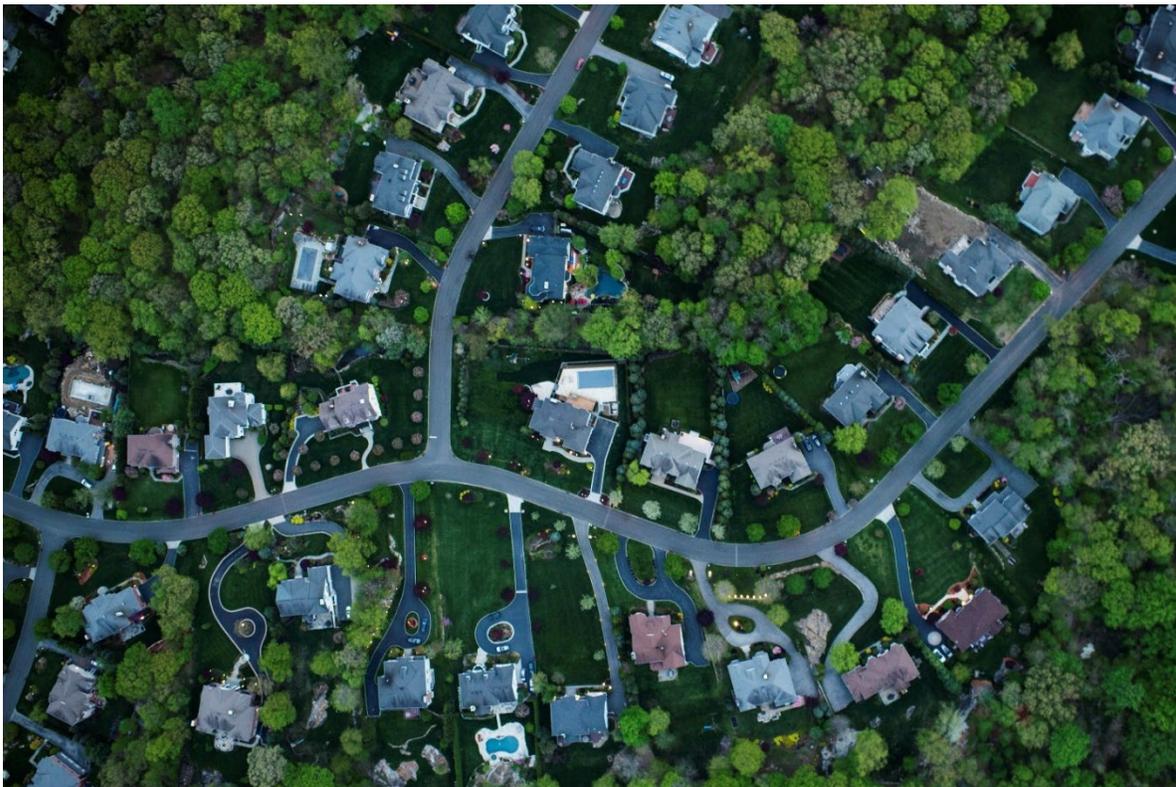




RURAL RESEARCH REPORT



Understanding Ownership, Unlocking Investment

**Clarifying the Legal Process for Title Resolution and Opportunities for
Financial Funding for Heirs' Property**

Understanding Ownership, Unlocking Investment

Clarifying the Legal Process for Title Resolution and Opportunities for Financial Funding for Heirs' Property

The Housing Assistance Council

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HAC is solely responsible for the accuracy of the statements and interpretations contained in this document and such interpretations do not necessarily reflect the views of the Robert Wood Johnson Foundation or JPMorganChase.

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The Housing Assistance Council (HAC) is a national nonprofit corporation that helps build homes and communities across rural America. For over 50 years, HAC has supported local efforts to improve rural housing conditions.

HAC is an equal-opportunity employer and housing provider.

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Introduction

Heirs' property, a form of communal landownership, is often related to unclear title on family-owned property. While clearing title is one of the most common approaches to solving issues related to heirs' property ownership, the legal process of doing so is easily misunderstood. To help clarify the necessary steps involved in clearing property titles for heirs' property owners, Housing Assistance Council (HAC) presents this report outlining the most common legal steps taken, why they are required, and ways that property owners and attorneys can be supported at each point in the process. The report also identifies potential methods of financial intervention and investment that can expedite the title clearing process, allow heirs' property owners to utilize their property, and expand future opportunities for heirs to participate in financial systems that they are currently unable to access.

Executive Summary

Heirs' property is a form of communal landownership that can be created when a property is inherited without a formal transfer of title. If a property owner dies without a will or estate plan or leaves their property to multiple owners, or if their will is not properly probated, their descendants will inherit the property together as heirs' property, and the title will be considered tangled or unclear. Heirs' property owners have undivided, shared interests in their property, and every heir has the right to use the property or prevent other heirs from making significant changes to the property. Historically, heirs' properties have been created because of a lack of access to the legal system, misunderstandings about the risks of heirs' property ownership, and families' desires to hold land communally.

Heirs' property ownership can affect property owners' ability to access capital, build generational wealth, and achieve housing stability for themselves and their families.

While heirs' property is a legally valid form of property ownership, it is not recognized by the financial mainstream as eligible for lending, collateral, or other methods of economic benefit. It is also difficult for heirs' property owners to secure disaster relief or home repair funds without a clear title to their property.

Predatory practices by investors, developers, or others looking to acquire land, including subdivision and forced sales, threaten the stability of heirs' properties. The legal process of partition can be used to subdivide an heirs' property physically among the owners, or a partition sale can be forced, and the entire property will be sold. Proceeds from the sale are divided among the heirs, after any legal fees are paid out of the total sum. Predatory actions can be taken to force the sale of heirs' property from outside the family, if a third party purchases the share of one owner and begins the partition process.

Communal land stewardship practices on Native lands and in U.S. territories are challenged by individualistic land ownership laws. In communities and cultures that value land as a shared resource rather than an individual commodity, many of the obstacles faced by heirs' property owners are also prevalent. Members of Tribes or Native communities that hold land communally are often unable to build wealth through land ownership, secure mortgages for homes, or use land as leverage for economic mobility.

The Housing Assistance Council has conducted qualitative research to better understand the process of resolving title issues related to heirs' property ownership.

This project explores the necessity of providing access to capital for heirs and opportunities for effective financial support throughout the title resolution process. Research included interviews with 69 attorneys, funders, and other professionals who work on land tenure issues, who provided a broad understanding of what title resolution means, and what the process of reaching resolution looks like across geographies. Opportunities for effective investment to support heirs' property owners were identified throughout the title resolution process.

Attorneys shared similar steps taken to achieve clients' goals related to title work. To illustrate the general title resolution process, the steps are organized into two main phases. Phase 1 involves completing title work, which includes identifying all the heirs and establishing the property's chain of title. Most attorneys reported following similar steps during this phase. The steps in phase 2 include confirming ownership, which involves updating property records to accurately reflect all living heirs with claim to the property, and consolidating ownership to fewer heirs, potentially a single owner. The laws and requirements for confirming and consolidating ownership vary widely across jurisdictions. Attorneys noted that the point at which a case closes depends on the clients' goals and capacity, the attorneys' capacity, and the scope of legal services provided.

