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The Heirs' Property Dilemma: How Stronger Federal Policies Can Help Narrow the Racial Wealth Gap

I. INTRODUCTION

Without the proper knowledge and preparation, a family that owns heirs' property could lose all of the resources they have invested for generations in their home.¹ Heirs' property ownership is a complex social justice issue and financial burden for Black communities that inhibits homeowners from receiving assistance after their homes and land have been damaged due to an environmental disaster such as flooding.² An accurate account of the amount of heirs property is difficult to determine because data on heirs' property is incomplete and only the onerous efforts of acquiring and processing county-level documents and directly engaging with landowners would disclose its real scope.³ In a 2017 land use policy article, Gaither and Zarnoch estimated that heirs' property accounts for approximately 30–40 percent of Black-owned land in the South.⁴ Heirs' property owners often have difficulty providing proof of ownership because property is typically passed down from generation to generation without a will or other legal

1. See U.S. Dept. of Homeland Sec., *Floods*, READY.GOV (Dec. 9, 2021), <https://www.ready.gov/floods> [<https://perma.cc/TE7M-QWJE>] (providing information and resources to prepare for floods in order to mitigate the damage that floods cause).

2. See RORY FLEMING ET AL., SEA GRANT N.C., SPLITTING HEIRS: THE CHALLENGES POSED BY HEIRS' PROPERTY OWNERSHIP TO COASTAL RESILIENCE PLANNING I (2016), https://ncseagrant.ncsu.edu/ncseagrant_docs/coastallaw/pubs/heirs_property.pdf [<https://perma.cc/5E3X-GV3H>] (“Heirs’ property ownership is both a social justice issue for poor African American communities, as well as an obstacle to recovery after their homes and land are damaged by flooding or other weather events.”).

3. See Surekha Carpenter & Sonya Ravindranath Waddell, *Whose Land Is It? Heirs' Property and Its Role in Generational Land Retention*, FED. RSRV. BANK OF RICHMOND (Oct. 14, 2021), https://www.richmondfed.org/research/regional_economy/regional_matters/2021/rm_10_14_21_property [<https://perma.cc/T9PN-GAUM>] (“Data that reports heirs’ property is incomplete, and only the laborious efforts of retrieving and parsing county-level records and connecting with landowners directly would reveal its true scope.”).

4. See Cassandra J. Gaither & Stanley J. Zarnoch, *Unearthing 'Dead Capital': Heirs' Property Prediction in Two U.S. Southern Counties*, 67 U.S. FOREST SERV. 367, 369 (Sept. 2017), https://www.srs.fs.usda.gov/pubs/ja/2017/ja_2017_johnson_001.pdf [<https://perma.cc/KP23-W8YE>] (“The extent of heirs’ property ownership is not clearly understood in the U.S. . . . These approximations range from thirty to roughly forty percent of all African American-owned land in the South.”).

document proving ownership.⁵ Consequently, the lack of a clear title for heirs' property limits Black landowners' ability to access bank loans and federal aid, such as aid provided by the Federal Emergency Management Agency (FEMA).⁶

FEMA's Individuals and Households Program provides financial and direct services to eligible individuals and households affected by natural disasters.⁷ The program requires verification that the house listed on the individual's application is their primary residence, and that the home was owned prior to the disaster before they are eligible for either Home Repair or Replacement Assistance.⁸ To mitigate the obstacle that heirs' property brings, FEMA implemented several changes to its policy, such as expanding the forms of documentation that can be used to prove ownership or occupancy for homeowners and renters, which includes a self-certification statement.⁹ However, these changes are inadequate and present the owners of heirs' property with the same problems that had existed before the changes were implemented.¹⁰

5. See *Heirs' Property Landowners*, U.S. DEPT. OF AGR., <https://www.farmers.gov/working-with-us/heirs-property-eligibility> [<https://perma.cc/G3HU-NLR3>] (last visited Sept. 11, 2022) ("Land is passed down without a will or deed to prove ownership. Each successive generation generally results in more heirs being added to the land inheritance. The absence of the deed or will becomes more complicated and grows by generation as time and people pass.").

6. See FLEMING ET AL., *supra* note 2, at 1 ("Lack of clear property title in an heirs' property may inhibit the ability of the occupants of the house to apply for federal financial assistance after a natural disaster. In this situation, the occupants may have few to no resources to repair damage to their house.").

7. See *Verifying Home Ownership or Occupancy*, FED. EMERGENCY MGMT. AGENCY (Sept. 8, 2021) [hereinafter *Verifying Home Ownership or Occupancy*], <https://www.fema.gov/assistance/individual/after-applying/verifying-home-ownership-occupancy> [<https://perma.cc/FEH8-4MCT>] (detailing the procedures that must be met to acquire the programs services).

8. See *id.* ("FEMA is required to verify you lived at the address in your application as your primary residence before providing most types of IHP Assistance. FEMA is also required to verify you owned your home before providing Home Repair or Replacement Assistance.").

9. See Press Release, Fed. Emergency Mgmt. Agency, FEMA Makes Changes to Individual Assistance Policies to Advance Equity for Disaster Survivors (Sept. 2, 2021) [hereinafter *Changes to Individual Assistance Policies*], <https://www.fema.gov/press-release/20210902/fema-makes-changes-individual-assistance-policies-advance-equity-disaster> [<https://perma.cc/Z3A2-3E3D>] ("FEMA will now accept a broader range of homeownership and occupancy documentation, and expand the forms of assistance offered to survivors.").

10. See Memorandum from Keith Turi, Assistant Adm'r, Recovery Directorate, Fed. Emergency Mgmt. Agency to Reg'l Adm'rs, Fed. Emergency Mgmt. Agency (Sept. 2, 2021), https://www.fema.gov/sites/default/files/documents/fema_iappg-policy-amendments-

This Note argues that FEMA’s solution to the aforementioned problem is inadequate.¹¹ Part II explores the disparate impact of flood damage on various communities and the history and current implications of heirs’ property.¹² Part III assesses the obstacles that owners of heirs’ property encounter with meeting FEMA’s proof-of-ownership requirement when trying to obtain assistance after a flood.¹³ Part IV analyzes FEMA’s policy changes and solution to the problem.¹⁴ Part V discusses why FEMA’s policy change does not solve the problem that it is intended to address.¹⁵ Part VI provides proposals for resolving heirs’ property documentation issues before disasters occur.¹⁶ Lastly, Part VII summarizes the argument and concludes this Note.¹⁷

II. BACKGROUND

A. *Flooding: Damages and How They Impacts Communities Unequally*

Climate change could drive a 26 percent rise in U.S. flooding by 2050, creating more intense flooding which would disproportionately impact Black and low-income groups.¹⁸ A study published in 2022 by Nature Climate Change found that as climate change causes flooding to increase, Black communities—especially in the South—face the largest increase in flood risk.¹⁹ In contrast, most census tracts with low

memo.pdf [https://perma.cc/MKE2-TMGV] (detailing the changes made to the individual assistance and program policy guide).

11. See Bracey Harris et al., *FEMA Closes Gap that Prevented Many Black Families in South from Receiving Disaster Aid*, CNBC (Sept. 2, 2021, 8:36 AM), <https://www.cnbc.com/2021/09/02/fema-closes-gap-that-prevented-many-black-families-in-south-from-receiving-disaster-aid.html> [https://perma.cc/6G3Z-ZJPG] (“Under [FEMA’s] new policy . . . such applicants will be able to take other steps to prove ownership, such as showing receipts for significant repairs or improvements at their homes. In some cases, they will be allowed to self-certify to meet the ownership requirements.”).

12. See *infra* Part II.

13. See *infra* Part III.

14. See *infra* Part IV.

15. See *infra* Part V.

16. See *infra* Part VI.

17. See *infra* Part VII.

18. See Oliver E. J. Wing et al., *Inequitable Patterns of US Flood Risk in the Anthropocene*, 12 NATURE CLIMATE CHANGE 156–62 (2022) (“The future increase in risk will disproportionately impact Black communities, while remaining concentrated on the Atlantic and Gulf coasts.”).

19. See *id.* at 159 (“Areas with high Black population proportions are clearly concentrated across the Deep South [], in the very locations where climate change is

populations of Black people see little increase in climate-induced flood risks.²⁰

Flooding can cause significant damage to property such as structural and electrical damage,²¹ appliance damage,²² mold and mildew,²³ and damage to septic and well water systems.²⁴ Flood damage often requires expensive repairs averaging from \$2,000 to \$5,000.²⁵

Flood insurance is available and currently is predominantly provided by FEMA, but it is estimated that fewer people will purchase it, despite the increased risk of floods.²⁶ This could be due to recent increases in costs.²⁷ The majority of standard homeowners insurance policies do not cover flood damage.²⁸ Most flood insurance policies are

expected to intensify flood risk.”); *see also* Ayesha Tandon, *US Flooding Increase Will ‘Disproportionately’ Impact Black and Low-Income Groups*, CARBON BRIEF (Jan. 31, 2022), <https://www.carbonbrief.org/us-flooding-increase-will-disproportionately-impact-black-and-low-income-groups/> [<https://perma.cc/88RK-WRSE>] (“[I]n the coming decades, black communities – especially in the Deep South – will face the largest increase in flood risk.”).

20. *See* Wing et al., *supra* note 18, at 159 (“In contrast, most census tracts with the lowest Black population proportions see very little increase in climate-induced flood risk.”).

