be displaced by tax delinquency and less likely to transact homes in areas containing recent sales to institutional buyers. Private capital’s presence in the municipal finance ecosystem has amplified gentrification and the within-city Black-white wealth gap.”). For evidence on how property tax relief programs can prevent displacement, see David Crawford, *Gentrification and the Property Tax: How Circuit Breakers Can Help*, INST. ON TAX’N AND ECON. POL’Y (Apr. 27, 2021), <https://itep.org/gentrification-and-the-property-tax-how-circuit-breakers-can-help/> [<https://perma.cc/3UT5-2DA4>]; Lei Ding & Jackelyn Hwang, *Effects of Gentrification on Homeowners: Evidence from a Natural Experiment*, FED. RESERVE BANK PHILA. 2 (Apr., 2020) (finding that tax relief programs for long-term homeowners “help mitigate the risk of tax delinquencies and displacement”).

¹⁶⁵ See LaPoint, *supra* 164; see Crawford, *supra* note 164.

Already, both the federal and state governments have begun to make millions of dollars available for local governments to invest in climate-resilient housing.¹⁶⁶ Home energy rebate programs under the Department of Energy following passage of the Inflation Reduction Act (IRA), funding for the Low Income Home Energy Assistance Program (LIHEAP), and other current and future initiatives represent an increased federal role for reducing energy costs and mitigating the physical and financial costs of climate change for low- and moderate-income families.¹⁶⁷ Older programs such as HUD's general CDBG program¹⁶⁸ will likely play a greater role in fostering community climate resilience in upcoming years as well. However, absent intentional efforts to ensure heirs' access to general CDBG funds and to prevent property tax foreclosures, heirs—already disproportionately burdened by property taxes—will likely find themselves encumbered by property tax debts as their neighbors make use of resiliency programs that increase neighborhood property values, intensifying housing insecurity for heirs communities.

As the history of previous natural disasters in the U.S., such as Hurricanes Katrina and Maria, have shown, deteriorating climate conditions are likely to displace socially vulnerable communities from their homes, and heirs property households are no exception.¹⁶⁹

¹⁶⁶ See, e.g., Rebecca Redelmeier, *New Yorkers are Getting Help to Pay for New Energy-Efficient Home Upgrades, Thanks to Fed Funding*, WXXI NEWS (Dec. 17, 2024), <https://www.wxxinews.org/2024-12-17/new-yorkers-are-getting-help-to-pay-for-new-energy-efficient-home-upgrades-thanks-to-fed-funding> [<https://perma.cc/9MSX-G2RU>]; see Alison F. Takemura, *The climate law's \$8.8B in home energy rebates are starting to roll out*, CANARY MEDIA (Aug. 14, 2024),

<https://www.canarymedia.com/articles/electrification/the-climate-laws-8-8b-in-home-energy-rebates-are-starting-to-roll-out> [<https://perma.cc/C9YF-TTR8>]; *State Home Electrification and Appliance Rebates Program (HEAR)*, WASH. STATE DEP'T OF COM. (Sept. 12, 2025), <http://commerce.wa.gov/energy-incentives/hear/> [<https://perma.cc/9B22-NJSR>]. While the fate of these programs is now unclear, efforts remain underway to bring energy efficiency measures to the residential market.

¹⁶⁷ See Takemura, *supra* note 166.

¹⁶⁸ See Mayes & Martín, *supra* note 42 (noting, “Municipal home repair program funding most often comes from federal sources, namely the US Department of Housing and Urban Development’s ... [CDBG] program.”).

¹⁶⁹ While receiving less attention, survivors of Hurricanes Florence, Harvey, and Matthew also faced barriers to disaster recovery due to unclear or informal

With preexisting public and private barriers already frustrating heirs owners' attempts to create wealth, disasters and the resulting home loss will wipe away what little wealth heirs families have managed to build. The pre- and post-disaster challenges faced by heirs property owners, then, conspire to wash out the housing and financial security otherwise promised by homeownership.

IV. RECOMMENDATIONS: TOWARD ENVIRONMENTALLY JUST HOUSING POLICY FOR HEIRS

As the climate crisis intensifies, so too will its costs. Absent a reconsidered approach to climate recovery policies, however, the destructive impacts of natural disasters will continue to disproportionately affect lower-income, older, and Black and Brown communities. Embodying an environmentally just climate policy, however, will require us to rethink the relationship between property title and property management in six fundamental ways.

