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Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act

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By Thomas W. Mitchell

For well over 125 years, many Americans have lost their tenancy-in-common property involuntarily in various legal proceedings. For example, courts throughout this country have often resolved partition actions, 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. Though partition sales have negatively impacted a broad cross section of people in this country, the sales have particularly impacted poor and disadvantaged African-Americans, Hispanics, white Americans, and in some instances, Native Americans. The Uniform Partition of Heirs Property Act (UPHPA), a project that the American Bar Association's Section of Real Property, Trust and Estate Law helped convince the Uniform Law Commission to undertake in 2007, seeks to address partition action abuses that have led to significant property loss. Thomas W. Mitchell, the Reporter for the Uniform Partition of Heirs Property Act, explains the UPHPA and the history of its enactment by states over the last five years.

In 2010, the Uniform Law Commission (ULC) promulgated the Uniform Partition of Heirs Property Act (UPHPA).[1] I served as the Reporter (the person with principal drafting authority for a uniform act) for the UPHPA. The act was drafted to stabilize tenancy-in-common ownership for disadvantaged families because for many decades state partition laws have contributed to widespread and devastating involuntary land loss among families who owned tenancy-in-common properties.

The very development of the UPHPA and the effort to get states to enact it into law has defied long held assumptions about the chances partition law could ever be reformed to respond to the needs of poor and disadvantaged property owners. Given the widespread assumption that this area of law could not be reformed, based upon the view that those most adversely impacted lacked any political power, it is simply remarkable that eight states have now enacted the UPHPA into law and that a number of others will be considering it in the near future. Of course, success is never preordained and in some states, enactment of the UPHPA has been the product of some very determined, even inspiring advocacy work done by a group of very diverse stakeholders including elected officials, public interest and civil rights organizations, the ULC, and community organizers.

"Heirs property" as defined under the UPHPA simply represents a subset of tenancy-in-common ownership; therefore, in order to understand the act, one needs to know a little bit about tenancy-in-common ownership. Tenancy-in-common ownership represents the most widespread form of common ownership of real property within the United States. Individual tenants in common do not own any particular part of a parcel of tenancy-in-common property but instead own a fractional interest in the undivided whole (much like a shareholder owns shares in a corporation). The prevalence of this form of ownership can be explained in significant part by the fact that this ownership form is the default ownership structure that state intestacy laws throughout the country assign to two or more people who inherit real property. Given that nearly half of Americans don't make wills,[2] a substantial amount of real property is transferred by intestacy. This ownership structure is highly insecure because it only takes one tenant in common to initiate a partition action and to request a court to resolve the litigation by ordering a forced sale, a sale that is known as a partition sale.

Within poor and disadvantaged communities, tenancy-in-common ownership has been commonly known as heirs property (or "heirs' propety" or "heir property") because such property has normally been transferred from one generation to another to groups of heirs as a result of intestacy because the rate of will-making in these communities has been exceptionally low.[3] The drafters of the UPHPA specifically utilized the term "heirs property" in the title of the act, even though the term is a colloquial term that had not been recognized by the formal law, to maximize the chances that those who would benefit most from the act could become aware of it.

For several decades prior to the promulgation of the UPHPA, many families in different regions of the United States were negatively impacted by the way state court judges had resolved partition actions involving tenancy-in-common property. These families found partition law—laws these families for the most part only became familiar with after a partition action had been filed against them—to be counterintuitive and unjust. Not only did these families have their property rights extinguished but also many of these families ended up having their property sold for just a fraction of its value, which resulted in these families losing a substantial portion of the real estate wealth associated with their tenancy-in-common ownership.