Resolution Process Timeline

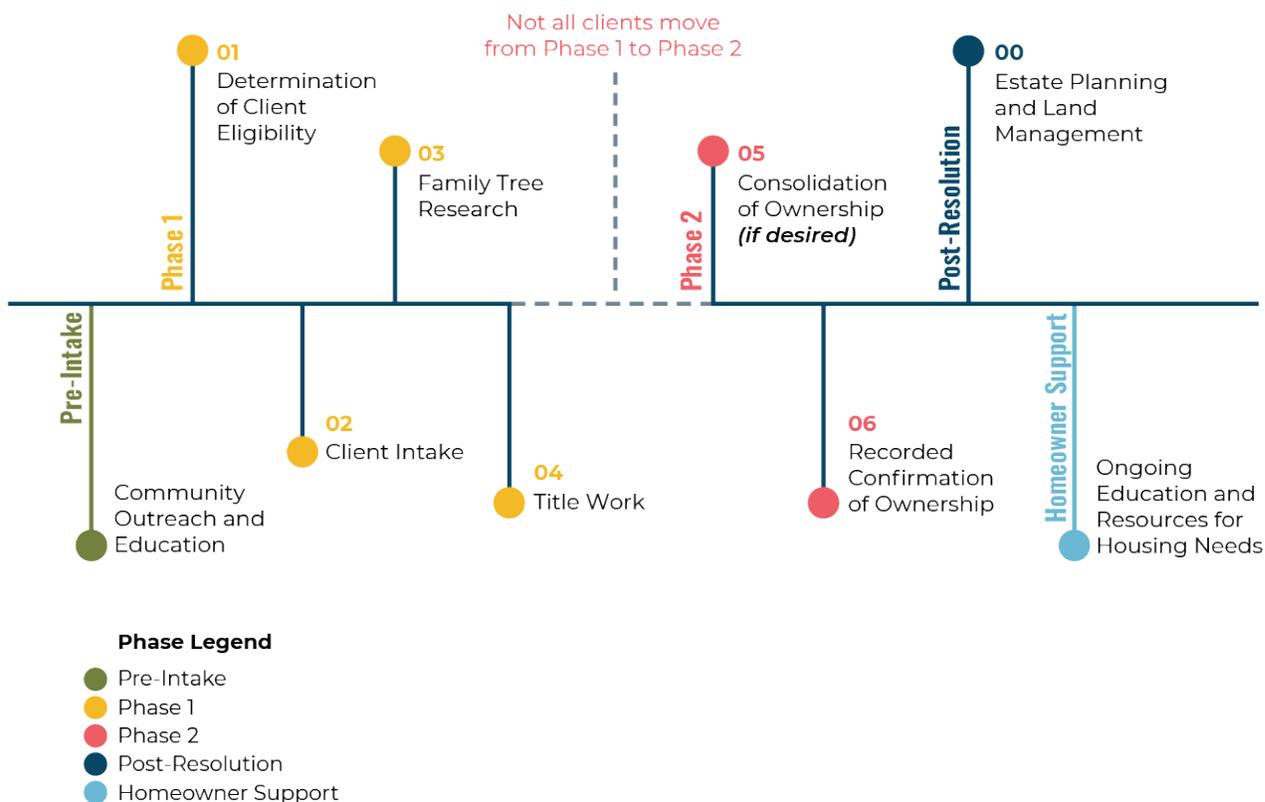


Figure 1. Outline of the steps taken during the process of title resolution. Pre-Intake and Homeowner Support steps are ongoing and take place outside of the legal process of title resolution. These steps are necessary for a comprehensive support network for heirs' property owners.

While much of the process involves legal steps that must be taken by an attorney, some of the complex steps to title resolution include non-legal work. This work includes researching the heirs' family tree, notifying other known and unknown heirs about the property, and negotiating with other owners to determine the use of the property. Some of these steps are simplified if an heir has already identified all other heirs to the property, if the family is in agreement, or if there are only a few heirs to the property.

Funding for heirs' property work includes more than legal assistance to clear title. Interviews revealed that practitioners are in need of funds for every step of the resolution process, including but not limited to family tree and genealogy research, mediation, court and administrative fees, and estate planning and entity formation. Much of the non-legal work involved in title resolution can be completed by community organizations or other entities, and attorneys reported encouraging their clients to seek help elsewhere for non-legal steps.

"Title resolution" does not have a clear definition. Attorneys, funders, and others all provided multiple varying definitions of what "title resolution" or "clear title" is. For many practitioners, resolution is defined as achieving the goals of their clients, which may or may not include individual ownership and a legally clear title. It is common for families to desire collective ownership of their property, rather than to consolidate all of the property rights to a single individual. Because of this, many interviewed attorneys shared that their clients do not always complete all steps of the resolution process, opting instead to close their case after identifying all of the heirs to the property.

The title resolution process varies by practitioner, state, and region. This report outlines a broad overview of the legal process of title resolution, as shared by attorneys across the United States, Puerto Rico, the Commonwealth of the Northern Mariana Islands, and Tribal lands. However, all states, municipalities, and Tribes have their own processes for inheritance, property transfer, and title resolution. This report is intended to inform high-level conversations about opportunities for financial intervention in the title resolution process and is general in its description of legal processes.

Background

Introduction to Heirs' Property

Heirs' property is a form of undivided, shared land ownership that distributes property rights across multiple heirs, or "cotenants", who own the property together. If a property owner dies without a legally valid will or other estate plan, the property is transferred intestate, meaning that the estate is passed on to heirs according to state law, and without any formal, recorded documentation. The rights to the property are shared among all the decedent's living heirs, who do not have clear title to the land.¹ This form of shared ownership can also be created when property is left to multiple heirs, but is not legally transferred to them upon the owner's death. Heirs' property may also be referred to as tenancy in common, and heirs may be referred to as cotenants.

Heirs' property ownership does not provide all of the benefits of clear title ownership, and may involve risks.

Heirs are often unable to access governmental financing or standard mortgage products for their homes or be eligible for disaster relief resources from local or federal governments because of their unclear title.² Heirs also legally need the approval of all other cotenants to make significant improvements or changes to the property.³ Since each heir has the right to prevent others from making productive use of the property, the land may become an underutilized resource for the family.⁴ Heirs' property owners also may not receive notices of tax bills, since the property is still recorded under a deceased owner's name. If overdue balances are not paid, and the living heirs are not notified, the property may become subject to tax foreclosure after the amount owed is too high for the heirs to pay in a lump sum. Additionally, if an heir occupying the property clears the title or retains the property after a partition sale, they may be denied any property tax relief benefits that had been previously applied to the home, since the exemptions were granted to the deceased owner.⁵ Both outcomes can place an undue financial burden on an heir who is trying to retain the property. These and other restrictions make it difficult to build generational wealth for families owning heirs' property, since they cannot access the major benefits of landownership.

"Wills have a valid and strong place, but after you're gone, you need someone to know they need to find the will and then hire a lawyer. And those are two hurdles that a lot of people don't jump through..."

Texas Attorney

Housing and Economic Impacts of Heirs' Property

Heirs' property owners may have difficulty building wealth through homeownership. If landowners do not hold a clear title to their property, they are often ineligible for mortgage financing and federal or state funding for housing repair costs.⁶ A lack of clear title may also discourage landowners from improving their land, out of fear that the other cotenants may force a partition sale and reap the financial benefits of their work.⁷ Likewise, if any one heir chooses to take on more than their fair share of maintenance, property taxes, or other upkeep, they may recover their extra investments only if the property is sold.⁸ If a family cannot build wealth over time through the management of their home and property, they are at higher risk of accumulating debt and becoming unable to maintain their home. In severe cases, this may lead to property abandonment by one or several heirs.⁹ The inability to secure economic benefits from their land places heirs at a disadvantage, contributing to generational wealth depletion.¹⁰

The economic implications of heirs' property extend beyond individual landowners, affecting entire communities through wealth erosion and restricted economic development. Estimates suggest that over 5.3 million acres of land in the South are held as heirs' property, part of conservative estimated values of \$32 billion to \$41 billion nationwide.^{11,12} Studies estimate that Black landowners have lost approximately \$326 billion in property value over the last century due to forced sales, partition actions, and institutional challenges.¹³ The loss of wealth through property ownership affects individuals' ability to reinvest in their communities, hinders neighborhood growth, and can make property owners vulnerable to outside pressures that jeopardize their landownership.

Fractionated ownership also has economic impacts on allotted-trust lands inherited by heirs of Native American allottees. Currently, there are approximately 101,000 fractionated allotted-trust tracts covering 5.6 million acres, with an estimated 2.4 million fractional interests.¹⁴ Due to non-transferability and fractionated ownership, heirs of the original allottees face challenges using the land, leveraging it as collateral, and accessing the capital needed for its productive use. These challenges associated with fractionated interests contributed to 64 percent of allotted-trust land generating no revenue for its shared owners.¹⁵ Research on individual allotted-trust land in the Northeast and West estimates that fractionated ownership structures reduce the value of these plots by \$973 to \$4,765 per acre. For the standard allotment size, 160-acres, the negative impact of undivided interest ownership was estimated at \$156,000 to \$762,000 per plot.¹⁶

Urban Sprawl, Resource Extraction, and Gentrification Pressures

Urban sprawl and new potential for resource extraction can increase attention on predatory heirs' property acquisition in rural communities. The COVID-19 pandemic caused trends in housing and property demand to shift, with a dramatic surge in mortgage applications in rural communities in 2020.¹⁷ Much of the increase in demand for homes in rural communities was driven by investment purchases, and buyers who planned to purchase a second home in rural regions.¹⁸ The use of remote work models also allowed previously urban or metropolitan households to migrate farther away from densely populated centers to what were, at the time, more affordable, lower-density rural areas. But this migration ultimately pushed home prices up dramatically, and almost one third of nonmetro counties saw a minimum home price increase of 40 percent between March 2020 and March 2023.¹⁹ As previously affordable, rural regions become popular among wealthy, ex-urban residents, rising property taxes and development pressures can make heirs' property owners vulnerable to predatory actions by developers who hope to take advantage of the high demand with profitable construction projects.²⁰