1. Strengthening FEMA policy improvements. As illustrated in Part II, exclusionary proof of ownership requirements are one of the clearest barriers to disaster recovery and resilience for heirs property owners. In moments of acute crisis, such policies prevent the most adversely affected households from restoring their physical and financial security. FEMA has already taken important steps in this direction through its 2021 decision to accept self-declarative statements as sufficient proof of ownership for IHP funds.¹⁷⁰ But FEMA should go further. To fully realize the promise of its 2021 policy change, FEMA should publish on its website sample self-declarative statements that heirs and their legal advocates can use as a reference. Moreover, FEMA should allow heirs owners to submit self-declarative statements and supplemental documentation at the initial stages of requesting IHP assistance. FEMA should set up the initial application to make this option clearly available, so that disaster survivors can obtain assistance earlier and avoid the difficult and time-consuming appeals process.

title. *See generally* Dreier & Tran, *supra* note 1 (detailing how majority-Black counties were twice as likely to be rejected for FEMA disaster relief because of the agency's title requirements, and reporting on older Black residents in the Deep South facing barriers to said assistance).

¹⁷⁰ *See* Way & Goldstein, *supra* note 44, at 471–73.

2. Ensuring accessibility for HUD post-disaster policies. Similarly, HUD could do more to ensure that heirs are not excluded from disaster relief programs due to proof of ownership standards. Unlike FEMA pre-2021, HUD does not prohibit CDBG-DR grantees from accepting self-declarative statements or similar documents as proof of ownership for assistance applications,¹⁷¹ and the recent Universal Notice requires grantees to provide alternative methods to title documentation.¹⁷² HUD, however, could also affirmatively require that CDBG-DR grantees accept affidavits of ownership akin to FEMA’s self-declarative statements. Some state and local CDBG-DR programs already permit heirs to establish their ownership interest in this way. For instance, Louisiana’s Restore program allows heirs to file an Affidavit of Death, Domicile and Heirship (ADDH), which must be signed by two witnesses who knew the decedent and have personal knowledge of the relevant facts, to prove their ownership.¹⁷³ Similarly, Texas permits CDBG-DR applicants to certify their ownership interest with “an affidavit and alternative documentation indicating that they exercised ownership over the property when the disaster occurred.”¹⁷⁴ Congress could, and should, also act. The Heirs Empowerment and Inheritance Rights (HEIR) Act of 2025, H.R. 1607, would allow households without traditional forms of title documentation to submit an affidavit of ownership in order to access CDBG-DR assistance.¹⁷⁵ This bill was introduced in 2024, again in 2025 with the new Congressional session, and has been referred to the House Committee on Financial Services.¹⁷⁶ However, no further activity has occurred.

¹⁷¹ See *id.*, at 475.

¹⁷² See *Universal Notice*, *supra* note 125.

¹⁷³ See Way & Goldstein, *supra* note 44, at 478 (citing LA. OFF. CMTY. DEV., THE RESTORE LOUISIANA HOMEOWNER ASSISTANCE PROGRAM: PROGRAM MANUAL VERSION 8.3, 55 (2021), <https://utopian-bustard.files.svdcdn.com/production/2016/restore-manual.pdf> [<https://perma.cc/85FL-MQRU>]).

¹⁷⁴ See Nketiah Berko & Sarah Mancini, *Keeping it in the Family: Legal Strategies to Address the Challenge of Heirs Property and Prevent Home Loss*, NAT’L CONSUMER L. CTR. (Jan. 29, 2024), https://www.nclc.org/wp-content/uploads/2024/01/202401_Report_Heirs-Property-Keeping-it-in-the-Family.pdf [<https://perma.cc/5FMG-V26F>] (citing Way & Goldstein, *supra* note 44).

¹⁷⁵ See Heirs Empowerment and Inheritance Rights Act of 2025, H.R. 1607, 119th Cong. § 2 (2025).

¹⁷⁶ *Id.*

3. Promoting inclusive proof of ownership for climate resiliency programs. Importantly, inclusive proof of ownership requirements should extend beyond just post-disaster recovery of funds: home resilience and climate mitigation programs should likewise adopt heirs-inclusive ownership requirements. As a recent JPMorganChase report observes, some state and local governments have already begun to embrace such practices.¹⁷⁷ As proactive climate mitigation strategies incorporate home rehabilitation and resiliency measures, it is crucial that heirs property owners are not excluded. Advocates in Philadelphia, Pennsylvania, and New York, for instance, have noted that heirs in several states currently struggle to access both public and private sector home repair and renovation funds.¹⁷⁸ To that end, state and local governments should extend heirs-inclusive proof of ownership requirements to other, non-disaster programs.