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I. Poor and Disadvantaged Property Owners Seriously Impacted

A. The Intersection of Intestacy Law and Partition Law Heightens Insecurity

A subset of tenancy-in-common owners who own their property under default rules and who are poor or who are disadvantaged in other ways[4] have been especially negatively impacted by partition law. As indicated earlier, many of these families have low rates of will-making, which has resulted in these families transferring undivided fractional interests in their property by intestacy. Moreover, heirs property tends to be property in which interests get transferred repeatedly by intestacy over time. Such a pattern of property transfer tends to expand the ownership group from one generation to another in a more substantial way than when property transfers within a family are done by devise. Though poor and uneducated people in general have comparatively low rates of will-making, intestacy also has a definite racial element. To this end, the rate of intestacy among African-Americans is more than double the rate of intestacy among white Americans and only about twenty percent of African-Americans have wills.

South Carolina Governor Nikki Haley conducts ceremonial signing of the Clementa C. Pinkney Uniform Partition of Heirs' Property Act into law on September 22, 2016. Looking on (from left to right) are: Ed Mullins, commissioner for the South Carolina delegation of the Uniform Law Commission and of counsel at Nelson Mullins Riley & Scarborough LLP; Prof. Thomas W. Mitchell, Professor of Law at Texas A&M University School of Law and the Reporter for UPHPA; and Rep. James E. Smith, Jr., primary sponsor of the UPHPA in the South Carolina House of Representatives.

Those who own heirs property that is located in the path of development can be particularly susceptible to real estate speculators or developers who want to acquire the property even if nearly all of the cotenants do not want to sell their land. The larger the number of cotenants, of course, the easier it can be for a speculator or developer to buy into the heirs property ownership group. If such a speculator or developer can purchase the fractional interests of just one cotenant, thereby becoming a tenant in common, that speculator or developer can then petition a court to order partition by sale.

As the Associated Press revealed several years ago, real estate speculators and developers in states throughout the South, exploited partition law by acquiring small interests in heirs property that African-American families had owned for generations, including cases in which the families first had acquired the property shortly after the end of the Civil War.[5] The speculators and developers often bought out particularly vulnerable family members and then in short order petitioned courts to order partition by sale. Often these courts ended up ordering partition by sale, including in many instances in which a physical division of the property (a remedy referred to as partition in kind) would have been very feasible. These sales almost always yielded prices well below fair market value including cases in which properties sold for less than twenty percent of the property's market value.

B. Partition Sales Undercut Family Wealth, Particularly for Most Vulnerable

Though for some reason it has not been obvious to many in the legal community, it should not be surprising that many families have been economically devastated by partition sales because a partition sale simply is a type of forced sale that one would expect to yield a forced sale price and not a market value price.[6] Most states require those vested with authority to sell property courts order sold by partition by sale to use the procedures for a sales upon execution, a type of forced sale often used in the creditor-debtor context. Many judges who have ordered partition sales have claimed that the partition sales they ordered somehow would maximize wealth. In contrast, many real estate attorneys and attorneys who work in the area of estate planning and creditor and debtor rights, have long known that sales upon execution by their very nature are not designed to yield a price that even closely approximates a fair market value price but instead are designed to liquidate an asset to get money to a creditor as quickly as possible.

C. A Diverse Group of Families Has Been Harmed by Partition Law

Without question, partition law has negatively affected many African-American families that have owned land in the South and most media and academic publications have focused upon this manifestation of the exploitation of partition law. Nevertheless, partition law also has had a negative impact upon families from other racial or ethnic groups whether these families have owned land in the South or in other regions. These families include white families in Appalachia and in other regions as well as Latino/Hispanic families in the Southwest. To this end, there are some commentators who have estimated that Hispanics in New Mexico alone in the late nineteenth and early twentieth century lost more than 1.6 million acres of property deemed by the federal government to be tenancy-in-common property (though such designation was highly contested) and that partition sales accounted for much of this loss.[7] There is also some compelling evidence that in places like South Texas, a large number of Latino families that have acquired property in more recent times easily could become the owners of heirs property in the not too distant future based upon high intestacy rates for Latinos and that such property ownership for these Latino families could then become insecure as a result of the extant partition law. Although poor and disadvantaged families may be particularly at risk of losing heirs property as a result of

a partition action, many other solidly middle class families who have owned heirs property, irrespective of their racial or ethnic background, also worry that their heirs property could be at risk of being ordered sold by a court.[8]