A similar shift in land values is happening in southern Arkansas, where, in late 2024, a potentially massive source of lithium was discovered that is expected to exceed the global demand for electric vehicle production through the end of the current decade.²¹ Historically, when valuable natural resources are found in regions with high rates of heirs' property ownership, landowners in the region have limited access to the high-paying jobs and profits of resource extraction or mining, and are either coerced or forced to give up some or all of their property rights for a minimal share of any overall proceeds gained from the operations.²² Landowners in southern Arkansas who hold their parcels as heirs' property face predatory actions by the United States' largest energy companies, which are seeking to acquire access to the lithium for as little money as possible.²³

While heirs' property is often associated with rural land loss, urban communities are also affected by legal vulnerabilities and predatory development practices. Cities such as New Orleans and Detroit have seen large-scale displacement of heirs' property owners due to unclear land titles and aggressive real estate speculation. In New Orleans, redevelopment after Hurricane Katrina disproportionately displaced heirs property owners, as unclear ownership prevented many from accessing repair funds.²⁴ In Detroit, municipal tax foreclosure policies have led to home loss, with thousands of heirs' property owners losing homes due to unpaid property taxes, often without realizing they were legally responsible for payments.²⁵ When left unaddressed, lack of awareness or action to assist heirs' property owners with the maintenance and retention of their properties can lead to vacancies and deterioration of housing stock.²⁶ However, despite widespread loss, there are still many urban households that hold their homes as heirs' property and need support.²⁷

Family Settlements

Heirs' property owners may hold land communally to give the family a sense of group autonomy over their property. When property is held collectively, it is not uncommon to find groups of extended family members living together on a single parcel of land, in several manufactured homes or small houses. Each family member or unit may have an informal claim to one portion of the property, which is respected by all other family members residing there.^{28, 29} Using the property as a shared resource, family members can offer flexibility to one another, provide a place for family to reside by choice, and, in times of need, remain in close proximity to their loved ones.³⁰ The land can also hold more than a monetary value for the heirs involved, as generations pass and the property potentially gives the heirs a sense of fulfillment, personal history, and place.³¹ Many of these families find that the social value gained from communal living outweighs the potential for economic harm that may come from owning the property together.^{32, 33}

Family settlements on heirs' property are one way that families have adapted to live within a precarious form of property ownership that they may not have originally chosen. For some families, especially minoritized landowners, combining separate households into multi-generational family units is a way to relieve the pressures of poverty.³⁴ Communities across the country have blended cultural traditions with strategies developed in response to economic pressure, creating land management systems that add value to their lives. This value may not be recognized by contemporary property systems and beliefs,³⁵ but there is potential to acknowledge the benefits of a nuanced system, which accepts and takes advantage of the social benefits of heirs' property while affording landowners more legal protections. If intestate laws do not have provisions for recognizing alternative family structures, some heirs may suffer economic harm if they are disregarded in favor of what the legal system identifies as a closer descendant.

Historical Precedent for Heirs' Property and Collective Landownership

Tenancy in common was the default intestate law in the early United States. In colonial America, tenancy in common property ownership began as a rejection of English common law. Historically, feudal land ownership in Europe led to joint tenancies, a similar form of shared land ownership, when a primary property owner died.³⁶ Joint tenancies, unlike tenancies in common, include the right of survivorship. When living, all of the property owners are recognized as one owner, and if one owner dies their interest is transferred to the surviving owners by the right of survivorship.³⁷ The other tenants continue to hold the property amongst themselves. Under tenancy in common, however, if one cotenant dies their interest does not disappear. Instead, it is subdivided among all of their descendants or specified heirs, and then passed through later generations in the same way.³⁸

The transfer of interest through tenancy in common may lead to an exponential increase in the number of heirs as each generation passes. The switch from joint

tenancy in Europe to tenancy in common in the colonial United States was preferred because it would increase access to land for Americans who wanted to own property.³⁹ Since each heir's claim to the property is transferable, any one heir can sell their interest to an outsider if they no longer want to be involved with the property. However, tenancy in common had many negative effects for freedmen in the Reconstruction period in the United States, and continues to cause problems for minoritized populations today.

When Reconstruction began following the Civil War, formerly enslaved landowners in the South were blocked from effectively accessing the legal system to manage the scant property they were able to acquire. While many freedmen's only access to land was through sharecropping contracts, some became property owners. However, without access to the legal system, many of the Black landowners who were able to acquire land could not complete formal estate planning. In addition, their heirs could not access and follow the formal process of transferring property ownership upon an owners' death, which is often the probate process. Instead, Black landowners held their property as heirs' property to ensure it would remain owned by family. Because all of the heirs had to agree on how the property was used, many of these families thought their property could not be sold without the consent of all of the cotenants.⁴⁰ Since this is not the case, many families lost most or all of their land as wealthier individuals bought out shares of the properties or purchased the land through partition sales.

Following the Civil War, the still-young United States began strategically and coercively claiming more land that had been historically stewarded by Native Americans throughout North America, and forcing many Tribes to migrate to other regions of the country. This forced migration, with new legislation enacted by the federal government, imposed individualistic land ownership practices on lands that had traditionally been stewarded in communal ownership by the members of a Native nation.⁴¹ One major piece of legislation was the General Allotment Act of 1887, also known as the Dawes Act. For impacted Tribes, the Act subdivided some of the Tribally-held land among individual members of a Tribe, and allowed portions of remaining parcels of land to be settled by white Americans. The Dawes Act, and subsequent policies enacted by the United States government, resulted in a complicated pattern of "checkerboarded" land ownership between white settlers, the U.S. government, and tribal members on historically Native lands, and contributed to the loss of an additional 90 million acres of Tribally-controlled land between 1887 and 1934.⁴²

The effects of the Dawes Act are seen today in fractionated land ownership on tribal lands. For Tribes impacted by the Dawes Act, when land allotments were assigned to an individual Tribal member, and that owner died, their ownership was divided amongst all of their living heirs as shares of undivided interest.⁴³ This passage of property between generations, similar to how heirs' properties are transferred according to intestate laws, leads to exponential growth of the number of owners with claim to any one parcel of land.

As multiple generations pass, fractionated ownership can be shared between hundreds or thousands of owners per parcel.⁴⁴

Today, many of these same issues continue to disproportionately harm multiple vulnerable populations, especially in rural places, low-income communities, and minoritized households. Property owners without a clear title and Native Americans with fractionated ownership rights to their land cannot leverage the value of their property for economic gain or mortgages, profitably develop the land, or use property as collateral for secure lending programs.⁴⁵ Rural communities have limited access to legal counsel, and Black and Native rural families in particular have faced generations of discriminatory legal practices, making the legal system seem untrustworthy and inaccessible.⁴⁶ This history makes the difficulties of heirs' property ownership more common among underserved, minoritized communities.⁴⁷

Legal Aspects of Title Issues

State laws determine which surviving family members inherit the property upon a landowner's death. When a landowner passes away without a will or another form of estate planning, their state's laws of intestacy determine which family members become heirs. The distribution of property ownership interests is decided by the degree of kinship between an heir and the deceased owner, without considering the living relationship that existed between the two. These laws are not inclusive of non-traditional family structures or living arrangements, which may include grandparents as primary caretakers in parents' absence, nonmarital cohabitating partnerships, and extended family cohabitation with shared economic resources.⁴⁸ The practice of determining inheritance based on a "traditional" marital or parental family structure harms populations who do not live in such situations. This disproportionately harms families with a lower socioeconomic status, as they are more likely to live within a "non-traditional" household.⁴⁹

Title resolution is a legal process. In order to transfer ownership of the property to the living heirs, consolidate ownership to one or more heirs, or defend against predatory actions to strip them of their property, heirs' property owners often need to retain the services of an attorney. Legal assistance is required to probate the estates of deceased owners and correctly document all living heirs, and is also necessary to file documents proving heirs' ownership.⁵⁰ The legal process of locating heirs, documenting their interests, updating property records, and consolidating ownership is complex, and may be drawn out by family disagreements or a large number of heirs with claims to the property.