Similarly, as federal agencies such as the U.S. Department of Energy and the Environmental Protection Agency (EPA) roll out billions of dollars in climate resilience measures over the next couple of years to reduce consumer costs, improve power grid resilience, and retrofit and weatherize older buildings, program administrators must ensure that eligibility requirements do not exclude heirs from participating—both to ensure that heirs owners can benefit from the full suite of public investment in climate mitigation, and to avoid the destabilizing effects of climate gentrification outlined above.¹⁷⁹

¹⁷⁷ See JPMORGAN CHASE POLICYCENTER, *supra* note 45, noting how San Antonio’s Casa Verde Weatherization Program, which provides income-qualifying homeowners and renters “free weatherization upgrades” is available to heirs.

¹⁷⁸ See e-mail from Kelly Gastley, Managing Att’y, Philly VIP, Heirs Property Practitioner Network on “Heirs’ Property & Home Repair Funds Question” (Sept. 26, 2024, 14:26 EST) (on file with authors); e-mail from Scott Kohanowski, Gen. Couns., Ctr. for N.Y. Neighborhoods, Heirs Property Practitioner Network on “Heirs’ Property & Home Repair Funds Question” (Sept. 26, 2024, 15:28 EST) (on file with authors); *but see* e-mail from Kelly Gastley, Managing Att’y, Philadelphia VIP to authors (Jan. 23, 2024) (on file with authors) (noting that Philadelphia’s “city-run and -funded home repair program has now agreed to allow heirs to qualify before they are on title,” a policy change which is “in the beginning stages of being implemented.”).

¹⁷⁹ See, e.g., *Biden-Harris Administration Announces Additional \$2 Billion to Protect the Grid Against Growing Threats of Extreme Weather, Expand Transmission*, U.S. DEP’T OF ENERGY (Oct. 18, 2024), [https://www.energy.gov/articles/biden-harris-administration-announces-additional-2-billion-protect-grid-](https://www.energy.gov/articles/biden-harris-administration-announces-additional-2-billion-protect-grid)

4. Permitting heir-occupants to manage property through default rules. Policymakers and courts should presume that an heir-occupant is empowered to manage their property on behalf of another owner absent any evidence to the contrary. Requiring heir-occupants, particularly in the aftermath of a disaster, to track down absentee heirs, many of whom may not even be aware they hold an ownership interest in the property, in order to receive disaster relief, runs contrary to any public policy goals. Unlike selling a home or taking out a mortgage secured by the property, receiving federal or local funds for a home does not threaten any co-heir's ownership interest in the property; if anything it preserves their interest. As noted in Part III, property law and policy must mediate between the interests of absentee, possibly unknown, co-owners versus those of an heir-occupant enjoying present use of the property.¹⁸⁰ Indeed, law and policy already do so, albeit often in ways that run contrary to the interests of heir-occupants, the property itself, or the broader community. In states without the Uniform Partition of Heirs Property Act (UPHPA), an owner of a fractional interest in a home, for instance, is entitled to force a partition sale that can dispossess heir-occupants of their home without procedural guardrails—privileging one heir's right to a share of the property (or, more accurately, a share of its sale price, which may be less than fair market value) at the expense of another heir's desire for occupancy.¹⁸¹ The UPHPA, enacted in 24 states and territories, “provides several procedural safeguards to protect the property interests of [heirs] owners,” namely in the following ways:

First, the Act requires the cotenant pursuing partition to give notice to all other co-owners. Next, courts must order an

against-growing [<https://perma.cc/XUJ5-ZM3Y>]; see also *Biden-Harris Administration Announces More than \$142 Million for Climate Resilience and Energy Efficiency Renovations in HUD-Supported Housing*, U.S. DEP'T OF HOUS. AND URB. DEV. (June 25, 2024), https://www.hud.gov/press/press_releases_media_advisories/hud_no_24_159 [<https://perma.cc/65WL-B992>]; see also Jennifer Moon, *State and Federal Whole Home Repair Programs: Can They Solve the Weatherization Assistance Program Deferrals Problem?*, JUST SOLUTIONS (Aug. 6, 2024), <https://justsolutionscollective.org/state-and-federal-whole-home-repair-programs-can-they-solve-the-weatherization-assistance-program-deferrals-problem/> [<https://perma.cc/AS6A-6DD3>].