II. Primer on State Partition Laws

Partition law provides a legal mechanism that enables those that own undivided, fractional interests in tenancy-in-common or joint tenancy properties to exit such common ownership arrangements through litigation when the common owners do not come to a consensual agreement on the terms for exit. Real estate lawyers, estate planners, and other professionals with business expertise consider tenancy-in-common ownership under state default rules to be the most unstable form of common, real property ownership within the American legal system.[9] As a result, these professionals often advise their clients who either own such property or who may be purchasing real property that they would like to own under some common ownership arrangement—clients who tend to be relatively wealthy and legally sophisticated—about the pitfalls of owning tenancy-in-common property under default rules. They often further advise these clients to enter into private agreements that contract around the worst features of tenancy-in-common ownership—these agreements are known as tenancy-in-common agreements—or to organize (or reorganize) their common real property ownership under a different ownership structure altogether, such as under a limited liability company.

A. A Partition Sale Initially Was Considered an Extraordinary Remedy

The inherent instability of tenancy-in-common ownership under the default rules is attributable to the manner in which partition law has developed over many centuries, including how partition law has developed in the United States over the course of the past 150 years. For centuries in England, most tenants in common essentially were locked into tenancies in common with little ability to exit if they could not reach a voluntary agreement. In the mid-1500s, tenants in common in England were afforded a statutory right to petition courts for partition in kind, a remedy that results in a physical division of commonly-owned property into separately titled parcels.

Partition law in the American colonies developed in many similar ways to how partition law developed in England. This is not surprising given that the American colonies could not have laws that were inconsistent with England's, and, as a result, most colonial partition statutes were modeled after the English partition laws in effect during the colonial period. This meant that tenants in common in the American colonies could request partition in kind as a remedy in a partition action.

Around the time of the Civil War, several states began to permit courts to order forced, partition sales, a remedy that results in a public sale of property that is the subject of a partition action with a distribution of the proceeds of the sale on a pro rata basis to the tenants in common. As has always been the case since this remedy was first recognized, a court can order a partition sale even if just one cotenant requests partition by sale, no matter how small that cotenant's fractional interest may be and no matter if that cotenant only recently acquired her interest, irrespective of whether all of the other cotenants oppose the request for a forced sale.

In the United States, courts considered the new authority to order a partition sale "an extraordinary and dangerous power" that they only should exercise in very limited circumstances in which the necessity for such a sale was clear.[10] The early view that a court should order partition sales only sparingly persists in state statutory law. In the majority of jurisdictions, partition statutes indicate that a court may order a partition sale only if partition in kind would result in "great prejudice" or "substantial injury" (or some other similar formulation for an "injury requirement") to the cotenants.

B. Courts Began Routinely Ordering Partition Sales Several Decades Ago

In spite of what appears to be a clear preference for partition in kind, a preference that was originally designed to preserve a tenant in common's essential property rights whenever possible, many state courts over the course of the past several decades have developed an actual preference for partition by sale. They were able to do so because state legislatures for the most part never specified any criteria for the injury requirement that a tenant in common that sought partition by sale would need to establish to overcome the preference for partition in kind. As a result, courts (and in some limited instances state legislatures) began to define the injury requirement and most ended up developing an "economics-only" test.[11] Under this narrow test, a court will order partition by sale if the hypothetical fair market value of the property as a whole is more than the aggregated fair market value estimate of the parcels that would result from a partition in kind.

The many state courts that have used this test have given little or no weight to claims that many families have made that their heirs property has special, if unquantifiable, significance to them and should not be ordered sold. These claims often include one or more of the following assertions: the land has ancestral value because it has been owned by a family for generations; the land has broader historical or cultural significance; and the land provides needed shelter to family members who are indigent or infirm in some way.