The legal system is not always accessible to heirs' property owners. Many heirs' property owners have trouble accessing affordable and effective legal assistance, making it difficult to navigate the probate system, dispute partition actions, or formalize their ownership. Some obstacles can be alleviated by community-based programs, which can provide free or low-cost legal assistance and mediation services.⁵¹ Expanding such

initiatives through philanthropic investments and state-funded legal aid programs remains essential for resolving heirs' property issues on a broader scale.

"...it is difficult and expensive to work in rural spaces because there are just **fewer people to do the tasks.**"

Kentucky Practitioner

Overall, roughly 20 percent of the United States population lives in a rural area, but only 2 percent of lawyers are located in the same regions. When individuals are physically separated from legal practitioners, they may be unaware of their legal rights, assume that they have no legal agency in their own life, or think that legal assistance is not relevant to them.⁵² However, the problem of rural access to legal services is not only a question of how many

lawyers are in rural areas. Maps and other data showing the locations of lawyers in rural America may be misleading; a lawyer identified on a map in a legal desert may be partially or completely retired, employed in a government position, or not experienced in the type of law in which a client needs assistance. These discrepancies or nuances must be layered onto considerations of distance to travel, lack of cell phone service, lack of internet access, and other barriers between the availability of a lawyer and potential rural clients. If a rural heirs' property owner were to seek legal counsel, it is likely that they would need to travel a great distance to find a practicing lawyer who specializes in estate and probate law. Additionally, the lawyer may not be available to take on another case, or may not be licensed to practice in the state or county where the landowner resides.⁵³ Efforts to incentivize young lawyers to practice in rural areas may be offered to fill the gaps, but even if a new graduate is inclined to move to a legal desert to practice, the misconception that rural lawyers earn less money may be a deterrent, especially when a graduate is carrying debt from student loans.⁵⁴

Legal barriers also include social obstacles. In order to facilitate resolution of heirs' property issues, lawyers must have knowledge of more than the relevant areas of law. In some regions populated by minoritized communities, landowners face the highest levels of persistent poverty in the country, and also must deal with language barriers between themselves and the attorneys who can work on their cases.⁵⁵ In rural areas without language barriers, lawyers for heirs' property owners still need a nuanced sense of cultural competence in order to effectively serve their clients. If someone tries to provide legal aid to a rural community without understanding how the community lives, their history, and how they got to where they are, the person looking to help may be seen as an outsider, and may even cause unintended harm.⁵⁶

Behavioral and systems barriers may prevent people from executing an estate plan. Many Americans believe that they do not have enough wealth or assets to need an estate plan. Others who understand the importance of planning but have not completed a will or other estate plan report that procrastination, a lack of understanding of the process, and a

perception that they cannot afford the cost are all reasons why they may not have any planning documents.⁵⁷ In minoritized communities, gaps in estate planning education, lack of trusted and reliable legal or financial services, and the perception that they lack sufficient wealth to pass down are all likely reasons for people to not execute an estate plan.⁵⁸ Specifically, Asian and biracial property owners are less likely to access education about the estate planning process, and Black and Hispanic property owners often have less reliable access to the legal system.⁵⁹

It is common for heirs' property owners to be unaware of the most severe risks and disadvantages of holding property as tenants in common. Many of these landowners, despite understanding that their property is held collectively, believe that maintaining this form of property ownership is a way to protect the land from unwanted sale,⁶⁰ when the opposite is a distinct possibility.

Partition of Property

Owners of heirs' properties face the risk of partition, which is legal action taken to divide the property between heirs. Partition actions are court processes that give heirs the opportunity to be compensated for their ownership interest if they no longer want a claim to the property, or divide the land into smaller lots for each heir to own separately. Any heir, regardless of the size of their share, may seek partition and force the sale of the property in court if they desire, which may result in forced displacement of other heirs living on the property.⁶¹

Partitioning heirs' properties can bring about financial and familial disagreements.

Heirs do not need permission from the other heirs to initiate the partition process, even if they are extended family members who have never visited the property.⁶² An heir may seek a sale for several reasons; partition sales may be seen as an easy way to get money for the property, or to get out of ownership. However, partition actions may be lengthy and costly to the family, because the lineage of heirs may be complicated and span multiple generations. The costs associated with the partition process are often paid out of the profits of a partition sale, if one occurs.⁶³ This can mean that heirs who do not wish to sell their land often pay for the partition out of their shares of the property sale. In some cases, a partition sale may be sought by an individual who is not an original heir, or even a family member. If a third-party individual were to buy out one heir's share in the property, that person would then be granted all of the legal rights of the other heirs. If that outside individual decided to pursue a partition sale, they could collect profits from the sale, or even buy the whole parcel of land at a discounted price.⁶⁴

"90 plus percent pf partitions result in the sale of the property ... We're dedicated to preservation of property."

Federal Policy Interventions

Ongoing policy changes are attempting to increase access to capital for heirs' property owners. Without clear titles, landowners are often ineligible for agricultural loans, disaster recovery aid, and federal conservation programs, further exacerbating financial instability.⁶⁵ For example, following Hurricane Katrina and Hurricane Michael, thousands of Black landowners were unable to access FEMA assistance due to unclear property titles, leaving them without financial support for rebuilding.⁶⁶ Recognizing these challenges, FEMA has begun to allow proof of occupancy and sworn statements to qualify heirs' property owners for disaster relief.⁶⁷ The 2018 Farm Bill also introduced key provisions allowing heirs' property owners to qualify for USDA programs without traditional deeds by providing alternative documentation, such as tax records or family lineage affidavits.⁶⁸

Attention to heirs' property at the federal level has largely prioritized owners of agricultural land. The Heirs' Property Relending Program (HPRP), related to the 2018 Farm bill, offered funding indirectly to heirs' property owners for clearing land titles or consolidating ownership to help families retain access to critical land-based resources.⁶⁹ In May 2024, the Heirs Education and Investment to Resolve Succession of Property (HEIRS Property) Act was introduced in the U.S. House of Representatives. The Act would provide free or low-cost legal services to families seeking to clear their property title to use their land for agricultural production.⁷⁰ While these pieces of legislation recognize the barriers of legal fees for heirs' property owners, they both prioritize agricultural land, and owners of residential heirs' property may be left out or not fully considered. Also in 2024, the "Heirs Empowerment and Inheritance Rights (HEIR) Act" and the "Heirs' Estate Inheritance Resolution and Succession (HEIRS) Act" were introduced to permit heirs' property owners the use of alternative documentation to access Community Development Block Grant Disaster Recovery funds from the U.S. Department of Housing and Urban Development.⁷¹ These policy interventions show progress in addressing systemic inequities, yet many barriers remain, particularly for those who cannot afford legal assistance to formalize ownership.

State Policy Interventions

Specific state-level legislation has been introduced to reduce land loss among heirs' property owners. The Uniform Partition of Heirs Property Act (UPHPA) is a model law designed to protect families who own heirs' property from forced sales by notifying all heirs of a potential partition, giving co-owners the first opportunity to buy out a share before

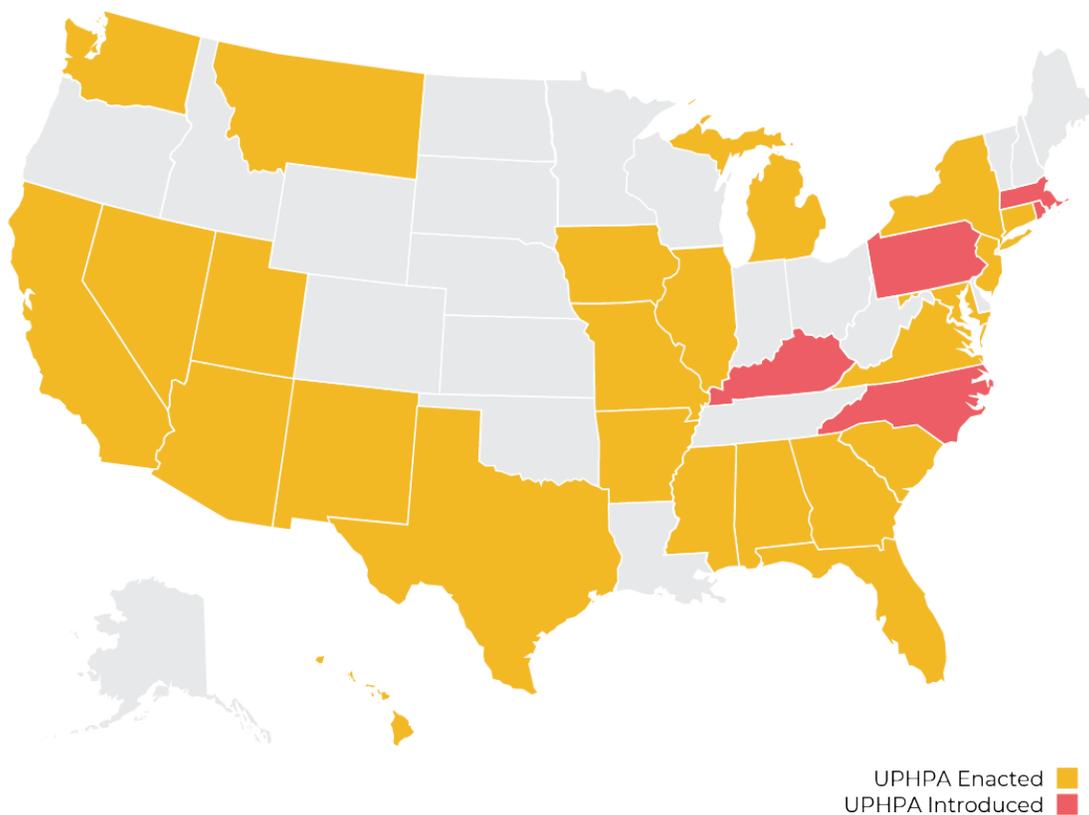
it is sold to outsiders, and requiring fair-market appraisals. The model legislation also