¹⁸⁰ See *supra* Part III.C.1.

¹⁸¹ See Berko & Mancini, *supra* note 174, at 10.

independent appraisal to determine the property's fair market value. The law allows cotenants to object to the appraised value, at which point the court must hold a hearing to consider other evidence of value. Additionally, the Act grants cotenants an opportunity to buy out the interest of the petitioning cotenant(s), with 45 days to exercise this right of first refusal and another 60 days to arrange for financing. Finally, if no cotenants choose to exercise this buyout option, courts are required to evaluate several economic and non-economic factors to determine whether to proceed with a partition-in-kind (subdividing the piece of land, if practicable) or a partition-by-sale (sale of the home and division of sale proceeds). If the court opts for a partition sale, the property must be sold on the open market for no less than the court-appraised value in a "commercially reasonable manner."¹⁸²

Much as the UPHPA has reformed the law in several states to mediate this conflict between co-heirs, policymakers in the disaster context should likewise change the default rules and presumptions underlying co-owner consent requirements.

For instance, as noted above, a 2024 settlement of a HUD complaint against North Carolina's Office of Recovery and Resilience (the administrator of funds for the state's CDBG-DR program, Rebuild NC Homeownership Recovery Program) reformed program requirements to promote heirs eligibility.¹⁸³ Previously, Rebuild NC required applicants to "attest by signing the Homeowner Grant Agreement that no other party has the right to claim ownership or everyone who has the right to claim ownership has agreed to participate in the program or could not be

¹⁸² *Id.* at 10 (quoting *Uniform Partition of Heirs Property Act* at 32, <https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=50724584-e808-4255-bc5d-8ea4e588371d&LibraryFolderKey=&DefaultView=&5a583082-7c67-452b-9777-e4bdf7e1c729=eyJsaWJyYXJ5J5ZW50cnkiOiJjNjY4OTE3Zi0wYmZILTRlYzltOTlhZi1mMDk4NDRjNTU3NzcifQ%3D%3D> [<https://perma.cc/936Q-LKL3>]).

¹⁸³ See U.S. DEP'T OF HOUS. AND URB. DEV., TITLE VIII CONCILIATION AGREEMENT/TITLE VI & SECTION 109 VOLUNTARY COMPLIANCE AGREEMENT BETWEEN [REDACTED], (COMPLAINANT) AND NORTH CAROLINA OFFICE OF RECOVERY AND RESILIENCY (RECIPIENT) AND UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, 6, 112 (Apr. 18, 2024), https://legalaidnc.org/wp-content/uploads/2024/04/NCORR-Heirs-Property-CA-VCA-signed_Redacted_Final-Final.pdf [<https://perma.cc/7QBN-DSWN>].

located.”¹⁸⁴ Following the settlement, Rebuild NC now requires applicants to “[agree] that they have or will notify any party that may have an ownership interest in the property concerning program participation, if such parties are known to the applicant.”¹⁸⁵ This change would ensure that heir-occupants can participate in disaster relief programs despite being unable to locate absentee or unknown heirs, allowing disaster assistance to flow more quickly and prioritizing the interests of those engaged in managing the property. Policymakers and program administrators should respect the autonomy of heir-occupants to assume the unlikely risk of an angered absentee heir.¹⁸⁶

Some states have codified even stronger heirs-friendly presumptions into law. Louisiana, for instance, empowers public entities to “‘conclusively presume’ that a co-owner in possession of the property for more than one year has been appointed by the other co-owners to manage, repair, reconstruct, and restore the property and to receive disaster recovery funds where there is no existing written agreement between co-owners,” though legal services attorneys report that public entities often decline to utilize this statutory discretion.¹⁸⁷ Similarly, Texas empowers a co-owner of residential property to “act in the name of and on behalf of another co-owner, whether known or unknown, as the co-owner’s statutory agent and attorney-in-fact,” provided the co-owner meets certain occupancy, homestead exemption, property tax, and filing requirements.¹⁸⁸ The co-owner can enter into contracts “giving rise to a mechanic’s and materialman’s lien and to execute a deed of trust for the purpose of preserving or improving the residential property.”¹⁸⁹ Other states and territories should adopt these types of presumptions into law.