21. *See* *What Kind Of Home Damage Can a Flood Cause?*, ALLSTATE (July 2019), <https://www.allstate.com/resources/flood-insurance/home-flood-damage> [<https://perma.cc/6ZG8-RJXS>] (explaining that structural and electrical damage caused by flood water includes roof or foundation cracks and frayed electric wires).

22. *See id.* (explaining that home appliances damaged by flood water include heating, ventilation, and air conditioning, and water heater).

23. *See id.* (asserting that in addition to building materials such as drywall, mold begins to grow within twenty-four to forty-eight hours after a flood on personal property such as clothing and furniture).

24. *See id.* (explaining that the ability of a septic tank to accept water can be compromised by clogged septic tank filters during flooding).

25. Stewart Robinson, *Flood Damage Cost Estimates*, FLOOD MGMT. SERV. (Aug. 4, 2021), <https://floodmanagement.com/2021/08/flood-damage-cost-estimates/> [<https://perma.cc/QW6Q-CZY8>].

26. *See* Emily Schmidt, *Inundating the Gulf: Fewer Americans Covered By Federal Flood Insurance Even As Population Grows in Flood-Prone Areas*, APM RSCH. LAB (July 28, 2022), <https://www.apmresearchlab.org/10x-flood-insurance> [<https://perma.cc/A389-XVBU>] (“Created by Congress in 1968 and administered by FEMA, [the National Flood Insurance Program] . . . provides insurance through a network of over 50 insurance companies and NFIP Direct to lessen the disastrous impact of floods.”).

27. *See id.* (“Dr. Samuel Brody, director of the Institute for a Disaster Resilient Texas and professor at Texas A&M University at Galveston, said raising flood insurance rates has become an equity issue because they’ve become so expensive that people can’t afford them.”).

28. *See* Les Masterson, *Guide to Flood Insurance*, FORBES: ADVISOR (Nov. 21, 2022, 7:27 AM), <https://www.forbes.com/advisor/homeowners-insurance/flood-insurance/> [<https://perma.cc/ZM4E-EBAU>] (“[A] standard homeowners insurance policy won’t cover flood damage—and only 15% of homeowners have flood insurance.”).

separate policies that typically provide dwelling and personal belongings coverage.²⁹ Without flood insurance, victims of flood damage may face exorbitant out-of-pocket expenses, with averages ranging from \$3.75 to \$7.00 per square foot, depending on the degree of damage.³⁰ The majority of people in the United States are not insured against flooding, with only one in six homes having flood insurance.³¹ However, approximately 90 percent of natural disasters in the United States involve flooding.³² 75 percent of these flood insurance policies are administered by FEMA's National Flood Insurance Program (NFIP).³³ Homeowners may also purchase private flood insurance, which makes up a small percentage of the overall market.³⁴

The NFIP was created after private insurers, deeming flooding an untouchable risk, stopped providing policies to homeowners that lived in high-risk areas.³⁵ FEMA estimates that one million fewer Americans will purchase flood insurance by the end of 2030.³⁶ This is partially due to a new pricing system implemented in April 2022 by FEMA which will cause most policy holders' rates to increase.³⁷

29. *Id.*

30. *How Much Does Water Restoration Cost*, NAT'L FLOOD SERV., <https://nationalfloodservices.com/faq-items/how-much-does-water-damage-restoration-cost/> [<https://perma.cc/HUE7-9GAY>] (last visited Oct. 2, 2022).

31. *Flood: State of the Risk*, INSR. INFO. INST. (Jan. 4, 2022), https://www.iii.org/sites/default/files/docs/pdf/triple-i_state_of_the_risk_floods_01042022.pdf [<https://perma.cc/9828-L95C>].

32. *Natural Disasters*, U.S. DEPT. OF HOMELAND SEC., <https://www.dhs.gov/natural-disasters> [<https://perma.cc/6AJ4-3VLV>] (last visited Oct. 14, 2022) (“Ninety percent of natural disasters within the United States involve flooding.”).

33. *Flood: State of the Risk*, *supra* note 31.

34. *See* Masterson, *supra* note 28 (noting that “the majority of homeowners who buy flood insurance buy it from the National Flood Insurance Program”); *see* CAROLYN KOUSKY ET AL., UNI. OF PA. WHARTON: RISK MANAGEMENT AND DECISION PROCESSES CENTER, THE EMERGING PRIVATE RESIDENTIAL FLOOD INSURANCE MARKET IN THE UNITED STATES 15 (July 2018), <https://riskcenter.wharton.upenn.edu/wp-content/uploads/2018/07/Emerging-Flood-Insurance-Market-Report.pdf> [<https://perma.cc/3L3M-TRLN>] (estimating that private flood policies comprise of only 3.5% to 4.5% of primary residential flood policies).

35. Michael Phillis, *FEMA Report: Flood Insurance Hikes Will Drive IM from Market*, AP NEWS (July 22, 2022), <https://apnews.com/article/floods-entertainment-federal-emergency-management-agency-congress-climate-and-environment-2f8fac768c73e52090eaa59f742ff48d> [<https://perma.cc/LA8W-ZRYC>].

36. *Id.*

37. *Id.*

B. *Black Homeownership in the United States*

In 2020, the U.S. homeownership rate increased by 1.3 percent from 2019, reaching 65.5 percent.³⁸ However, Black homeownership has decreased since 2010.³⁹ For many Black families, owning property has been a particularly difficult task due to a myriad of reasons.⁴⁰ According to the National Association of Realtors, Black Americans still encounter considerable barriers to homeownership in the current housing market.⁴¹ Racial inequities exist in the housing market because Black households not only pay a larger percentage of their income than White households for rent and have greater student loan debt, but also experience discrimination in real estate transactions.⁴² These barriers make it more difficult for Black people to save for down payments which are necessary to purchase a home.⁴³

C. *Heirs' Property*

Heirs' property is land that is jointly owned by descendants of a deceased person and has been passed from one generation to the next without a will or other legal document establishing ownership.⁴⁴ If there are multiple heirs, each heir owns the property as “tenants in common,” meaning each person has an undivided interest in the entire

38. Troy Green, *U.S. Homeownership Rate Experiences Largest Annual Increase on Record, Though Black Homeownership Remains Lower Than a Decade Ago*, *NAR Analysis Finds*, NAT'L ASS'N OF REALTORS (Feb. 23, 2022), <https://www.nar.realtor/newsroom/u-s-homeownership-rate-experiences-largest-annual-increase-on-record-though-black-homeownership-remains-lower-than-decade-ago> [<https://perma.cc/88RZ-SE8B>].

39. *See id.* (“The homeownership rate for Black Americans – 43.4% – trails behind that of a decade ago (44.2% in 2010).”).

40. *See* Sophia Anong et al., *Asset Ownership by Black and White Families*, in 18 CHARITABLE FIN. COUNSELING & PLAN. 33–45 (2007) (explaining the inequalities in asset ownership between black and white families).

41. Green, *supra* note 38.

42. *See* Anna Bahney, *The Black Homeownership Rate Is Now Lower Than It Was a Decade Ago*, CNN BUS. (Feb. 25, 2022, 10:45 AM), <https://www.cnn.com/2022/02/25/homes/us-black-homeownership-rate/index.html> [<https://perma.cc/2YLM-BSZ7>] (“The 41% of Black households with student debt is more than twice that of Asian households at 18% and nearly twice that of White households at 22%, while 26% of Hispanic households have student debt.”).

43. *Id.*

44. *See Heirs' Property Landowners*, *supra* note 5 (“Heirs' property is family-owned land that is jointly owned by descendants of a deceased person whose estate did not clear probate.”).

property.⁴⁵ Although multiple tenants can own land of unequal sizes, each tenant still has the right to occupy and use all of the property.⁴⁶ Each heir has the legal right to terminate their interest and demand a partition action without the agreement of other owners.⁴⁷ A partition lawsuit can be difficult to stop since courts typically cannot force a cotenant to maintain ownership against their will.⁴⁸

In addition, the existence of several owners makes the property vulnerable to involuntary loss through forced partition sale by third parties such as developers.⁴⁹ Third parties exploit partition law by buying the interest of co-tenants and ordering partition by sale.⁵⁰ Partition sales can be economically devastating for families.⁵¹ If there

45. See FLEMING ET AL., *supra* note 2, at 1 (“Tenancy in common in property law refers to an arrangement where multiple tenants’ own portions of the land in question, potentially of unequal size, yet each tenant has the right to occupy and use all of the property.”).

46. *Id.*

47. See *Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act*, A.B.A. (Oct. 1, 2016), https://www.americanbar.org/groups/state_local_government/publications/state_local_law_news/2016-17/fall/restoring_hope_heirs_property_owners_uniform_partition_heirs_property_act/ [<https://perma.cc/V3ZG-QMYR>] (“[Partition is] a legal proceeding in which a tenant in common seeks to exit a tenancy in common, by ordering a forced, partition sale of the property even when these courts could have ordered a remedy that would have preserved the property rights of the tenants in common.”).

48. See Jim Bush, *The Definitive Guide to Partition Actions: Forcing the Sale of Jointly Owned Property*, KEYSTONE L. GRP., P.C. (Oct. 21, 2022), <https://keystone-law.com/guide-to-partition-actions> [<https://perma.cc/7H6Q-3AM4>] (“While it is possible to defend partition actions, doing so is difficult, as the court typically cannot force a co-owner to maintain ownership of a property they do not want.”).