(The UPHPA is) "**extremely underutilized**.... I believe (with) reasonable certainty that many of our judges are unfamiliar with it."

Georgia Attorney

encourages courts to physically divide the land among heirs (partition in kind) rather than ordering a sale, helping preserve generational landownership. Demonstrated in Figure 1, as of August 2025, 24 states, the District of Columbia, and the US Virgin Islands, have enacted the UPHPA, and five more have introduced it in their legislatures.⁷² The UPHPA has been a cornerstone policy reform, providing protections that help prevent speculative land grabs and forced sales initiated by investors or other third parties.⁷³ Although its provisions vary from place to place because states write their own versions of the UPHPA before adopting it, states that have enacted the legislation have seen a reduction in partition sales and an increase in successful mediation efforts that allow families to retain ownership of their land.⁷⁴

Uniform Partition of Heirs' Property Act: State-Level Status



Source: Uniform Law Commission

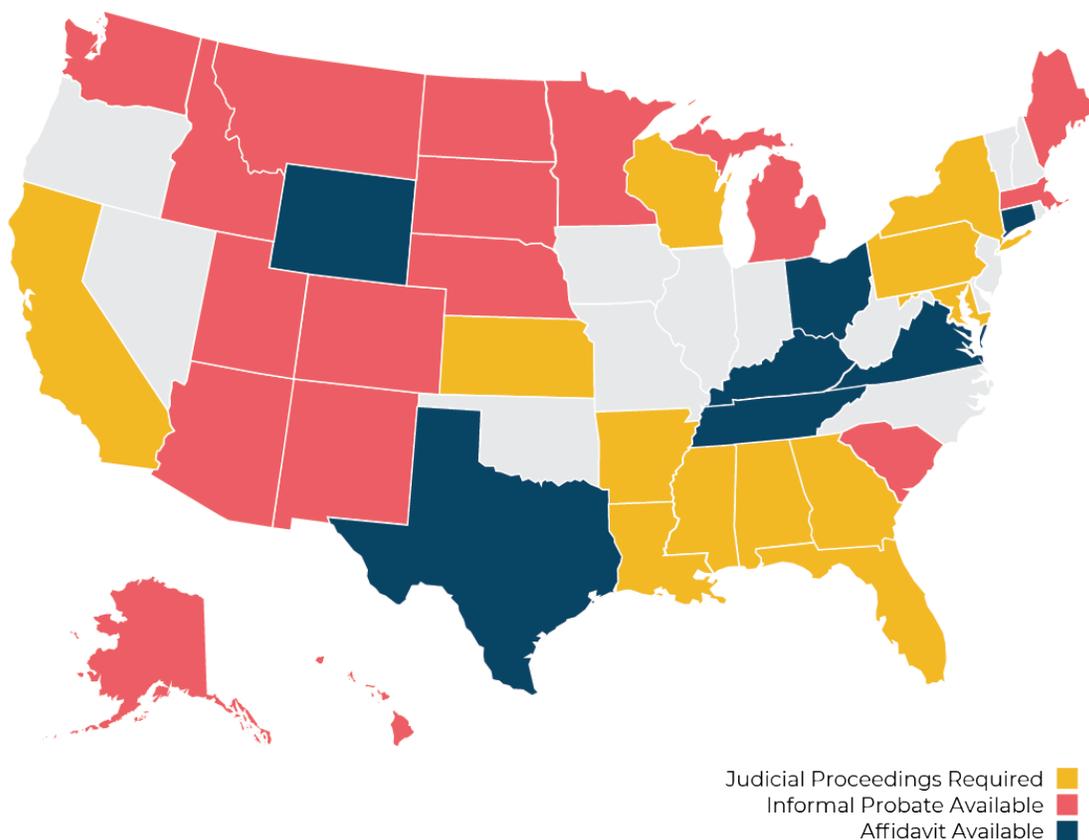
Figure 2. State-Level Status of the Uniform Partition of Heirs' Property Act.

There is not a single, standard process for title resolution that applies in all states.

When heirs' property owners seek to confirm ownership by updating the property records from the deceased owner's name to all living heirs with an ownership interest, or consolidate their ownership to fewer heirs or one heir, the required steps vary by location. As illustrated in Figure 2, judicial proceedings are required to confirm ownership in only 12

states. In 17 states, some form of informal probate process is available to heirs' property owners and their attorneys, which can allow them to bypass the more lengthy and expensive process of going to court. An opportunity to skip the probate process altogether is available in seven states, which allow heirs to file affidavits certifying the living heirs and the size of their ownership interest.⁷⁵

State-Level Title Resolution Policies



Source: National Agricultural Law Center

Figure 3. Map representing states' various legal processes for title resolution.

"...if my client is just trying to **assume a mortgage**, and the mortgage company is going to take an heirship affidavit, I'm not going to do a quiet title. **I'm going to do an heirship affidavit.**"

Alabama Attorney

Affidavits are only usable when state law or other authorities recognize them. These affidavits (including affidavits of heirship, affidavits of descent, determinations of descent, etc.) can be used to prove ownership for home repair needs or funds, assume a mortgage, or allow heirs to otherwise utilize their property, but only for municipalities or companies that recognize the affidavits as legal documents. In

states that require formal or informal probate proceedings to transfer property, affidavits can be drafted and used as evidence in the legal process, but not filed as a legal document to transfer a property title. The U.S. Department of Justice has a guide for an affidavit of heirship that provides an outline of information that should be included in the document,⁷⁶ but each state that permits the use of these documents has its own requirements.

Legislative action can assist heirs' property owners, but has not resolved the structural barriers to resolution and property retention. While the UPHPA and similar legislative reforms have improved protections and simplified pathways to resolution for heirs' property owners, many families remain vulnerable due to physical distances and financial constraints that hinder access to legal assistance. States that lack UPHPA protections continue to see high rates of land loss, disproportionately affecting Black, Indigenous, and rural communities. As partition and resolution laws remain inconsistent across jurisdictions, addressing these legal disparities is critical to securing generational wealth and preventing further dispossession.

Philanthropic Investments

Financial support for heirs' property work is needed, and can yield high returns on investment. An analysis of title resolution work in urban areas found a social return of between \$2 and \$32 for every dollar spent on heirs' property work.⁷⁷ For homeownership families, heirs' property investments can prevent foreclosure, allow them to take financial advantage of their property as an asset, avoid an unwanted sale of their property, and provide other opportunities for them to make economic use of their home or land.⁷⁸ These economic benefits also extend beyond the family, by increasing property values in communities, raising tax revenue for local governments, and reducing the potential for predatory actions to be taken against property owners.

Legal costs and fees associated with formalizing ownership of heirs' property are simultaneously one of the biggest barriers to title resolution, and one of the most common areas for investment by outside philanthropic funders. The Federal Home Loan Banks of Atlanta and Dallas both have programs targeting heirs' property resolution and prevention in their respective districts,^{79,80} and other Federal Home Loan Banks are beginning to follow these examples.⁸¹ These programs disperse funds to their member institutions, who then allocate those resources to community-level organizations to serve heirs' property owners, whether through educational events or waived legal fees. Non-governmental financial institutions have also piloted grant programs for heirs' property work. JPMorganChase has invested funding in legal services through university law clinics,⁸² research on heirs' property, natural disaster relief for heirs' property owners, and resources to educate philanthropic entities about effective policy interventions and investment methods to directly impact heirs' property owners.⁸³ Wells Fargo, another major financial institution, has contributed funds to university law clinics,⁸⁴ housing

nonprofits,⁸⁵ and legal aid organizations⁸⁶ working to remediate issues associated with heirs' property ownership.