¹⁸⁴ *Id.*

¹⁸⁵ *Id.*; see also *DHRC Member Legal Aid of North Carolina Wins Settlement for Heirs’ Property Owners Excluded from Disaster Recovery Assistance Program*, NAT’L. LOW INCOME HOUS. COAL. (Apr. 29, 2024), <https://nlihc.org/resource/dhrc-member-legal-aid-north-carolina-wins-settlement-heirs-property-owners-excluded> [<https://perma.cc/893H-7M3W>].

¹⁸⁶ See A.D. Skaff, Supervising Att’y, Legal Aid of N.C., Heirs and Disasters Presentation at Estate Planning and Heirs’ Property Intensive at the Consumer Rights Litigation Conference (Oct. 23, 2024).

¹⁸⁷ La. Code. Civ. P.2821–2822; see Reed & Hammant, *supra* note 135; see Carter, *supra* note 89.

¹⁸⁸ TEX. PROP. CODE ANN. §§ 65.002–.003 (West 2023).

¹⁸⁹ TEX. PROP. CODE ANN. § 65.004 (West 2023).

5. Preventing property value-based displacement by increasing heirs' accessibility to property tax relief programs. Another area where heir-inclusive policies could make a significant difference is in the realm of property tax relief. Given the increased risks heirs face of property tax foreclosure, especially as climate resiliency investments may add to upward pressure on home values, states should adopt the following measures (the following recommendations are quoted directly from a report on the prevalence of property tax foreclosures among heirs property owners):

- Recognize that heirs are the owners of an inherited property immediately upon death of the decedent and should be eligible for the full property tax homestead exemption and other homeowner relief options.
- Allow heirs to apply for the property tax homestead exemption upon the filing of an affidavit of heirship certifying their ownership of the property.
- Make it clear that penalties for failure to report a change regarding the property cannot be imposed on heirs who: inherit a property intestate (or by will that is not yet probated); intend to make the property their primary residence; and are otherwise eligible for the homestead exemption.
- Provide the homestead exemption retroactively for a certain period of time if the heir can attest to living in the property and otherwise qualifying for the exemption during that period.
- Require that, upon the death of any homeowner as determined through death records, the tax authority shall provide notification to the heirs of the necessity to notify the tax assessor and the process by which they can and should apply for the homestead tax exemption.¹⁹⁰

Some jurisdictions already allow heirs property owners to receive the full homestead exemption. For example, in Texas, heirs are eligible for the state's homestead exemption, with the state also granting them access to the following benefits:

[Ability to] pay their property taxes in four installments without penalties rather than paying them up front; qualify for the homestead exemption for up to two years if they can no longer reside in their home due to disaster damages; and exclude certain home

¹⁹⁰ STARK & WILLIAMSON, *supra* note 30, at 20.

improvements or replacements from taxable income to lower the tax increase that homeowners would otherwise pay.¹⁹¹

In Philadelphia, an heir may be eligible for an Owner-Occupied Real Estate Tax Payment Agreement (OOPA), allowing them to “make affordable monthly payments on property taxes that are past due.”¹⁹² Heirs may also be eligible for conditional homestead exemptions to reduce their taxable assessed property value.¹⁹³ In Florida, the community development organization LISC Jacksonville has demonstrated an impressive model of identifying heirs properties, engaging with residents and community-based partners, connecting heirs with legal support, and providing heirs with “no-cost property tax debt relief” to protect heirs property owners from property tax foreclosures as they clear title.¹⁹⁴ By ensuring that heirs can access the same type of relief programs—disaster and otherwise—as other homeowners, states, localities, and community partners can stem home loss in socially vulnerable communities.¹⁹⁵

¹⁹¹ JPMORGAN CHASE POLICYCENTER, *supra* note 45; *see also* ENTREPRENEURSHIP & CMTY. DEV. CLINIC, UNIV. OF TEX. AT AUS., HAVE YOU INHERITED YOUR HOME? HOW TO LOWER YOUR PROPERTY TAXES BY QUALIFYING FOR THE FULL BENEFITS OF THE HOMESTEAD EXEMPTION IN TEXAS (2020), https://law.utexas.edu/wp-content/uploads/sites/11/2020/08/2020-12-ECDC-heirproperty_2pg.pdf [<https://perma.cc/Z7GS-7Y67>] (explaining heir property owners’ qualification for a homestead exemption with the right to pay taxes in installments under Texas law).