49. See Lizzie Presser, *Their Family Bought Land One Generation After Slavery. The Reels Brothers Spent Eight Years in Jail for Refusing to Leave It.*, PROPUBLICA (July 15, 2019) [hereinafter *Their Family Bought Land*], <https://features.propublica.org/black-land-loss/heirs-property-rights-why-black-families-lose-land-south/> [<https://perma.cc/W7CB-JGAW>] (detailing the hardships faced by many families who have been subject to forced partition).

50. See *Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act*, *supra* note 47 (“[Partition is] a legal proceeding in which a tenant in common seeks to exit a tenancy in common, by ordering a forced, partition sale of the property even when these courts could have ordered a remedy that would have preserved the property rights of the tenants in common.”).

51. See Thomas W. Mitchell et al., *Forced Sale Risk: Class, Race, and the “Double Discount*, 37 FLA. ST. U. L. REV. 589, 610–19 (2010) (explaining the implications of not having a clear title such as partition sales which can be economically devastating for families because the actual value of the property is rarely given).

are many co-tenants, each is left with a small sum of money—including the co-tenant who occupied and perhaps improved the property.⁵²

D. Heirs' Property and Black Land Loss

Heirs' property has been a significant driver of Black land loss in the United States.⁵³ The lack of a clear title limits access to bank loans and federal aid, depressing the value and economic use of the property.⁵⁴ Heirs' property disproportionately affects Black families throughout the South, accounting for one-third of all Black-owned land.⁵⁵ This issue also affects Latinx families in the Southwest, Indigenous communities on reservations, and low-income families in Appalachia.⁵⁶ Relatively high rates of Black land loss due to heirs' property likely contributes to the racial wealth gap.⁵⁷

Despite immense challenges, many Black people were able to acquire land following the Civil War.⁵⁸ This was partially due to Union Army General William Tecumseh Sherman issuing a special field order

52. *Id.*

53. See Janice F. Dyer et al., *Ownership Characteristics of Heir Property in a Black Belt County: A Qualitative Approach*, 24 J. OF RURAL SOC. SCI. 192, 193 (2008) (“There is a consensus in the literature that heir property has been a primary source of land loss among African Americans, including black farmers . . .”).

54. See Noah Ranells, *Heirs Property*, NC FARMLINK (Dec. 12, 2022), <https://ncfarmlink.ces.ncsu.edu/heirs-property/> [<https://perma.cc/J2R3-3AGY>] (“Without proper documentation and a court proceeding to clear the “cloudy” title, third parties . . . have no way of knowing who is really entitled to the property and whether any creditor claims apply.”).

55. See *Their Family Bought Land*, *supra* note 49 (“Heirs’ property is estimated to make up more than a third of Southern black-owned land — 3.5 million acres, worth more than \$28 billion.”).

56. See U.S. Department of Agriculture, *Heirs' Property*, NAT'L AGRIC. LIBR., <https://www.nal.usda.gov/farms-and-agricultural-production-systems/heirs-property> [<https://perma.cc/N5JY-LCSW>] (last visited Feb. 4, 2023) (“Heirs’ property is most predominant among African American landholders, contributing to land loss from 16 million to 4.7 million acres over the last hundred years. It is also an issue for Latinx families in the southwest, Indigenous families on reservations, and low-income families in Appalachia.”).

57. See Suzanne Updike, *The Lasting Impact of Heirs' Property*, WASH. POST (July 15, 2021, 4:22 PM), https://www.washingtonpost.com/opinions/letters-to-the-editor/the-lasting-impact-of-heirs-property/2021/07/15/d654de1c-e340-11eb-88c5-4fd6382c47cb_story.html [<https://perma.cc/8NLM-G9F2>] (“Found in many socially disadvantaged communities, [heirs’ property] contributes to the widening wealth gap in our country.”).

58. See *Their Family Bought Land*, *supra* note 49 (“Land was an ideological priority for black families after the Civil War, when nearly 4 million people were freed from slavery.”).

on January 16, 1865, declaring 400,000 acres of land formally held by Confederates to be given to Black people, also known as “40 acres and a mule.”⁵⁹ However, discrimination, distrust in the legal system, and lack of access to government services prevented Black people from formalizing their ownership on paper.⁶⁰ The practice of passing land down in Black families without a will began during Reconstruction, when Black people did not have access to the legal system, and continued through the Jim Crow era,⁶¹ a time when Black people distrusted White courts.⁶² Consequently, Black Americans did not execute wills under the assumption that they would keep the land in the family while failing to realize that family ownership was actually jeopardized by the transfer of property through intestacy, rather than through a will.⁶³ Between 1910 and 1997, Black people lost about 90 percent of their land.⁶⁴ Despite making up 13 percent of the population, Black Americans own less than 1 percent of rural land in the country.⁶⁵ White Americans, by comparison, own more than 98 percent of U.S. land.⁶⁶

Those who have inherited heirs’ property may need legal services to resolve heirs’ property issues, including preparing all legal documents, correcting an outdated land record, conducting title searches and surveys, determining legal heirs, and representation in court.⁶⁷ In

59. Waymon R. Hinson, *Land Gains, Land Losses: The Odyssey of African Americans Since Reconstruction*, 77 AM. J. ECON. & SOCIO. 893, 902-904(2018).

60. See *Their Family Bought Land*, *supra* note 49 (“Mitchell didn’t trust the courts, so he didn’t leave a will. Instead, he let the land become heirs’ property, a form of ownership in which descendants inherit an interest, like holding stock in a company.”).

61. Hinson, *supra* note 59, at 902–04.

62. See *What Was Jim Crow*, FERRIS ST. UNIV., <https://www.ferris.edu/HTMLS/news/jimcrow/what.htm> [https://perma.cc/9AMT-UPGA] (last visited Oct. 20, 2022) (“[T]he Supreme Court helped undermine the Constitutional protections of blacks with the infamous Plessy v. Ferguson (1896) case, which legitimized Jim Crow laws and the Jim Crow way of life . . . Plessy sent this message to southern and border states: Discrimination against blacks is acceptable.”).

63. See *Their Family Bought Land*, *supra* note 49 (detailing the hardships faced by many families who have been subject to forced patrician).

64. *Id.*

65. *Who Owns Almost All America’s Land?*, INEQUALITY.ORG (Feb. 15, 2016), <https://inequality.org/research/owns-land/> [https://perma.cc/32DB-VF3D] (“African Americans, despite making up 13 percent of the population, own less than 1 percent of rural land in the country. The combined value of this land: \$ 14 billion.”).

66. *Id.*

67. See *Protect Your Land*, CENT. FOR HEIRS PROP., <https://www.heirsproperty.org/protect-your-land/> [https://perma.cc/Z3W6-SCPT] (last visited Sept. 16, 2022) (“Our clients receive all the legal services necessary to resolve heirs’

addition, those who have inherited heirs' property may need to resolve title issues by financing the purchase or consolidation of property interests and financing costs associated with clearing the title.⁶⁸ This may also include costs and fees associated with buying out fractional interests of other heirs, closing costs, appraisals, title searches, surveys, preparing documents, mediation, and legal services.⁶⁹ Many heirs cannot afford the high court costs and attorney fees that are required to resolve heirs' property issues, so the title of the property often remains unclear.⁷⁰

E. *Racial Wealth Gap and Real Estate*

Experts contend that investing in real estate is the safest and most reliable way to build wealth in the United States.⁷¹ Black households have “less wealth to pass on to the next generation than White households and therefore less funds to invest in real estate.”⁷² This widens the racial wealth gap even more and limits economic

property issues including title searches, preparing documents, scheduling land surveys, requesting hearings, and providing full representation in court.”).

68. *See id.* (explaining that resolving title issues often require financing costs).

69. *See USDA Announces First Three Lenders for Heirs' Property Relending Program*, NAT'L RES. CONSERVATION SERV. (Aug. 18, 2022), <https://www.nrcs.usda.gov/news/usda-announces-first-three-lenders-for-heirs-property-relending-program> [<https://perma.cc/6TGV-BXKX>] (explaining the resources offered to help those who inherit property without a clear title).

70. *See Christy Kane et al., Addressing Heirs' Property in Louisiana: Lessons Learned Post-Disaster*, LA. APPLESEED 89, 90 https://www.srs.fs.usda.gov/pubs/gtr/gtr-srs244/gtr_srs244_010.pdf [<https://perma.cc/8WKL-5J34>] (last visited Sept. 16, 2022) (“Many heirs, especially low-income heirs inheriting small estates, could not afford the necessary legal paperwork due to high court costs and attorneys' fees associated with this required process.”).

71. *See David Greene, Why Real Estate Builds Wealth More Consistently Than Other Asset Classes*, FORBES (Nov. 27, 2018), <https://www.forbes.com/sites/davidgreene/2018/11/27/why-real-estate-builds-wealth-more-consistently-than-other-asset-classes/?sh=3ea1a9bf5405> [<https://perma.cc/CDF9-7X2F>] (dark archive)] (explaining that real estate may be the safest, steadiest, and simplest way to build wealth in America).