Some municipalities directly allocate funds to resolve title issues and support heirs' property owners. In Pennsylvania, the city of Philadelphia's Tangled Title Fund provides grants to low-income homeowners seeking to resolve title issues associated with their properties, which can be used to cover legal costs associated with title resolution.⁸⁷ In Florida, the city of Stuart's Heirs' Property Assistance Program provides up to \$3,000 of legal assistance per property to landowners looking to clear their tangled titles, if the property is valued at \$300,000 or less.⁸⁸ The city of Gainesville launched a similar Heirs' Property Program in 2022 that provides free legal assistance to landowners making less than 120 percent of the area median income.⁸⁹ The Washington, D.C. Department of Housing and Community Development launched their Heirs' Property Assistance Program to "assist an estimated 1,000 individuals from multi-generational families in maintaining their family property after the original homeowner passes."⁹⁰ The city of Detroit has partnered with a family foundation to fund legal services for heirs' property owners in the city, with the intention to increase access to the legal system for families facing tax foreclosure.⁹¹ These programs, and others like them, are bringing local attention to heirs' property challenges in various municipalities.

Philanthropic investment in title resolution for heirs' property owners may also benefit the funding organizations. Some state-level forestry programs provide funds for heirs' property owners to clear titles on their agriculturally viable or forested properties, so they can utilize their land for agricultural production.⁹² Mutually beneficial investments into title resolution may increase the availability of funds for heirs' property owners, and also bring to their attention ways to profit from managing their land. Because heirs' property owners are often unable to access financial products like loans on their properties, or legally transfer the property, investing in title resolution and estate planning efforts can make more property owners eligible to participate in financial systems.⁹³

Intermediary organizations can fill an important funding distribution gap. The Center for Heirs' Property (CHP) is an example of a place-based organization with national visibility and the resources to apply for federal funding opportunities.⁹⁴ Entities like CHP can redistribute money at the local level, in communities where the organization has already built trust. Additional funding success has been found by The Local Initiatives Support Corporation (LISC), a national organization with local branches that support community-based and local initiatives.⁹⁵ By building trusted relationships and leveraging local partnerships, staff, and data, LISC branches can determine how best to allocate resources from larger funding organizations to make a local impact.⁹⁶ Using intermediary organizations to distribute funding also enables philanthropic funding organizations to more effectively target their investments, based on what various communities need.⁹⁷

These and other approaches show a clear advantage of funding one or several local organizations, which allows for community-centered and community-driven programs. Such approaches support existing community partners and legal aid organizations across the country in providing legal services, estate planning, and financial counseling services to families with heirs' property.^{98, 99} A localized approach may also increase the visibility of the programs to community residents, which can create a snowball effect of more residents seeking services, and lead to an overall increase in wealth retention.

In rural areas, funding may be less accessible than in urban or suburban areas.

Approximately 20 percent of Americans live in rural communities, but the most generous estimates suggest that rural philanthropy constitutes between 3 and 7 percent of all philanthropic spending.¹⁰⁰ Federal resources intended to increase economic and community development may be expected to fill the gaps, but the hundreds of federal programs designed to do so can be complex, with layers of processes that may not be easily navigated by rural communities or organizations with limited resources. In addition, most philanthropic opportunities are not exclusive to rural communities, which forces rural applicants to compete against their urban counterparts that have denser populations, resources for matching funds, and a broader network of capacity.¹⁰¹ When funding is based in grantmaking, as many philanthropic investments are, organizations or communities with lower capacity (including expertise, staff, and tax base) to organize and write grant applications are at a greater risk of falling behind.¹⁰² This dynamic can lead to "chronic underinvestment," as rural places with the highest need are unable to access funding that could increase their capacity to apply for more funding.¹⁰³ A wide range of resources and targeted efforts are required to alleviate the disproportionate lack of legal services in rural areas. If funding alone is used as a solution, ingrained patterns of injustice and obstacles to accessing legal aid will remain and hamper the use of that funding in solving the issues at hand.¹⁰⁴

Rural communities need increased investments and targeted efforts to alleviate the disproportionate lack of legal aid services in rural areas. Legal aid is one potential solution for increasing access to justice in rural America, but legal aid services are far less accessible in rural communities. In non-metropolitan areas, there are 1.6 legal aid attorneys per 100,000 residents, compared to 3.5 legal aid attorneys per 100,000 residents in metro areas.¹⁰⁵ Legal aid providers nationwide struggle to obtain adequate resources to serve their needs. This problem is exacerbated in rural areas, which already have more difficulty in obtaining resources than their urban and suburban counterparts.¹⁰⁶ When legal aid funding is provided to attorneys practicing in legal deserts, it is not always sufficient to cover the additional costs of rural practice: lengthy travel to and from client meetings or court appearances, the higher average cost of services like internet in rural areas, unreliable cell phone reception, and other aspects of rural services.¹⁰⁷

Without access to legal aid services, rural heirs' property owners may only have the option of hiring a private attorney. Additionally, decades of less-than-trustworthy

methods of land transfer have established a deep sense of suspicion of the efficacy of the legal system in protecting heirs' property interests.¹⁰⁸ As heirs' property owners historically observed family lands being taken by third parties through both legal and illegal means, a sense of distrust in the legal system grew among many populations.¹⁰⁹ Sparse legal aid services may mean low-income and rural heirs' property owners cannot afford legal counsel when problems arise, but they may also avoid seeking assistance because of their distrust.

"The one thing that needs to change, for all of us, not just funders, not just attorneys, not just researchers, we should probably all stop talking about heirs' property like it's a four-letter word and it's a problem. Heirs' property is not just a problem to be solved.... Heirs' property in and of itself is **a fully legitimate way to own property, it's just a tenancy in common.** Owning it is not a bad thing... so the funding is to solve the issues associated with heirs' property, not the ownership itself. **Being sensitive to these families, to a certain degree, is recognizing that.**"

North Carolina Attorney

Heirs' property is a form of landownership that has been prolonged by exclusionary systems.

While heirs' property is a legally valid way to hold land, this form of land ownership may result in barriers to landowners' efforts to secure financial stability through homeownership. By providing informed, targeted funding streams to programs that support heirs' property owners, funders and philanthropic entities can increase protections and opportunities for security and wealth generation. A combination of capital funding and access to reliable legal services and education, as well as community-based interventions, policy advocacy, and research are needed to ensure the long-term stability of heirs' property owners.

To better understand the process and available pathways to accessing the legal services needed to preserve, protect, and resolve title issues, and the opportunities for effective funding and partnerships, the Housing Assistance Council (HAC) conducted qualitative research in partnership with attorneys, practitioners, and funders, to clarify the legal process for resolving title issues and outline opportunities for financial investment and collaboration.

Approach

HAC conducted a qualitative analysis of the legal process of clearing property title and identified opportunities for financial intervention and collaboration. Researchers conducted semi-structured interviews with 51 attorneys, mediators, and non-profit professionals who represent and support landowners across 28 states, 57 Tribes, Puerto Rico, the Central Mariana Islands, and Guam. HAC researchers also interviewed 18 funders supporting direct legal services for title resolution across 12 states, as well as national heirs' property initiatives. Interviewed funders included municipal organizations, financial institutions, national and local foundations, nonprofits, private companies, and intermediaries. Interviewees were solicited using targeted outreach through established attorney and advocate networks including the Heirs' Property Practitioner Network and the National Consumer Law Center's Mortgage Advocate's Network. Following the initial outreach and interviews, researchers used a snowball method for additional interviews, as participants referred colleagues and other contacts to participate in the research. Researchers also sent targeted outreach to real estate and probate attorneys to increase geographic representation in the research and to highlight regional and state-level nuances in the title resolution process, which is necessary for informing high-level strategies for intervention. All interview participants were compensated for their time and contributions to this research and given the assurance of anonymity if desired.