III. Key Provisions of the UPHPA

Overall, the UPHPA seeks to modify partition law to address the specific problem families with heirs property holdings have experienced with partition law. At the same time, the Act makes no changes to partition law as that body of law applies to tenancy-in-common ownership for those who do not own heirs property. In seeking to stabilize heirs property ownership, the UPHPA drew upon some of the tools wealthy and legally sophisticated families typically use to preserve their family, real estate holdings.

A. UPHPA Governs Partition Actions Involving Heirs Property

In order for a partition action to be governed by the UPHPA,

the property in question must constitute "heirs property" as defined by the Act. These requirements mandate that one or more of the cotenants must have acquired their interests in the property from a relative and that the property have other indicia of family ownership. The Act does not cover tenancy-in-common property for which there is an express agreement governing the partition of the property even if the property otherwise would qualify as heirs property. Pursuant to the UPHPA, courts must determine whether property that is the subject of a partition action qualifies as heirs property, and if it does, the partition action will be decided under the UPHPA unless all of the cotenants agree otherwise. This last requirement was included as a result of access to justice concerns and it is designed to enhance the ability of heirs property owners to receive the enhanced protections the UPHPA affords, even if they (or their lawyers for that matter) may be unfamiliar with the Act.

***B.** UPHPA's Three Major Reforms*

1. Buyout of Cotenant That Petitioned Court for Partition by Sale

In addition to this threshold requirement and some important but more minor reforms, the UPHPA makes three major changes to partition law. In the aggregate these changes represent the most substantial reform of partition law in the United States in 150 years. First, if a cotenant petitions a court to order a partition sale, the cotenants that did not seek a sale must be afforded the opportunity to buy out the cotenant that petitioned the court for partition by sale at a price that represents the value of the petitioning cotenant's fractional ownership interest.[12]

2. Bolstering Preference for Partition in Kind

If a buyout does not resolve the partition action, then a court may proceed to decide whether to order partition in kind or partition by sale. As it relates to the second major change, however, the UPHPA provides real substance to the preference for partition in kind and rejects application of the economics-only test. Instead, in determining whether to order partition in kind or partition by sale, a court must consider several factors that constitute a mix of economic and non-economic factors without deciding beforehand to place more weight on any one factor whether that factor is economic or non-economic.[13] For example, a court must consider whether the property that is the subject of a partition action has sentimental, cultural, or historic value; whether one or more cotenants could be rendered homeless if a court ordered the property sold; and whether the property as a whole has economies of scale that would make it more valuable than the aggregate value of the parcels that would result from a potential partition in kind.

3. Revamped Sales Procedure Designed to Yield Higher Sales Prices

Third, the drafters of the UPHPA recognized that there will be many partition actions for which partition by sale may be the appropriate remedy for a court to order, including partition sales in which the property that is the subject of the action is a single-family home whether located in an urban or rural location. In these instances, the UPHPA seeks to ensure that the sales procedures that is used for the partition sale vindicates the goal of wealth maximization so that heirs property owners can maintain as much of the wealth that had been associated with their heirs property ownership as possible. To this end, the preferred sale procedure under the UPHPA is an "open market sale" under which the court appoints a disinterested real estate broker to list the property for sale for at least its value as determined by the court and to market the property using commercially reasonable practices.[14] This type of sales procedure stands in sharp contrast to the type of auction sales that almost always have been used for partition sales. There is good evidence from some partition cases in the United States and from cases from other countries such as Scotland that sales conducted using the "open market sale" procedures typically yield significantly higher sales prices than sales conducted using the auction sale procedures that have typically been utilized in partition cases in states across this country.