72. *See Christian E. Weller & Lily Roberts, Eliminating the Black-White Wealth Gap Is a Generational Challenge*, CTR. FOR AM. PROGRESS (Mar. 19, 2021), <https://www.americanprogress.org/article/eliminating-black-white-wealth-gap-generational-challenge/> [<https://perma.cc/3JAT-68M7>] (“This system has always made it difficult for Black households to acquire and keep capital, and this lack of capital has created a persistently large racial wealth disparity, as African Americans have had less wealth to pass on to the next generation than white households.”).

prospects of Black households.⁷³ Although the median family wealth for all Americans has increased by \$14,000 from 1992 to 2016, the growth in household wealth has not been inclusive.⁷⁴ In 2016 the Federal Reserve found that Black households had roughly one-tenth the median wealth of White households.⁷⁵

A stable foundation of family wealth is based on “equity capital, liquid savings, credit, and access to investable assets.”⁷⁶ These components are not equally accessible to Black households.⁷⁷

The racial wealth gap would be greatly reduced if disparities in homeownership rates were eliminated.⁷⁸ The Florida Housing Coalition finds that homeownership and landownership play a significant role in creating wealth and drive intergenerational economic mobility.⁷⁹ However, Black people continue to be uprooted from their homes and lands due to issues such as heirs’ property.⁸⁰ Heirs’ property may obstruct the occupants’ ability to pursue their present and future economic goals.⁸¹

73. *See id.* (explaining that Black individuals have less wealth to pass on to future generations and therefore less wealth to invest “invest in their children’s education, to start a business, relocate for new and better opportunities, buy a house, and have greater participation in the democratic process”).

74. *See id.* (“Wealth is the difference between what families own—for instance, their savings and checking accounts, retirement savings, houses, and cars—and what they owe on credit cards, student loans, and mortgages, among other debt.”).

75. *See* Nick Noel, et al., *The Economic Impact of Closing the Racial Wealth Gap*, MCKINSEY & CO. (Aug. 13, 2019), <https://www.mckinsey.com/industries/public-and-social-sector/our-insights/the-economic-impact-of-closing-the-racial-wealth-gap> [<https://perma.cc/29NF-5H8U>] (“[T]he median white family had more than ten times the wealth of the median black family in 2016.”).

76. *Id.*

77. *Id.*

78. *See* Laura Sullivan et al., *The Racial Wealth Gap: Why Policy Matters*, DEMOS (2015), <http://racialequity.issuelab.org/resources/29921/29921.pdf> [<https://perma.cc/55K9-4WMG>] (“Eliminating disparities in homeownership rates and returns would substantially reduce the racial wealth gap.”).

79. Ann Carpenter & Sarah Stein, *Landmark Act in Florida Aims To Keep Land (and Wealth) in Black Families*, HOUS. NEWS NETWORK 10, 10 (July 2020).

80. *See* Vann R. Newkirk II, *The Great Land Robbery*, THE ATL. (Sept. 29, 2019, 2:15 PM), <https://www.theatlantic.com/magazine/archive/2019/09/this-land-was-our-land/594742/> [<https://perma.cc/TV2Q-LBLV>] (explaining that Black people have been almost completely uprooted from the Mississippi Delta and how heirs’ property issues continue to separate Black landowners from their property).

81. *See* April Simpson, *Racial Justice Push Creates Momentum to Protect Black-Owned Land*, PEW (Sept. 21, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/09/21/racial-justice-push-creates-momentum-to-protect-black-owned-land> [<https://perma.cc/7MHM-VEYQ>] (explaining that if we continue to partition

III. PROBLEM

A. *Federal Assistance: Difficulty Obtaining FEMA Assistance After a Natural Disaster*

FEMA's Individuals and Households Program provides financial and direct services to eligible individuals affected by a disaster that damages or destroys their home.⁸² As part of the process, FEMA is required to verify that the house listed on the application of those seeking aid is their primary residence and that they are the homeowners in order to qualify for FEMA's "Home Repair" or "Replacement Assistance."⁸³ If FEMA cannot verify occupancy or ownership through a public records search, applicants for federal disaster assistance will be asked to provide documentation to prove occupancy or ownership.⁸⁴ Until a policy change in 2021, FEMA only accepted as proof of ownership the following documents: the deed or title; mortgage documentation; homeowners insurance documentation; property tax receipt or bill; manufactured home certificate or title; home purchase contracts; or a last will and testament (with death certificate) naming the applicant as heir to the property.⁸⁵ FEMA relied on these documents to prove that disaster victims owned their property.⁸⁶

A Washington Post study conducted in 2021 that analyzed 9.5 million aid applications submitted since 2010 found that FEMA denial rates for "title issues" in majority-Black counties were double the

heirs' property, with every generation we will have parcels of land that have very little agricultural, residential, and commercial value).

82. See *Individuals and Households Program*, FED. EMERGENCY MGMT. AGENCY (Oct. 11, 2022), <https://www.fema.gov/assistance/individual/program> [<https://perma.cc/86RP-2GJH>] ("FEMA's Individuals and Households Program (IHP) provides financial and direct services to eligible individuals and households affected by a disaster, who have uninsured or under-insured necessary expenses and serious needs.").

83. *Verifying Home Ownership or Occupancy*, *supra* note 7.

84. *Id.*

85. *Id.*

86. See Bracey Harris et al., *FEMA Closes Gap That Prevented Many Black Families in South from Receiving Disaster Aid*, CNBC (Sept. 2, 2021, 8:36 AM), <https://www.cnbc.com/2021/09/02/fema-closes-gap-that-prevented-many-black-families-in-south-from-receiving-disaster-aid.html> [<https://perma.cc/K4DJ-A28L>] (explaining that previously "FEMA relied on records like deeds to prove that land belonged to disaster victims before it sent them money through its individual assistance program").

national average of around 2 percent.⁸⁷ This is in part because Black Americans are less likely to have a will than White Americans and are therefore more likely to own heirs' property.⁸⁸ In parts of the Deep South, FEMA has denied up to a quarter of those seeking assistance because of failure to prove ownership.⁸⁹

Where there are multiple heirs, the occupant of the heirs' property would have to collect notarized signatures from all the tenants in common attesting that the individual applying for aid owns the house.⁹⁰ This process may be impossible to accomplish, but even if it is accomplished, a partition action might be triggered by one of the non-occupant co-owners and force the sale of the land.⁹¹

The same 2021 report from the Washington Post highlighted Greensboro, Alabama—a predominately Black community in which at least 35 percent of applicants were denied disaster aid because they did not meet the proof of ownership requirement.⁹² With no other options to repair damage, victims were forced to choose between finding a relative to stay with, staying in a hotel, remaining in their uninhabitable home, living in a vehicle, or finding a storage shed to rent.⁹³

What happened to the heirs' property owners in rural Alabama after the disaster is not unique to Alabama.⁹⁴ Heirs' property was a barrier to community rebuilding efforts in New Orleans, Louisiana,

87. Andrew Ba Tran & Hannah Dreier, 'The Real Damage', WASH. POST (July 11, 2021, 6:00 AM), <https://www.washingtonpost.com/nation/2021/07/11/fema-black-owned-property/> [<https://perma.cc/SK4T-7XFX>].

88. See Althea Chang-Cook, *Why People of Color Are Less Likely to Have a Will*, CONSUMER REPORTS. (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/6K2P-VUB8>] (noting that 77 percent of Black people do not have a will).

89. Ba Tran & Dreier, *supra* note 87.

90. B. James Deaton, *A Review and Assessment of the Heirs' Property Issue in the United States*, 46 J. OF ECON. ISSUES 615, 619 (2012); see Ba Tran & Dreier, *supra* note 87 (describing a man who sought fifteen signatures of relatives scattered across the country).

91. See Tia S. Overway, Note, *Preserving the Interests of Black Heirs Property Owners: A Preference for Tenants in Possession and Elimination of Judicial Discretion*, 16 S.J. POL'Y & JUST. 54, 63 (2022) (noting that individuals may not know that they have a stake in a property and may choose to sell when they are informed).

92. See Ba Tran & Dreier, *supra* note 87 (describing the aftermath of a tornado outbreak in Greensboro, Alabama where homes were left abandoned with paint peeling, roofs sagging or missing, and windows broken but applicants were unable to receive aid to repair them).

93. See *id.* (noting that some victims had to stay in a hotel, car, storage shed, or remain in their uninhabitable home).

94. *Id.*

where nearly 25,000 residents “lacked a clear title to their home”⁹⁵ and obtained their property from their decedents without a will or other legal document proving ownership.⁹⁶ Following Hurricane Katrina, approximately 20,000 of those heirs’ property owners were denied FEMA or U.S. Department of Housing and Urban Development assistance because they lacked a clear title to their property.⁹⁷ Due to the difficulty of obtaining recovery aid, many people stopped paying taxes on their homes, and lost them at public auctions.⁹⁸ By requiring disaster survivors to provide incontrovertible proof of homeownership, heirs’ property owners were left with little to no options after being denied federal assistance.⁹⁹

B. Difficulty Using Heirs’ Property as Collateral for Loans

When taking out a loan from a bank or another financial institution, it can be secured or unsecured.¹⁰⁰ The loan can be secured by “pledging something with significant value in case [of] default,” which occurs if the agreement made with the lender is broken by breaching one of the terms outlined in the loan contract.¹⁰¹ Homes and land can be used as assets for secured loans.¹⁰² Secured loans have

95. See Laura Bliss, *These Communities Face a Double Threat from Hurricane Florence and Property Rights*, GRIST (Sept. 17, 2018), <https://grist.org/article/these-residents-face-a-double-threat-from-hurricane-florence-and-property-rights/> [<https://perma.cc/VED7-28KN>] (“In 2005, Hurricane Katrina shone a light on how many heir’s properties there are in the Southeast. Nearly 25,000 residents in New Orleans lacked a clear title to their home . . .”).