Interview Representation by State

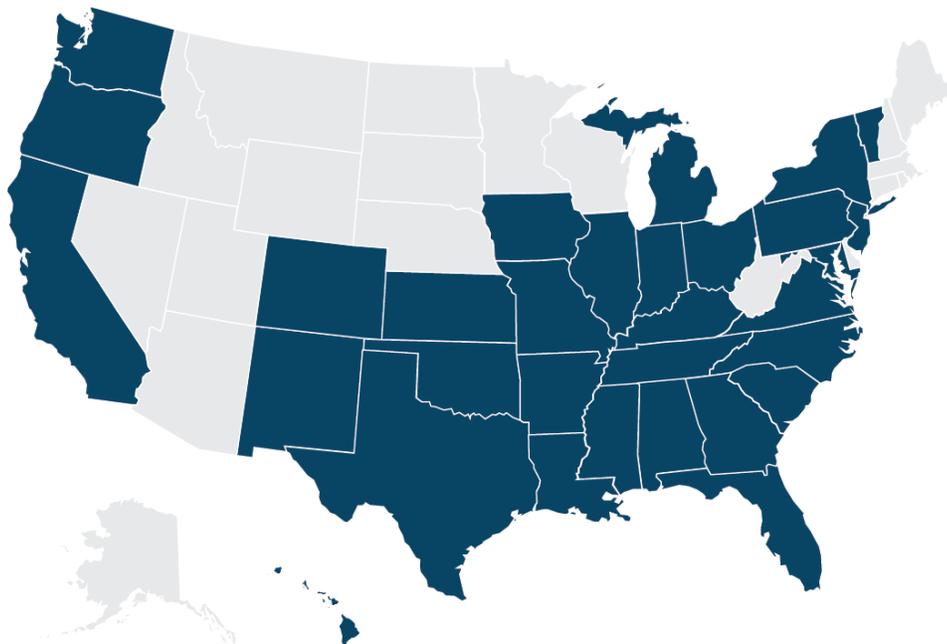


Figure 4. Map representing states and U.S. territories served by attorneys, practitioners, and funders interviewed, indicated in dark blue.

Semi-structured interviews were tailored to each participant’s background and current position. In attorney and practitioner interviews, HAC researchers asked questions related to the following categories: understanding varied title structure and land tenure; supporting, advocating for, and representing impacted homeowners; the Uniform Partition of Heirs’ Property Act; nuances in legal aid, private, or university practice; and resources, funding, and philanthropic support. Interviews with funders focused on the participant’s experience and understanding related to funding land tenure and title work, including their investment areas, application process, nuances in funding through financial institutions or foundations, and the forecast for heirs’ property owners’ access to capital.

Researchers participated in collaborative education opportunities to better understand the legal process of title resolution. HAC’s team members completed an heirs’ property training course through HeirShares, an information and education resource focused on heirs’ property law, as interviews were conducted.¹¹⁰ HAC also held a roundtable convening with cross-sector professionals and experts to present initial findings for feedback and ensure accuracy of the interpretation of interview findings.

Interview materials were analyzed for similarities, and coded according to factors including region, type of organization (private legal, nonprofit or legal aid, philanthropic or financial institution, etc.), clients served, and others. Answers to specific interview questions were interpreted based on context, the participant’s background and experience, and researchers’ knowledge.

The findings presented in this research represent an analysis of the information obtained in interviews. This research does not represent the practices of all attorneys, jurisdictions, legal codes, state laws, or other relevant legal guidelines. Findings presented here outline the title resolution process as presented in interviews with attorneys, funders, and other practitioners. The focus of this research is on the process of resolution for existing title issues and not on preventative measures to be taken before landowners have tangled titles. HAC understands the importance of preventative planning, but the scope of this research is intended to inform interventions for heirs’ property owners. The information presented in this report is intended for a general audience, and should not be taken as a legal document, legal review, or other form of legal publication.

Findings: Attorney and Practitioner Interviews

I. The Legal Process of Resolution: Attorney Interviews

Interviews revealed similar steps in the legal processes needed to achieve clients' goals related to title work. Many attorneys shared similar experiences with their clients, including the steps taken to resolve title issues, the average number of heirs involved with a property, the average number of cases an attorney handles at any given point in time, and the legal requirements for updating property records to accurately include the living heirs' names. However, there are key differences in title resolution work that depend on the organization or firm providing legal services and the location of the property. For the presentation of these findings, relevant distinctions will be made to highlight the different challenges faced by legal aid, nonprofit, university, and private law organizations.

The legal process of title resolution will be presented step by step, with steps divided into two distinct phases:

Phase 1 begins with an evaluation of client eligibility, and includes all steps related to title work. This phase includes steps to identify and record all deceased and living property owners and establish a chain of title, documenting all ownership transfers related to the property. These steps are largely the same across jurisdictions and precede any litigation or court processes to legally update ownership records. The steps in Phase 1 include: Determination of Client Eligibility, Client Intake, Family Tree and Genealogy Research, and Title Work.

Phase 2 begins after all living owners have been identified and a clear chain of title has been established. These steps are taken to transfer the property ownership from deceased owners to living heirs. Phase 2 includes steps that vary widely across jurisdictions, and may or may not be taken based on the client's goals. The steps in Phase 2 include: Consolidation of Ownership and Recorded Confirmation of Ownership.

Step	Phase	Time Required	Cost to Client
Determination of Client Eligibility	Pre-Intake	1 - 2 hours	Varies
Client Intake	Phase 1	0.5 - 1 hour	Varies
Family Tree and Genealogy Research	Phase 1	2 - 6 months	\$300 - \$2,000
Title Work	Phase 1	2 - 6 months	\$700 - \$4,000
Consolidation of Ownership	Phase 2	3 months - 1 year	\$1,500 - \$10,000
Recorded Confirmation of Ownership	Phase 2	1 - 2 weeks	\$50 +

Figure 5. Outline of the steps taken during the process of title resolution, with estimated ranges of cost and time required to complete each step, based on attorney interviews.

Phase 1

Phase 1, which includes all steps related to title work, is necessary to identify and record all deceased and living property owners, or heirs.

The steps in Phase 1 include:

- Determination of Client Eligibility
- Client Intake
- Family Tree and Genealogy Research
- Title Work

Step 1: Client Eligibility

Before an attorney begins to work with a client facing issues associated with an unclear property title, the client must be evaluated for eligibility to receive services. Eligibility requirements vary slightly by the organization or firm providing legal services, and by the type of legal services provided.

Client Eligibility: Step Breakdown

Step: A potential client is evaluated for their eligibility for legal services.

Time needed: Between 1 and 2 hours of attorney time.

Cost: Dependent on organization providing services.

Why do it? This step is necessary to ensure that the client understands the legal process they are beginning, and the attorney understands the case they may be opening.

Legal aid or nonprofit organizations, which provide free or low-cost legal services to low- and moderate-income individuals, often have income and asset restrictions for their clients. Many legal aid attorneys reported that income requirements are based on area median income or federal poverty guidelines. However, a majority of legal aid attorneys interviewed acknowledged that their organizations are facing capacity limitations that leave them unable to meet the needs of every potential client in their community. This level of demand forces organizations to prioritize potential cases based on the severity of the client's situation. In title resolution work, the severity of a client's situation is related to their immediate housing security: individuals may be facing imminent tax foreclosure, utility shutoffs, or a lack of access to home repair services.

Another aspect of client eligibility that must be considered by attorneys is the complexity of the case. Many attorneys reported that limited capacity and uncertain funding streams prevent them from taking on cases with a large number of potential heirs, or cases in which the heirs do not all agree on a path forward. If an understaffed legal aid organization is unsure that there will be consistent funding for their work in the future,

they are likely not able to take on a client whose case could take multiple years and many resources to resolve. A recurring theme in interviews was requiring clients to either be in full agreement with all other heirs, already have identified all heirs, or have fewer than a predetermined number of heirs (often fewer than 5) involved. For private practice attorneys interviewed, eligibility requirements often depended on their capacity to take on clients with tangled titles. University law clinics expressed considerations of both funding and capacity when considering opening another case. For some attorneys, restricting the number of heirs involved with a property helped them manage their cases, suggesting they have to turn clients away if they know of or find too many individuals with claim to the property.

"...the process is lengthy, (and) **our funding going forward is not certain**, so it's troublesome for us to get involved in full-time, full-scale direct representations, when **these cases could take years.**"

Vermont Attorney

Funding requirements may also indirectly impact client eligibility. Attorneys reported that the use of grant funds often comes with strict reporting requirements and output metrics, which place undue burdens on the legal aid organizations that utilize the funds. These reporting requirements, compounded with a high and often unmanageable volume of cases, may cause legal aid organizations to turn potential clients away because of a lack of capacity to take on new cases.