IV. Success: North, South, East, and West, and Even Across the Pacific

The UPHPA has had a strong enactment record in the five or so years it has been available for consideration by the states, which stands in stark contrast to the many failed efforts to reform partition law in individual states, reform efforts that date back to the 1970s.[15] The prior reform efforts were state specific and, in almost every case, the proponents of these reform efforts simply (but understandably) were unable to generate the necessary political support for the reform measures, measures that could have been extremely helpful to heirs property owners. In contrast, the UPHPA has benefited enormously from the strong support it has received from important national organizations.

These national organizations include the American Bar Association (through its Section of Real Property, Trust and Estate Law and its Section of State and Local Government Law) and the Uniform Law Commission.[16] The Joint Editorial Board for Uniform Real Property Acts and the American College of Real Estate Lawyers, nationally important organizations in the fields of real property and real estate law, also provided key support for the UPHPA at different critical stages in its development. These national organizations, together with a very well-functioning and effective coalition of public interest, legal aid, community-based, and civil rights organizations called the Heirs' Property Retention Coalition,[17] have worked incredibly well together at different stages either in the development of the Act or in the effort to get it enacted after it was promulgated. It is the combined effort of these various organizations, melding top down and bottom up approaches in a singular way that accounts for a large part of the Act's success thus far.

Given the many failed attempts to reform partition law in individual states over the course of four decades or so and

the fact that the Uniform Law Commission often has experienced great difficulty in getting its uniform acts in the field of real property law enacted into law, the UPHPA has had quite a remarkable record of enactment thus far. Eight states have enacted it into law since it was first made available for consideration by the states in 2011. These states are as follows: Alabama, Arkansas, Connecticut, Georgia, Hawaii, Montana, Nevada, and South Carolina.[18] The diversity in the regional and sub-regional locations of these states provides strong evidence that the extant partition law has caused unjustified problems for many families that have owned heirs property and that the UPHPA has been well crafted to remedy some of these problems. In the next few years, a number of other states are likely to consider the UPHPA as well.

Although there is geographical diversity among the states that have enacted the UPHPA into law, it is also true that four of the states are located in the South, the region in which many have long believed that heirs property owners have been victimized the most by partition actions. It is also the region that many assumed would be the most resistant to efforts to enact the UPHPA into law. Given that nearly all of the failed efforts to reform partition law to benefit poor and disadvantaged property owners prior to promulgation of the UPHPA involved efforts to reform partition law in southern states, it certainly has been quite surprising to many that the UPHPA has garnered such strong support thus far in the South.

A. South Carolina: An Unexpected and Inspirational Enactment

Of all the states to enact the UPHPA into law, South Carolina merits special consideration. For quite some time, South Carolina has widely been considered ground zero for the problems poor and disadvantaged heirs property owners, many of them African-Americans, have had with partition law. Though there once were a very large number of African-Americans who owned property on Hilton Head Island, for example, many of these owners lost their land in the latter half of the twentieth century to real estate speculators and developers as a result of partition sales.

Given this history of severe land loss as a result of partition sales, the assumption that powerful interest groups in favor of the extant law would vigorously oppose any significant efforts to reform partition law in South Carolina, and the mostly failed attempts to reform partition law in South Carolina in recent decades, many of us who participated in the drafting of the UPHPA did not believe that South Carolina would be amenable to enacting the UPHPA into law, at least not for several decades. To say the least, many of us were surprised by the level of support the UPHPA received in the South Carolina legislature after it was introduced for consideration a couple of years ago. Nevertheless, the path to enactment was rocky at times as the Act had to survive a couple of attempts that a very small number of legislators made to derail it.

In 2015, the Act was declared dead in the South Carolina House of Representatives near the very end of the legislative session after a powerful member of that chamber began to block consideration of the bill. A frantic last minute effort to revive the bill ended up bearing fruit on literally the last day of the legislative session in 2015 when the South Carolina House of Representatives passed the UPHPA with no members opposing it in the end. This past spring, the act had to survive a last ditch effort to defeat it in the South Carolina Senate as the act was approaching final consideration in that chamber.