96. See Kane et al., *supra* note 70 (noting that many people in New Orleans, Louisiana obtained their property from their decedents without a will or other legal document proving ownership).

97. *Id.*

98. See Bliss, *supra* note 95 (“Because it was so challenging for these largely low-income owners to qualify for FEMA and long-term recovery aid for storm repairs, many of them stopped paying taxes on their homes and then lost them at a public auction . . .”).

99. See *id.* (explaining that it is common for low-income disaster victims who own heirs’ property to experience a cascade of issues after natural disasters).

100. Megan DeMatteo, *Here’s The Difference Between Secured and Unsecured Loans*, CNBC (Apr. 25, 2022), <https://www.cnbc.com/select/secured-loans-vs-unsecured-loans/> [<https://perma.cc/8TX3-YWYW>].

101. Casey Bond, *Everything You Need to Know About Collateral Loans*, U.S. NEWS (July 9, 2021), <https://money.usnews.com/loans/articles/everything-you-need-to-know-about-collateral-loans> [<https://perma.cc/FA4K-XJC4>].

102. Kim Porter & Amanda Push, *Secured Loans: What You Need To Know*, LENDING TREE (July 30, 2021), <https://www.lendingtree.com/personal/is-a-secured-loan-right-for-you/> [<https://perma.cc/Q2MG-LWDW>] (noting that property, land, vehicles, bank accounts, investments, valuables, and life insurance can all be used as collateral for a loan).

several benefits such as offering lower interest rates than unsecured loans and assisting in credit building.¹⁰³ Without a clear title, heirs' property owners cannot use their property as collateral for loans or financing.¹⁰⁴ The ability to obtain loans and create financial stability can increase wealth and improve the overall quality of life.¹⁰⁵ Owners of heirs' property may not be able to use their largest asset, property, as collateral for a loan to fund expenses such as property improvements, emergency costs, and college tuition.¹⁰⁶

C. *Leads to Widening Racial Wealth Gap*

Property loss has exacerbated the wealth inequities that have existed in our country since its founding.¹⁰⁷ Heirs' property is one of the leading causes of Black land loss and it contributes significantly to the racial wealth gap in this country.¹⁰⁸ Heirs' property issues often

103. Paris Ward, *The Pros and Cons of Collateral Loans*, CREDIT KARMA (Aug. 31, 2022), <https://www.creditkarma.com/personal-loans/i/pros-cons-collateral-loans> [<https://perma.cc/6PGS-KXHG>] (explaining that collateral loans often have lower interest rates than unsecured loans, larger loan amounts may be available, and they could be a way to improve credit).

104. See Brooke Christy, *Heirs' Property Relending Program and Additional Opportunities to Mitigate Land Loss*, FARM BILL LAW ENTER. (Sept. 16, 2022), <https://www.farmbilllaw.org/2022/09/16/heirs-property-re-lending-program-and-additional-opportunities-to-mitigate-land-loss/> [<https://perma.cc/9MBT-MEPC>] (“[W]ithout a clear title the heirs cannot use the land as collateral for loans—which further prevents economic development.”).

105. See Julia Kagan, *What Is Quality of Life? Why It's Important and How to Improve it*, INVESTOPEDIA (June 24, 2022), <https://www.investopedia.com/terms/q/quality-of-life.asp> [<https://perma.cc/BAQ8-3Y4P>] (explaining that financial security can increase an individual's quality of life).

106. See Dori Zinn & Mike Cetera, *6 Good Reasons to Get a Personal Loan*, FORBES (Nov. 19, 2020), <https://www.forbes.com/advisor/personal-loans/good-reasons-to-get-a-personal-loan/> [<https://perma.cc/48MX-X2RU>] (noting that personal loans can be crucial for a variety of reasons such as emergency unexpected expenses, debt consolidation, home repairs, and vehicle financing).

107. Carpenter & Waddell, *supra* note 3.

108. See Simpson, *supra* note 81 (noting that “Black-owned land with active farm operations has decreased roughly 85% over the past century” and “heirs' property contributes to the racial wealth gap and is among the strongest examples of historic and structural racism”); Anne Price, *Preserving Black-Owned Land Is One of Our Greatest Triumphs Against Racial Wealth Inequity*, MEDIUM (Aug. 1, 2019), <https://insightcced.medium.com/preserving-black-owned-land-is-one-of-our-greatest-triumphs-against-racial-wealth-inequity-b6424f011829> [<https://perma.cc/FN2F-5ZBF>] (noting that heirs' property is the leading cause of black land loss and a major contributor to the racial wealth gap in this country).

become problematic for the first time immediately following a disaster, since federal assistance programs such as FEMA require clear title.¹⁰⁹

When heirs' property owners are denied FEMA assistance for lack of clear title, their options may be few depending on the condition of their residence.¹¹⁰ Victims may be left with no other option but to choose homelessness or remain in their uninhabitable homes.¹¹¹ Although FEMA does not have legal authority to condemn or demolish homes, the local, state, and federal governments do.¹¹² Ordinances and codes that establish housing standards vary by jurisdiction, but their function and purpose are similar.¹¹³ In general, ordinances and codes require homeowners and landlords to follow housing codes by maintaining their property to minimum standards, to protect the health of residents, which includes operable plumbing and heating facilities, adequate roofing, and structural support.¹¹⁴ If a municipality deems a house unfit for human habitation, they may condemn it. If there are occupants living in the house at the time it is condemned, the municipality will require occupants to leave the dwelling who cannot return until the occupants make necessary renovations to bring the home up to code.¹¹⁵

109. Carpenter & Stein, *supra* note 79.

110. See Ba Tran & Dreier, *supra* note 87 (noting that disaster victims may be left with no other option but to choose homelessness or remain in their uninhabitable homes).

111. See *id.* (noting that victims with substantial damage to their homes were unable to continue to live in them).

112. *Condemning Property Is Done by Local Jurisdictions*, NOT FEMA, FED. EMERGENCY MGMT. AGENCY (Sept. 16, 2021) <https://www.fema.gov/fact-sheet/condemning-property-done-local-jurisdictions-not-fema> [<https://perma.cc/AQ4V-UTBT>].

113. See *What To Do When My Home is Condemned for Alleged Code Violations or Based on Claims That It Is Unsafe or Uninhabitable*, OWNER'S COUNS. AM., <https://www.ownerscounsel.com/featured-article/what-to-do-when-my-home-is-condemned-for-alleged-code-violations-or-based-on-claims-that-it-is-unsafe-or-uninhabitable/> [<https://perma.cc/XVT7-6XCK>] (last visited Oct. 20, 2022) (noting that most cities, towns, and counties have adopted housing codes aimed at the general well-being, health, and safety of their occupants).

114. See Charlotte Code of Ordinances, Ord. No. 9651, § 1, 10-14-2019; *State Housing Codes*, NAT'L CTR. FOR HEALTHY HOUS., <https://nchh.org/information-and-evidence/healthy-housing-policy/state-and-local/healthy-housing-codes/by-state/> [<https://perma.cc/382A-N2A2>] (last visited Oct. 21, 2022) (explaining that state housing codes set the standards that must be met by all housing to protect the health of residents).

115. *What You Need to Know About Condemned Houses in 2023*, HOMEGO (July 5, 2022), <https://www.homego.com/blog/what-happens-to-condemned-houses/> [<https://perma.cc/SH9F-8VA8>].

If victims of disasters complete all the required repairs, the municipality can restore the house from condemned status.¹¹⁶ However, if survivors do not receive government disaster relief funding government and cannot afford to make the required repairs on their own, the house will not be removed from condemned status and survivors cannot return to their house. Consequently, the loss of homes and property to natural disaster further widens the racial wealth gap.¹¹⁷

IV. FEMA'S SOLUTION

On September 2, 2021, FEMA announced that it would make changes to the way it verifies homeownership for disaster relief applicants.¹¹⁸ These sweeping changes were intended to assist applicants who lack certain legal documentation for heirs' property.¹¹⁹ The new policy was put into effect for natural disasters declared after August 23, 2021.¹²⁰ First, FEMA amended its policy by expanding the forms of documentation that can be used to prove ownership and occupancy for homeowners and renters, respectively, with the option to self-certify ownership as a last resort.¹²¹ The expanded list of documents now includes receipts for major repairs or property maintenance dated within five years prior to the disaster; a letter prepared after the disaster from a mobile home park owner or manager or public official that meets FEMA requirements; and letters or mail delivered to the applicant's address from an employer, public official, social services organization, local school, or school district.¹²²

116. *See id.* (explaining that occupants living in the home at the time that it was condemned, cannot return unless necessary renovations are made to the house to address the reasons it was condemned).

117. *See* Carpenter & Waddell, *supra* note 3 (explaining that "property loss has contributed to creating and widening the wealth gaps that have existed in our nation since its inception" and "heirs' property has been one definable way that this loss . . . has occurred").

118. *See* Changes to Individual Assistance Policies, *supra* note 9 (noting that "FEMA will now accept additional forms of documentation to verify occupancy and ownership requirements, improves access to disaster assistance for underserved communities").