¹⁹² *Payments, Assistance & Taxes: Set Up an Owner-Occupied Real Estate Tax Payment Agreement (OOPA)*, CITY OF PHILA., <https://www.phila.gov/services/payments-assistance-taxes/payment-plans-and-assistance-programs/income-based-programs-for-residents/set-up-an-owner-occupied-real-estate-tax-payment-agreement-oopa/> [<https://perma.cc/GQE7-VSWN>] (last visited Sept. 26, 2025).

¹⁹³ *See Payments, Assistance & Taxes: Get the Homestead Exemption*, CITY OF PHILA., <https://www.phila.gov/services/payments-assistance-taxes/taxes/property-and-real-estate-taxes/get-real-estate-tax-relief/get-the-homestead-exemption/> [<https://perma.cc/SR3Y-52CP>] (last visited Sept. 26, 2025).

¹⁹⁴ Leslie Grueber, *Heirs’ Property Resolution and Prevention: Jacksonville, FL*, RESULTS FOR AM. (Nov. 5, 2024), <https://catalog.results4america.org/case-studies/heirs-property-resolution-and-prevention-jacksonville-fl> [<https://perma.cc/J3X5-RSRF>].

¹⁹⁵ *See* Ding & Hwang, *supra* note 164.

6. Expanding estate planning and title resolution accessibility.

Finally, equitable climate and housing policy should ensure the adoption of initiatives that empower households to navigate estate planning and title resolution. Already, several municipalities have begun to expand estate planning services for their residents, while others have devoted significant funding toward assisting heirs in resolving heirs property challenges.¹⁹⁶ Tools such as Transfer on Death Deeds (TODDs), which transfer real property to a specified beneficiary, can empower families to transfer title inexpensively and without the need for probate.¹⁹⁷ Instruments such as trusts may also play a role here, with one scholar proposing that states create a statutory “Family Land Trust” presumption to replace the tenancy-in-common default and prevent property fractionalization.¹⁹⁸ Different tools may be appropriate for different situations or regions; however, encouraging creativity in intergenerational land transfer and management is essential in protecting families from land loss.

Where probate does occur, promoting home preservation across generations requires reforming the process so that it is less expensive and arduous for families. Some states have implemented simplified probate processes that make probate more accessible to

¹⁹⁶ See, e.g., Nushrat Rahman, *Detroiters Can Now Get Free Estate Planning, Legal Help to Keep Their Family Homes*, DET. FREE PRESS (June 12, 2024), <https://www.freep.com/story/news/local/michigan/detroit/2024/06/12/free-estate-planning-legal-services-to-help-detroiters-save-homes/74064923007/> [https://perma.cc/DVY6-4UMR]; *DHCD Awards \$1 Million to Assist Heirs in Probate*, DEP’T HOUS. & CMTY. DEV. (Sept. 26, 2023), <https://dhcd.dc.gov/release/dhcd-awards-1-million-assist-heirs-probate> [https://perma.cc/5ZB3-9SEP]; David Slade, *Tangled Titles: Philadelphia Explores Heirs’ Property Solutions to Boost Generational Wealth*, POST & COURIER (Apr. 8, 2022), https://www.postandcourier.com/news/special_reports/philadelphia-explores-heirs-property-solutions-to-boost-generational-wealth/article_0370ced0-9c12-11ec-ab5a-73fceb01dab2.html [https://perma.cc/CE8M-LLZ7].

¹⁹⁷ See Nketiah Berko & Sarah Bolling Mancini, *Heirs’ Property: Policies to Preserve Wealth*, ASSET FUNDERS NETWORK 25 (2024), <https://asset-funders.org/resource/heirs-property-policies-to-preserve-wealth/> [https://perma.cc/G4TQ-AH8Y].

¹⁹⁸ See Phyllis C. Taite, *Remediating Injustices For Black Land Loss: Taking The Next Step To Protect Heirs’ Property*, 10 BELMONT. L. REV. 301, 320 (2023) (proposing the creation of a statutory Family Land Trust (FLT) to replace the tenants in common default in order to prevent fractionalization of family, owner-occupied land).

low- and middle-income families.¹⁹⁹ A National Consumer Law Center report on legal interventions to address heirs property notes the following:

[S]implified, or summary, probate process[es] [are] typically permitted so long as the estate's value does not exceed a specified amount. For instance, in Texas a small estate affidavit may be filed to avoid probate provided that the estate's value, excluding homestead and exempt property, does not exceed \$75,000. Simplified probate processes, however, often have other restrictions. For instance, in some states the process is not available unless the heir is a surviving spouse. Others, such as Alabama's summary distribution process, apply only to personal property and cannot be used to pass down real estate. By contrast, in Georgia, any heir may petition for an order that no administration is necessary, provided the petition includes the signatures of all heirs.²⁰⁰

In addition to simplifying the probate process, some states and localities have made efforts to reduce the cost of probate for low-income families. With estate administration often costing hundreds or thousands of dollars, local governments should look for ways to reduce filing fees and service costs for low-income families.²⁰¹

Efforts exist at the federal level to assist low- and moderate-income families in circumventing the barriers of intergenerational home transfer. Notably, the Heirs Estate Inheritance Resolution and Succession (HEIRS) Act of 2024 tasks HUD with establishing a grant program for states that adopt the UHPA that would “provide housing counseling, legal assistance, and financial assistance related to title clearing and home retention efforts for owners of heirs property.”²⁰² Enactment of this bill would go far in increasing accessibility to crucial estate planning and title resolution services for marginalized communities.

¹⁹⁹ See Berko & Mancini, *supra* note 174, at 17.

²⁰⁰ *Id.*

²⁰¹ See *id.* (citing Ryan Briggs, *Philly's New Register of Wills Wants to Help Families Transfer Inherited Properties*, WHY? (May 29, 2019), <https://whyy.org/articles/phillys-new-register-of-wills-wants-to-fight-fees-that-lock-people-out-of-homeownership/> [<https://perma.cc/3FV2-PDH8>], and Marco Poggio, *How Court Fees Can Keep Poor NYers from Inheriting Homes*, LAW360 (Feb. 2, 2024)).

²⁰² Heirs Estate Inheritance Resolution and Succession Act of 2024, H.R. 8127, 118th Cong. § 3 (2024).

Even where heirs-exclusive program requirements are facially race-neutral, if their effect is to exacerbate home loss amongst Black or other socially marginalized communities, absent a showing of necessity for achieving a non-discriminatory interest, they risk violating federal law.²⁰³ The experiences of prior disasters have rendered this disparate impact painfully clear; the existence of alternative, heirs-inclusive policies across the states, and now with FEMA, indicate that policies of exclusion are not grounded in legitimate policy aims. Additionally, the Fair Housing Act of 1968 requires executive agencies and departments to “administer their programs and activities relating to housing and urban development in a manner affirmatively to further” fair housing.²⁰⁴ Given this statutory obligation, federal programs must ensure that title and co-owner consent requirements advance, rather than frustrate, homeownership for communities of color.

The barriers that heirs property owners face pose dire consequences for these households and their communities writ large. Heirs cannot, however, surmount these obstacles on their own. Absent revised policies and presumptions that account for the imposition of, distrust in, or exclusion from the current U.S. property law regime, heirs property households will continue to lose their homes.

CONCLUSION

As the waters rise and neighborhoods fall to increasingly devastating storms, access to repair, reconstruction, and resilience funding will play a critical role in stemming the tide of community displacement. Without accounting for the ways in which property law intersects with climate response efforts, however, communities for whom the promise of American property ownership has too often been more mirage than reality will quickly lose what little they have built.

Additional research is needed on the forms of housing insecurity and displacement that non-heirs property communities with informal or fractional land interests face, such as those in the U.S. Southwest with land formerly deeded via Spanish land grants; indigenous nations; and property ownership in U.S. territories.

²⁰³ See *Tex. Dep’t of Hous. & Cmty. Affairs v. Inclusive Cmty. Project, Inc.*, 576 U.S. 519 (2015).

²⁰⁴ 42 U.S.C. § 3608 (2018).

Moreover, environmentally just policies will require devoting increased attention to the ways in which marginalized communities use, view, and manage their property. Scholars and policymakers should therefore understand and incorporate the priorities of said communities into legal theory and practice, allowing these narratives to inform the presumptions and principles underlying property law.

The consequences of a storm are anything but natural. Absent intentional policymaking, heirs are at risk of losing their homes, their neighborhoods, and their communities to the social consequences of devastated homes: blight, displacement, and gentrification. By adopting inclusive approaches to disaster recovery and resilience program eligibility standards, local, state, and federal actors can take a significant, albeit long overdue, step toward ensuring the protection of socially vulnerable homeowners.