In an effort to fend off this challenge, the supporters of the UPHPA in the senate, among other things, renamed the act the Clementa C. Pinkney Uniform Partition of Heirs' Property Act in honor of the late Senator (and Reverend) Clementa Pinckney who had been murdered in the massacre at Emanuel African Methodist Episcopal Church in Charleston on June 17, 2015. It was renamed after the late Senator Pinckney because for many years he had been the most vigorous advocate within the South Carolina legislature for property law reform to benefit poor and disadvantaged heirs property owners. The renaming of the act was not only an appropriate way to honor Senator Pinckney but it also helped stifle the effort to defeat the UPHPA.

In the end, only one member of the South Carolina legislature voted against the Clementa C. Pinkney Uniform Partition of Heirs' Property Act and Governor Haley signed it into law on April 21, 2016. Not only did she sign it into law, but she also decided to give the act special recognition by conducting a ceremonial signing of the act in her office at the state capital on September 22, 2016, before a small group of invited guests. Given the long history of partition law abuses in South Carolina and the inspiring life that Clementa Pinckney had lived, I was deeply touched to have been invited to and to have attended this event. More broadly, the success we have had in South Carolina has inspired those of us who have worked hard on getting the UHPA enacted into law to be even bolder in our enactment efforts. Our unexpected successes have taught us to resist the received wisdom that we should simply write-off certain states because of the presumption that those who would oppose our enactment efforts in those states would be simply too powerful to overcome.

B. On to Mississippi, New Mexico, Tennessee, Texas, and West Virginia

For the 2017 legislative session, we are working on getting introductions for the UPHPA in a number of jurisdictions. At this time, these jurisdictions include Mississippi, New Mexico, Tennessee, Texas, and West Virginia. Beyond seeking new enactments, it is also necessary to begin tracking how the UPHPA is impacting the ability of heirs property owners to stabilize their ownership and to retain the wealth that is associated with their tenancy-in-common ownership. Though such analysis is vital to analyzing the actual impact of the UPHPA, it is clear that the UPHPA is providing many heirs property owners throughout the United States with renewed and unexpected hope that they may now have a fighting chance to retain their family property for generations to come.

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and no compensable taking. (The Murrs, though, could only build on the vacant lot if they demolished the existing cabin.) In this appeal, the Court will have to decide the critical question of how the unit of "property" against which the loss of value is to be measured must be defined.

Other cases to watch when the Court resumes are *Manuel v. City of Joliet*, No. 14-9496, on whether a tort claim, "malicious prosecution," arising from an arrestee's prolonged detention on bogus drug charges and the suppression of a crime lab report exonerating him, is cognizable under the Fourth Amendment; *Ivy v. Morath*, No. 15-486, on the accommodations provisions of Title II of the Americans with Disabilities Act and the Rehabilitation Act mandating that services, programs, and activities of a public entity be accessible by the disabled, and the extent to which "reasonable accommodation" applies to programs managed by a state agency but administered by private vendors (in this case, a driver's education course that was mandatory for certain applicants for a driver's license, when the state agency is the sole entity authorized to issue certificates of course completion); a Free Exercise and Equal Protection Clause case, *Trinity Lutheran Church of Columbia v. Pauley*, No. 15-577, on whether the exclusion of a church from an otherwise neutral and secular grant program (to resurface a playground using scrap tire materials) is unconstitutional, when no valid Establishment Clause concern exists; and cases on who is eligible to sue under the Fair Housing Act (*Bank of America Corp. v. City of Miami*, No. 15-1111, consolidated with *Wells Fargo & Co. v. City of Miami*, No. 15-1112, on whether the FHA's "aggrieved" person extends to cities seeking to recover money damages from residential mortgage lenders, on the theory that the lenders engaged in discriminatory loan practices that led, eventually, to neighborhood blight and decreased property tax revenues).