119. *Id.*

120. *Id.*

121. *See* Turi, *supra* note 10 (explaining that FEMA has expanded the types of acceptable documents that may be submitted to prove occupancy and ownership and is permitting a written self-declarative statement as a last resort.).

122. *Id.*

Furthermore, in place of a formal appeal process, FEMA will send inspectors to applicants' homes to verify property ownership.¹²³ Applicants may then show the aforementioned additional forms of paperwork to FEMA inspectors during the visits rather than appeal.¹²⁴ Although inspectors do not decide whether victims will receive assistance, they are trained to verify disaster-related damage to homes and personal property and to record damage that may be eligible within the Individual and Households Program.¹²⁵

As a last resort, FEMA will accept a written certification from applicants whose pre-disaster residence was passed down via heirship if the other documentation cannot be produced.¹²⁶ To be sufficient, a self-certification for proof of ownership of heirs' property must include: the address of the disaster-damaged residence; the duration of the owner's residence in the disaster-damaged home as their primary residence; the applicants' name(s) and signature(s); a copy of the decedent's death certificate; a statement declaring that a genuine effort was made to gather acceptable documentation; and justification for why ownership verification was not possible.¹²⁷

V. WHY FEMA'S SOLUTION IS INADEQUATE

FEMA's self-certification and expanded list of documents for proving ownership is a step in the right direction.¹²⁸ In June 2022, FEMA reported that after the policy change, approximately 42,000 homeowners were able to receive disaster assistance that would have

123. Bracey Harris et al., *FEMA Closes Gap That Prevented Many Black Families in South from Receiving Disaster Aid*, CNBC (Sept. 2, 2021, 8:36 AM), <https://www.cnbc.com/2021/09/02/fema-closes-gap-that-prevented-many-black-families-in-south-from-receiving-disaster-aid.html> [<https://perma.cc/6APH-V5UW>].

124. *Id.*

125. *Home Inspections*, FED. EMERGENCY MGMT. AGENCY (last updated Oct 13, 2022), <https://www.fema.gov/assistance/individual/after-applying/home-inspections> [<https://perma.cc/5RMM-VKMS>].

126. *Verifying Home Ownership Or Occupancy*, *supra* note 7.

127. *Id.*

128. See Bailey Wright, *FEMA Distributes \$350M in Disaster Relief to Heirs Property Owners After Policy Change*, ABC NEWS 4 (June 29, 2022), <https://abcnews4.com/news/local/fema-distributes-350m-in-disaster-relief-to-heirs-property-owners-after-policy-change-senator-tim-scott-jon-ossoff-wciv> [<https://perma.cc/RE9X-XKPA>] (explaining that from 2021 to 2022, the FEMA policy change has allowed over 42,000 homeowners and 53,000 renters to receive assistance that would have been denied assistance under the old system).

been previously denied.¹²⁹ While this is a significant improvement, the FEMA changes are not substantive enough in the affected communities.

Although FEMA has expanded the type of documentation that applicants may submit to verify ownership,¹³⁰ some people may still be unable to produce such documentation. For example, receipts for major repairs dated within five years prior to the disaster could be difficult to produce since heirs may be reluctant to repair or improve the property.¹³¹ If one co-tenant pays the entire bill and the property is later sold, all co-tenants get the benefit of the enhanced value of the property that may have resulted from one co-tenant's investment in the repair.¹³² In addition, documentation may also be difficult to provide if it has been destroyed during a flood or other natural disaster.¹³³ However, if these documents are not available, those who own heirs' property may self-certify that they own their homes.¹³⁴

A. *Documentation and Other Heirs*

An issue arises when multiple heirs claim to be the owner of the property in order to receive housing assistance funds.¹³⁵ When multiple applicants claim ownership for the same address and provide self-certifications of ownership, the applicant who provides other satisfactory ownership documentation may be deemed the eligible recipient of aid.¹³⁶ If all applicants provide self-certifications of ownership, the first applicant to meet all eligibility and documentation

129. *Id.*

130. Changes to Individual Assistance Policies, *supra* note 9.

131. See Press Release, FEMA, *Replacing Personal Documents after a Natural Disaster* (May 21, 2018) [hereinafter *Replacing Personal Documents*], <https://www.fema.gov/press-release/20210318/replacing-personal-documents-after-natural-disaster> [<https://perma.cc/E5PX-22D5>] (noting the various documents that individuals lose during natural disasters).

132. See Ranells, *supra* note 54 (“Heirs may be reluctant to repair or improvement the property because every dollar spent is supposed to be divided among all of the other heirs.”).

133. See *Replacing Personal Documents*, *supra* note 131 (noting the various documents that individuals lose during natural disasters).

134. See *Verifying Home Ownership Or Occupancy*, *supra* note 7 (explaining that FEMA allows heirs' property owners to self-certify ownership in order to receive aid).

135. See Turi, *supra* note 10 (“[There are] instances where multiple applicants may claim they are the owner occupant.”).

136. *Id.*

requirements will be awarded the FEMA disaster funds.¹³⁷ Consequently, the true owner must meet all eligibility and documentation criteria in order to prove they are the true owner over other heirs, meaning the co-tenant who is actually possessing the property.¹³⁸ If they cannot meet the criteria, funding may not be awarded to the true owner.¹³⁹

B. Issue of Disaster Fraud

In addition to other heirs, the true owner may run into obstacles with non-heirs: scammers who commit fraud against FEMA.¹⁴⁰ After disasters, individuals often attempt to take advantage of disaster victims.¹⁴¹ Due to FEMA's vast size and the typically large number of victims affected by a disaster, people frequently engage in disaster fraud schemes to gain benefits to which they are not entitled.¹⁴²

FEMA requires disaster survivors to provide proof of homeownership to combat scammers who make off with as much as 1 percent of FEMA aid each year.¹⁴³ In 2020, the Department of Homeland Security conducted an audit which found that FEMA had

137. *Id.* (“If all claimants provide self-declarative statements, the first applicant to meet all eligibility and documentation criteria will be awarded the Housing Assistance funds.”).

138. *See id.* (“In instances where multiple applicants claim they are the owner-occupant, an applicant who provides other acceptable ownership documentation may be determined eligible when all other applicants claiming ownership for the same address provide self-declarations of ownership. If all claimants provide self-declarative statements, the first applicant to meet all eligibility and documentation criteria will be awarded the Housing Assistance funds.”).

139. *See id.* (noting that if applicant cannot prove occupancy and ownership by either documentation or a self-declarative statement, funding will not be provided).

140. *See* Press Release, FEMA, *Protect Yourself from Fraud, Schemes and Scams*, (Sept. 28, 2021) [hereinafter *Protect Yourself from Fraud*], <https://www.fema.gov/press-release/20210928/protect-yourself-fraud-schemes-and-scams> [<https://perma.cc/G8SR-ELKA>] (explaining that FEMA and disaster victims are targets by fraudsters after natural disasters).

141. *See id.* (explaining that “scammers may target [disaster] survivors when they are in a stressful state and are more susceptible to potential fraud”).

142. *See* Press Release, Dept. of Homeland Sec. Off. of Inspector Gen., *Camden, New Jersey, Woman Admits Defrauding FEMA after Natural Disasters*, (Mar. 21, 2018), <https://www.oig.dhs.gov/node/4424> [<https://perma.cc/VG6A-ZJ8C>] (noting that “due to FEMA’s vast size and the typically large number of victims resulting from a disaster, FEMA is frequently targeted in disaster fraud schemes by individuals or groups seeking benefits to which they are not entitled”).

143. *See* Ba Tran & Dreier, *supra* note 87 (“FEMA created that requirement on its own, to combat scammers who make off with as much as 1 percent of aid each year.”).

distributed more than \$3 billion in improper and potentially fraudulent payments for home repair assistance since 2003.¹⁴⁴

Moreover, self-certification of ownership “increases the agency’s vulnerability to fraud and improper payments”¹⁴⁵ as scammers can claim to be owners of property through self-certification statements. If the true owner does not have other acceptable ownership documentation, they might not be able to prove that they are the true owner.¹⁴⁶ Scammers are also capable of producing false documentation to be deemed eligible over the true owner if the true owner is relying exclusively on self-certification to establish ownership.¹⁴⁷

For example, in a case investigated by the U.S. Department of Homeland Security’s (DHS’) Office of the Inspector General (OIG), an individual fraudulently received more than \$30,000 after making false statements and providing false documentation in their FEMA disaster assistance application.¹⁴⁸ The applicant falsely claimed that they owned the home and that it was their primary residence.¹⁴⁹ This instance of fraud is not unique, as the DHS’s OIG in 2018 investigated an individual who submitted several fraudulent documents including letters, invoices, earning statements, leasing agreement, and copies of rental receipt payments.¹⁵⁰

144. DEPT. OF HOMELAND SEC. OFF. OF INSPECTOR GEN., *OIG-20-23, FEMA HAS MADE MORE THAN \$3 BILLION IN IMPROPER AND POTENTIALLY FRAUDULENT PAYMENTS FOR HOME REPAIR ASSISTANCE SINCE 2003* 1 (2020), <https://www.oig.dhs.gov/reports/2020/fema-has-made-more-3-billion-improper-and-potentially-fraudulent-payments-home-repair-assistance-2003/oig-20-23-apr20> [<https://perma.cc/WLQ9-YU7D>].

145. See Ba Tran & Dreier, *supra* note 87 (“[FEMA] still requires most disaster survivors to prove ownership because . . . ‘self-certification of ownership increases the agency’s vulnerability’ to fraud and improper payments.”).

146. See Turi, *supra* note 10 (“[T]he first applicant to meet all eligibility and documentation criteria will be awarded the Housing Assistance funds”).

147. See Dept. of Homeland Sec., *supra* note 142 (noting that woman defrauded FEMA in 2014 after Hurricane Sandy struck New Jersey in 2012).

148. See Press Release, Off. of Inspector Gen., Dept. of Homeland Sec., *Mannford Woman Guilty of Fraudulently Receiving Over \$30,000 In Disaster Relief*, (May 21, 2014), <https://www.oig.dhs.gov/news/press-releases/2014/05022014/mannford-woman-guilty-fraudulently-receiving-over-30000-disaster> [<https://perma.cc/4D8J-Z7NN>] (noting that a woman fraudulently obtained FEMA disaster assistance benefits made available to victims of the Mannford wildfires by making false statements and providing false documents to support her application for FEMA disaster assistance).

149. See *id.* (noting that home was not owned by the applicant and had been uninhabited).

150. See *id.* (describing woman who obtained over \$30,000 due to their fraudulent assertions and documents).

VI. PROPOSALS

A. *FEMA: Education, Outreach and Prevention*

A lack of knowledge can create and perpetuate heirs' property issues.¹⁵¹ Providing education and resources to communities is another way to provide heirs' property owners the resources they need to clear titles and prevent future heirs' properties problems.¹⁵² The cycle of generational property loss is broken by proper estate planning that takes heirs' property protection into consideration.¹⁵³ Education can include informing the community on heirs' property, the importance of clearing title, maintaining clear title, and the importance of wills and estate planning.¹⁵⁴ The goal of this proposed solution is to equip communities with the information they need to clear titles and prevent the formation of heirs' properties.¹⁵⁵

FEMA explains that education equips the entire community with the information, expertise, and skills necessary to assist individuals

151. See Edward Pennick & Monica Rainge, *African-American Land Tenure and Sustainable Development: Eradicating Poverty and Building Intergenerational Wealth in the Black Belt Region*, in HEIRS' PROPERTY AND LAND FRACTIONATION: FOSTERING STABLE OWNERSHIP TO PREVENT LAND LOSS AND ABANDONMENT 93, 94 (Cassandra Johnson Gaither et al., eds., 2019), https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs244.pdf [<https://perma.cc/8JNL-G63B>] (explaining that in order to correct issues that arise with owning heirs' property, landowners are required to have a sound knowledge of their rights and responsibilities as landowners. Without at least basic knowledge, Black-owned land often falls prey to tax sales, adverse possession, foreclosures, and mineral rights exploitation).

152. See 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 98, 100 (Cassandra Johnson Gaither, et al., eds., 2019), https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs244.pdf [<https://perma.cc/8JNL-G63B>] (explaining the importance of educating community members on what heirs' property is, its impact, its cures, and its preventions to break the cycle of generational property loss).

153. See StipeMaas, *supra* note 152, at 99 ("Estate planning that contemplates heirs' property prevention breaks the cycle of generational property loss.").

154. See Lizzie Presser, *How to Close Heirs' Property Loopholes*, PROPUBLICA (July 15, 2019, 4:59 AM) [hereinafter *How to Close Heirs' Property Loopholes*], <https://www.propublica.org/article/what-can-heirs-property-owners-do-to-protect-their-land-loss> [<https://perma.cc/L6VW-GWQE>] (noting that education can be provided to help families clear title, make estate plans, and maintain clear titles).

155. See Edward Pennick & Monica Rainge, *supra* note 151, at 95–96 (noting that lack of estate planning and unclear titles are primary factors that contribute to the loss of Black-owned land).

before, during, and after natural disasters.¹⁵⁶ In Publication One, FEMA explains that its emergency management role consists of raising risk awareness, providing education for risk reduction options, and acting before disasters.¹⁵⁷ Here, the risk associated with not resolving heirs' property issues is that homeowners may lose property to a natural disaster and not receive federal funds to repair the property due to lack of proof of ownership.¹⁵⁸ This risk can be reduced by educating people with heirs' property on the importance of obtaining a clear title before disaster occurs and providing information on how to avoid creating heirs' property in the first place.¹⁵⁹ FEMA would be acting within its emergency management role by raising risk awareness, providing risk reduction options, and encouraging heirs' property owners to act before disasters occur.¹⁶⁰

Furthermore, this solution will align with the FEMA Disaster Mitigation Act of 2000, which found that a greater emphasis needs to be placed on implementing adequate measures to reduce losses from natural disaster.¹⁶¹ Providing the community with information regarding heirs' property can reduce losses from disaster.¹⁶² Georgia Heirs' Property Law Center has discovered that educational outreach is one of the most effective tools for preventing and resolving heirs'

156. See FEMA, *Training and Education*, U.S. DEPT. OF HOMELAND SEC. (last updated July 14, 2022), <https://www.fema.gov/emergency-managers/national-preparedness/training> [<https://perma.cc/5499-6LVY>] (“Training and education provide the whole community with knowledge, skills and abilities needed to help people before, during and after disasters.”).

157. See FEMA, *Publication One*, U.S. DEPT. OF HOMELAND SEC. (2019) [hereinafter *Publication One*], https://www.fema.gov/sites/default/files/2020-03/publication-one_english_2019.pdf [<https://perma.cc/ZBL7-UPLG>] (noting that in FEMA's emergency management role they raise risk awareness, educate in risk reduction options, and help to act before disasters).

158. See *How to Close Heirs' Property Loopholes*, *supra* note 154 (explaining that without clear title heirs' property owners are vulnerable to losing their property).

159. See StipeMaas, *supra* note 152, at 100 (explaining that clearing title and estate planning before disaster occurs is one of the most effective preventative measures for heirs' property).

160. See *Publication One*, *supra* note 157 (noting that in FEMA's emergency management role they raise risk awareness, educate in risk reduction options, and help to act before disasters).

161. See Disaster Mitigation Act of 2000, Pub. L. No. 106-390, 114 Stat. 1553-1576 (noting that adequate measures need to be implemented to reduce losses from natural disasters).

162. See Kane et al., *supra* note 70, at 91 (noting that providing the community with information regarding heirs' property can help prevent future problems).

property.¹⁶³ If heirs' property is prevented and resolved, owners will not have difficulty proving ownership due to heirs' property issues, and they will not encounter this barrier at the inopportune time that they are trying to obtain much-needed FEMA assistance after a natural disaster.¹⁶⁴

B. *FEMA: Legal Services*

Resolving heirs' property issues and obtaining a clear title can be expensive and complex.¹⁶⁵ If legal services can be provided for an heirs' property owner to resolve deed issues before a disaster occurs, the barrier of proving ownership to receive FEMA assistance could be eliminated.¹⁶⁶

Disaster Legal Services (DLS), created in 2007 by FEMA and the American Bar Association's Young Lawyers Division, provides free legal help to low-income disaster survivors after presidentially declared disasters.¹⁶⁷ DLS helps address problems that arise after disasters such as insurance claims for loss of property, legal documents lost during the disaster, proof of homeownership, and FEMA appeals.¹⁶⁸

According to FEMA regulations, provisions of disaster legal services may be accomplished by use of volunteer lawyers, use of federal lawyers, and use of private lawyers who may be paid by FEMA

163. See StipeMaas, *supra* note 152, at 100 (“[I]ntentional outreach by community advocates can resolve and prevent heirs’ property so that generational wealth building and community revitalization efforts can succeed.”).

164. See Kane et al., *supra* note 70, at 91 (noting that providing the community with information regarding heirs’ property can help prevent future problems).

165. B. James Denton, *Land ‘in Heirs’: Building a Hypothesis Concerning Tenancy in Common and the Persistence of Poverty in Central Appalachia* 11 J. OF APPALACHIAN STUD. 83, 83–93 (2005) (noting that issues that result from owning heirs’ property require funding and legal resources to solve); see B. James Denton, *Intestate Succession and Heir Property: Implications for Future Research on the Persistence of Poverty in Central Appalachia* 41 J. OF ECON. ISSUES 927, 927–42 (2007).

166. See Ba Tran and Dreier, *supra* note 87 (noting that barriers to proving ownership include title issues).

167. See *About Disaster Legal Services*, A.B.A. [hereinafter *About Disaster Legal Services*], https://www.americanbar.org/groups/young_lawyers/projects/disaster-legal-services/ [https://perma.cc/8DN5-EHG5] (last visited Oct. 20, 2022) (“Through the Disaster Legal Services Program, the ABA Young Lawyers Division (ABA YLD) and the Federal Emergency Management Agency (FEMA) provide immediate temporary legal assistance to disaster survivors at no charge.”).

168. See *id.* (explaining that DLS is authorized under Section 415173 of the Stafford Act and implementing regulations can be found in 44 C.F.R. § 206.164).

if it is found that qualifying disaster victims cannot get competent legal aid through any other means.¹⁶⁹ The regulations state that if it is necessary for FEMA to compensate lawyers for their legal services, the Regional Administrator shall establish the amount of compensation owed to the attorneys who have supplied legal services.¹⁷⁰ In addition, at the regional administrator's discretion, administrative fees may be paid to lawyers who provided services requested by the administrator.¹⁷¹ By compensating private attorneys to assist heirs' property owners with resolving deed issues through DLS, FEMA would motivate more attorneys to help.