One case that the Court has not yet agreed to hear (as of the time of writing) raises an intriguing First Amendment claim. *Packingham v. North Carolina*, No. 15-1194, examines the validity of a state law that makes it a felony for a registered sex offender to "access" a variety of commercial websites and social media sites, if the site is "know[n]" to allow minors to have accounts. The law applies regardless of whether the underlying sex conviction involved a minor. A North Carolina court upheld the enforcement of the law against Packingham, a registered sex offender since 2002 who had completed all criminal justice supervision, based on a Facebook post in which Packingham thanked God for the dismissal of a traffic ticket ("No court costs, no nothing spent .... Praise be to GOD, WOW! Thanks JESUS!").

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Endnotes

1. *See Partition of Heirs Property Act*, Uniform Law Comm'n, http://www.uniformlaws.org/Act.aspx?title=Partition%20of%20Heirs%CC20Property%20Act (last visited Oct. 5, 2016).
2. *See* Thomas W. Mitchell, *From Reconstruction to Deconstruction: Undermining Black Landownership, Political Independence, and Community Through Partition Sales of Tenancies in Common*, 95 Nw. U. L. Rev. 505, 519 (2001).
3. Though the terms "heirs' property," would be more grammatically correct, for purposes of this article, I will use the term "heirs property" to be consistent with the title of the uniform partition act and because it is a term many communities do use.
4. Oftentimes, of course, the different members of a family that owns heirs property are differently situated with some being relatively poor and others being more educated and economically better off.
5. *See* Thomas W. Mitchell, *Destabilizing the Normalization of Rural Black Land Loss: A Critical Role for Legal Empiricism*, 2005 Wis. L. Rev. 557, 566–68 (2005).
6. Thomas W. Mitchell, Stephen Malpezzi & Richard K. Green, *Forced Sale Risk: Class, Race, and the "Double Discount,"* 37 Fla. St. U.L. Rev. 589, 610–19 (2010).
7. *See* Thomas W. Mitchell, *Reforming Property Law to Address Devastating Land Loss*, 66 Ala. L. Rev. 1, 34–36 (2014) [hereinafter, Mitchell, *Reforming Property Law*].
8. *Id.* at 33 (in parts of rural Maine, for example, families who own what some refer to as "heir-locked" property feel that their ownership is unstable as a result of partition law).
9. *Id.*
10. Vesper v. Farnsworth, 40 Wis. 357, 362 (1876); *see also* Ford v. Kirk, 41 Conn. 9, 12 (1874) ("[A] sale of one's property without his consent is an extreme exercise of power warranted only in clear cases."); Croston v. Male, 49 S.E. 136, 138 (W. Va. 1904) ("[I]t would be at variance with fundamental and basic principles to say the Legislature intended to authorize a sale, instead of a division, for any light or trivial cause. So sacred is the right of property, that to take it from one man and give it to another for private use is beyond the power of the state itself, even upon payment of full compensation. The jus publicum alone authorizes the conversion of the citizen's property into money without his consent.").
11. Mitchell, *Reforming Property Law*, 66 Ala. L. Rev. at 12–13.
12. *Id.* at 51–54.
13. *Id.* at 55–56.
14. *Id.* at 57.
15. *Id.* at 36–38. During this time period, in a small number of states there were some limited successful efforts to reform partition law to provide tenancy-in-common owners with more secure property rights but these reforms were very minor in scope for the most part.
16. The catalyst for the critical support these organizations provided was the Associated Press's award-winning 2001 series on black land loss titled *Torn From the Land*, a series that featured a segment on partition sale abuses that have contributed to substantial black land loss.
17. *See* http://www.southerncoalition.org/hprc/ (last visited Oct. 5, 2016).
18. *See Partition of Heirs Property Act*, Uniform Law Comm'n, http:// www.uniformlaws.org/Act.aspx?title=Partition%20of%20Heirs%CC20Property%20Act (last visited Oct. 5, 2016).