Although DLS focuses its efforts on helping survivors after disasters have occurred, DLS should extend its services to resolve heirs' property issues before disasters occur.¹⁷² This aligns with DLS' mission to help individuals after disasters, because if heirs' property issues are resolved and ownership can be proven before disasters occur, heirs' property owners will not have issues providing homeownership documentation to access federal assistance from FEMA in a timely manner.¹⁷³ Also, if heirs' property issues are resolved up front, it could be more efficient than trying to resolve the issue later.

In addition, if DLS provides legal services to resolve title issues that arise with heirs' property, it would also align with FEMA's goals. According to FEMA's mission statement, FEMA works to aid people before and after disasters.¹⁷⁴ If FEMA provides pro bono services to resolve heirs' property issues, FEMA can resolve the issues before disasters occur to ensure that ownership issues do not prevent individuals from obtaining aid as expeditiously as possible. After disasters occur, heirs' property owners will not have issues proving ownership since it has been resolved beforehand.

The aforementioned solution could also work to mitigate issues of fraud. If title is cleared before disasters occur, there will be no

169. 44 C.F.R. § 206.164(c)-(d).

170. *Id.*

171. *Id.*

172. See *About Disaster Legal Services*, *supra* note 167.

173. See *Disaster Legal Services*, DISASTERASSISTANCE.GOV (last updated Nov. 11, 2022), <https://www.disasterassistance.gov/get-assistance/forms-of-assistance/4464> [<https://perma.cc/Q36Q-2KZG>] (noting that DLS provides free legal help to low-income disaster survivors and presidentially declared disasters).

174. *About Us*, FEMA, (June 7, 2022) [hereinafter *About Us*], <https://www.fema.gov/about> [<https://perma.cc/3Q3S-JS5V>].

opportunity for bad actors to take advantage of the self-certification of ownership exception for heirs' property owners.¹⁷⁵

C. *Education: Community Reinvestment Act*

Another potential solution is for banks to provide education about heirs' property and receive credit through the Community Reinvestment Act (CRA).¹⁷⁶ The CRA requires the Federal Reserve and other federal banking regulators to encourage financial institutions to meet the credit needs of the communities where they conduct business, including low- and moderate-income communities.¹⁷⁷ Banks are rated on their CRA performance periodically and their lending and investment services to those communities are all evaluated as well.¹⁷⁸ This would be in the banks' interest because banks could potentially receive CRA service credit for providing education related to heirs' property.¹⁷⁹

The provision of educational opportunities on heirs' property issues would be similar to the current CRA qualifying program "Money Smarts" for financial literacy.¹⁸⁰ The heirs' property program could cover topics such as what heirs' property is and problems that arise;

175. See *Protect Yourself from Fraud*, *supra* note 140 (noting that scammers target disaster survivors).

176. See *Community Reinvestment Act*, BD. OF GOVERNORS OF THE FED. RSRV. SYS., https://www.federalreserve.gov/consumerscommunities/cra_about.htm [<https://perma.cc/V2MJ-DES2>] (last visited Aug. 24, 2022) ("Community Reinvestment Act (CRA), enacted in 1977, requires the Federal Reserve and other federal banking regulators to encourage financial institutions to help meet the credit needs of the communities in which they do business, including low- and moderate-income (LMI) neighborhoods.").

177. See *Community Reinvestment Act*, 12 U.S.C. § 2901 (1984) (noting that the Federal Reserve uses one of five evaluation techniques customized to a bank's size or business model to assess how successfully state member banks have assisted in meeting the requirements of their communities.).

178. See *Community Reinvestment Act*, *supra* note 176 ("Each performance evaluation includes: The bank's CRA rating(s), description of the bank and its community, conclusions about the bank's performance, discussion of the facts and data supporting the conclusions.").

179. See *Heir's Property*, Comment Letter on 1769(AG29) Regulation BB: Community Reinvestment Act, FED. RSRV. (Aug. 5, 2022) https://www.federalreserve.gov/SECRS/2022/August/20220808/R-1769/R-1769_080522_142408_437549927789_1.pdf [<https://perma.cc/U2MZ-FS87>] (noting that financial institutions can greatly assist communities that have been beset with heirs' property issues and aid in growing land ownership rates all while gaining CRA credit).

180. *Id.*

how to fix heirs' property issues; and how to prevent heirs' property issues from occurring.¹⁸¹

D. Financing for Legal Fees and Clearing Property Titles: USDA Lenders for Heirs Property Relending Program

Another potential solution is to utilize a pre-existing U.S. Department of Agriculture (USDA) program to provide the financing necessary to consolidate heirs' property interests. The USDA has a Lenders for Heirs' Property Relending Program (HPRP).¹⁸² HPRP provides loans to eligible entities to relend funds to eligible heirs with the purpose of resolving title issues by financing expenditures related to a succession plan, such as the purchase or consolidation of property interests.¹⁸³ Funds may be used to buy out fractional interests of other heirs in jointly owned property to clear the title, closing costs, legal services, title searches, and property surveys.¹⁸⁴ Eligible heirs include those who are individuals with authority to incur the debt and to resolve ownership and succession of a farm owned by multiple owners; are a family member or heir-at-law related by blood or marriage to the previous owner of the property; and agree to complete a succession plan.¹⁸⁵ However, the USDA Heirs Property Relending Program would only be helpful for agricultural property, so it is not a solution that could be utilized by everyone.¹⁸⁶

181. *Id.*

182. *Heirs' Property Relending Program*, U.S. DEPT. OF AGR., <https://www.farmers.gov/working-with-us/heirs-property-eligibility/relending> [<https://perma.cc/XE54-HMWV>] (last visited Jan. 2023).

183. *Id.*

184. See Press Release, U.S. Dept. of Agri., *USDA Announces First Three Lenders for Heirs' Property Relending Program* (Aug. 18, 2022) [hereinafter *Relending Program Press Release*], <https://www.usda.gov/media/press-releases/2022/08/18/usda-announces-first-three-lenders-heirs-property-relending-program> [<https://perma.cc/FW2V-DEWY>] ("HPRP intermediary lenders will reloan funds to eligible heirs to resolve title issues by financing the purchase or consolidation of property interests and financing costs associated with a succession plan. This may also include costs and fees associated with buying out fractional interests of other heirs in jointly owned property to clear the title, as well as closing costs, appraisals, title searches, surveys, preparing documents, mediation, and legal services.").

185. *Id.*

186. See *id.* ("Intermediary lenders may make loans to heirs who are individuals or legal entities with authority to incur the debt and to resolve ownership and succession of a farm owned by multiple owners.").

VII. CONCLUSION

Flooding devastates communities and causes damages to homes and property.¹⁸⁷ FEMA provides financial and direct assistance to eligible individuals and households after floods and other natural disasters occur.¹⁸⁸ One of the requirements is to prove ownership.¹⁸⁹ This requirement can be particularly difficult to meet for heirs' property owners who lack clear title.¹⁹⁰ Although FEMA has made changes to its ownership requirements, these changes are not substantial enough. Heirs' property owners must race to the finish line to provide additional documents if other heirs choose to submit a self-declaration of ownership.¹⁹¹ Owners also risk becoming victims of fraudulent schemes by bad actors who wish to make a profit from others' misfortune.¹⁹² When victims of natural disasters who own heirs' property are denied assistance and cannot afford repairs, their homes are at risk of condemnation and demolition,¹⁹³ thereby further increasing the wealth gap.¹⁹⁴

FEMA can use disaster legal services to clear the titles of those with heirs' property and educate community members about resolving and preventing heirs' property.¹⁹⁵ In addition to FEMA's initiative, CRA could potentially provide CRA credit to banks to educate the community on heirs' property. Also, the USDA offers funds to buy out fractional interests of other heirs in jointly owned property, but only to agricultural property.¹⁹⁶

187. See ALLSTATE, *supra* note 21 (noting that floods have the potential to cause damage that may require expensive repairs).

188. *About Us*, *supra* note 174.

189. See *Verifying Home Ownership Or Occupancy*, *supra* note 7 (noting that proving ownership is a requirement to receiving funds from FEMA).

190. See Carpenter & Stein, *supra* note 79, at 10 (explaining that heirs' property owners may have difficulty proving that they own their land due to title issues).

191. See Turi, *supra* note 10 (“[T]he first applicant to meet all eligibility and documentation criteria will be awarded the Housing Assistance funds.”).

192. See *Protect Yourself from Fraud*, *supra* note 140 (noting that after disaster criminals often attempt to take advantage of disaster survivors).

193. See HOMEGO, *supra* note 115 (noting that typically the homeowner must make all the necessary repairs to have the house removed from condemned status).

194. See Simpson, *supra* note 81 (“[H]eirs' property contributes to the racial wealth gap and is among the strongest examples of historic and structural racism.”).

195. See *About Disaster Legal Services*, *supra* note 167.

196. See *Relending Program Press Release*, *supra* note 184 (noting that the heirs' property relending program was created to help agricultural producers and landowners resolve heirs' land ownership).

It will likely take a variety of efforts from multiple federal agencies to tackle the complex and pervasive problem of heirs' property, which contributes to the racial wealth gap that persists in our country. However, the pre-existing federal mandates of FEMA, USDA, and the CRA provide authority and incentive for both public and private actors to get involved.

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