Clients seeking title resolution who may not qualify for legal aid services cannot always afford private representation. Because income and asset restrictions vary based on region and the makeup of a household, some legal aid attorneys acknowledged that their organization is forced to turn clients away, despite knowing that private counsel will be inaccessible to them. This can be exacerbated by the high fees of probate attorneys in particular.

Private attorneys taking on heirs' property clients also reported having to practice in other areas of law to supplement their business.

Because of this additional work, attorneys often have limited ability to expand their heirs' property work. Some clients do not move past an initial consultation with a private attorney because of the potential for high costs incurred by the title resolution process

"...there probably are a lot of people that apply (for our services) and are **denied as ineligible...** (but) probate lawyers are very expensive... people that are just living paycheck to paycheck, who might not qualify for our services... **still could not afford a probate lawyer** in our community."

Florida Attorney

Client Eligibility: Once Completed

Benefits: Determining that a client is eligible ensures that they can be represented effectively.

Why it might not be completed: If a legal organization does not have the capacity for client screening.

Why a client would move on: If deemed eligible and willing to move forward, the client can move forward with the resolution process.

Step 2: Client Intake

After a client has met eligibility requirements, the intake process begins as the attorney begins to understand the client's needs and goals. In smaller firms, attorneys reported conducting intake consultations themselves with their clients, to understand how many heirs are involved, what the client's relationship to the property is, and what their goals are. Among interview respondents, private attorneys were more likely to conduct intake consultations than legal aid attorneys, but private attorneys were also more likely to practice in smaller firms with fewer support staff members and paralegals.

Client Intake: Step Breakdown

Step: An eligible client participates in a consultation to establish their goals and available resources.

Time needed: Between 30 minutes and 1 hour of attorney time.

Cost: Dependent on organization providing services.

Why do it? This step is necessary to ensure that the attorney has the information needed to plan for the client's goals.

In larger firms and legal aid organizations, client intake is often handled by an intake team, rather than attorneys. By the time a client meets the attorney who will handle their case, their eligibility has been verified, and they have likely already provided information about their property, goals, and the issue they may be facing.

The intake process allows attorneys to understand what their clients need. Attorneys in legal aid, nonprofit, and university clinics reported that their clients are most often seeking assistance because they have a goal that they cannot reach due to their title issues. For example, a client may be seeking to sell timber on their land, buy a house, or otherwise utilize their property, and realize that they have

“Usually (our clients are) people who are **concerned about their housing security** as well as being an heir to the property.”

Florida Attorney

something they must first resolve with their title. At this step in the process, attorneys will be able to determine how far the client needs to go through the title resolution process to reach their goals. It is not as common for new clients to seek ownership consolidation as it is for them to seek an alternative form of resolution that can allow them to make better use of their land.

"That cultural competency to hear what the client really wants is really important."

North Carolina Attorney

The primary difference between an attorney and support staff conducting intake work is the loss of their time on the intake consultations.

Private attorneys, who may already be struggling to take on heirs' property cases because of their limited capacity, lose time and resources on consultations that could be devoted to more direct casework for an existing client. Legal aid attorneys, who may have paralegals and other support staff to

handle client intake, are likely struggling to manage their existing caseload and cannot take on additional complex cases that are vetted by their support staff.

Client Intake: Once Completed

Benefits: The intake process allows attorney and client to set appropriate goals.

Why it might not be completed: If a legal organization does not have the capacity to handle another client case, if the client's case is considered too complex for the organization, or if the client is unable to afford legal services.

Why a client would move on: If client intake is successful, a plan can be made for which legal steps must be taken.

Step 3: Family Tree Research

The first step taken when the attorney opens a case is to complete research on the client's family tree. Comprehensive family trees must be completed in order to determine who the living heirs to the property are. To build their family tree, heirs must trace all of their family members and their relationships from the original property owner to the currently living generations. Doing so requires that the heirs collect birth and death certificates, marriage and divorce records, adoption records, and any executed wills or other estate plans for every person listed in the family tree. Each one of those documents may be filed in a different state, depending on where family members were born, married, divorced, or died. Formal records requests also require that fees be paid to the office holding the documents. This process can take several weeks or several months, depending on the heir's capacity, the size of the family, the location of the documents, and the responsiveness of the records offices.

Family Tree Research: Step Breakdown

Step: An heir or heirs research their family tree, beginning with the last landowner of record.

Time needed: Between 2 and 6 months to locate heirs and obtain all records.

Cost: Between \$300 and \$2,000 for research and records requests, depending on the size of the family and if a client or professional completes the research.

Why do it? This step is necessary to find all heirs that might have a legal claim to the property, and the family tree is used for title work later.

A majority of attorneys interviewed, both private and legal aid, mentioned that having the client complete the family tree or having a community-based practitioner assist with the family tree research reduces the overall costs for the client. Some private attorneys interviewed said that they advise

clients not to ask their attorney to do the research, because of their high billable hourly rates. Legal aid and nonprofit attorneys reported that funds to hire genealogists or private investigators for family tree research would give time back to the staff attorneys to work on direct casework, and would also expedite the process, since clients often have difficulty locating or contacting extended family members on their own. University legal clinics were the only organizations that reported little difficulty in completing family tree research themselves, due to committing students' time to the family tree research. However, the students' time dedicated to the family tree process, added to the time needed to educate the students while they work, can contribute to cases being open for longer periods to achieve the clients' goals. Universities also must work with new students every few months. The rapid turnaround of students in legal clinics creates difficulty in sustaining knowledge of the open cases and can be a barrier to building trusted relationships with clients.

"There needs to be a structure to help with family trees... because **it's not a lawyer's job**. It's not legal work, and private attorneys are going to tell families, 'You don't want me doing your family tree because **I'm being paid by the hour.**'"

Arkansas Attorney

Family Tree Research: Once Completed

Benefits: The heirs have a documented record of every potential owner of the property.

Why it might not be completed: Heirs may not be able to locate or pay for all of the records in their family tree, or attorneys may not have the capacity to support their clients' research.

Why a client would move on: A completed family tree allows a client to obtain a title search and contact other potential heirs.

Step 4: Title Work

Once all heirs have been identified and a family tree has been established, “title work” can begin. Title work is a broad term that may include various processes and documentation, such as title searches, title abstracts, title exams, and title opinions. All of these processes are conducted to legally verify property ownership. The two processes most commonly mentioned in interviews were conducting title searches and filing title opinions.

Title Work: Step Breakdown

Step: Title work is completed to legally verify ownership and remove any clouds on the property title.

Time needed: Between 2 and 6 months to complete title searches and an opinion.

Cost: Between \$700 and \$4,000 for title searches, transfer taxes, and paying off liens on the property.

Why do it? This step is necessary to identify and resolve title issues that would prevent a new owner from transferring the title to their name.

A title search is necessary to establish the chain of title, which is a detailed timeline of each transfer of ownership interest of the property, starting with the landowner on record. The chain of title begins with the transaction that gave the owner on record ownership of the property. It then details every transaction that transferred ownership to date.¹¹¹ Documentation of these transactions may include wills or other forms of estate planning, like life estates and deeds. All of these documents must be obtained from local property records offices, and often require a fee.

A title search is also necessary to find liens, debt, or other encumbrances on the property. In some states, properties cannot be transferred to a new owner until all debts or liens associated with the property are resolved. A title search alerts the attorney and the heirs to any such issues, while also establishing the property’s chain of title. Some attorneys shared that they perform title searches for their clients, because the cost to have a search performed by a title company is often prohibitive. However, title searches are most often done by attorneys who specialize in related legal fields, and are too complicated and time-consuming for any attorney to complete without experience. If an attorney cannot complete a title search, a title company or other real estate attorney may be able to, but this would involve additional costs.

If the chain of title is established, the attorney can prepare a title opinion, which is legal documentation of who has ownership of a property. A title opinion provides an attorney’s professional assessment of ownership based on the available records, but it does not convey or transfer title. It is a document that can be used by lenders, insurers, and courts to confirm ownership, but its accuracy depends on the completeness of the existing

property records and family tree. Additionally, if an estate was not probated, an attorney must note in the title opinion that the title is clouded. Attorneys may use a title opinion to document ownership as part of a resolution strategy, but additional steps may still be required to create marketable title.

Title opinions are not always filed by attorneys, especially if there are gaps in the chain of title. Attorneys are responsible for what is stated in a title opinion document, and can be held liable for any mistakes or gaps in ownership that leave any heirs out. If a client is unable to complete their family tree, or if any portion of the property's history is unclear, an attorney may choose not to complete and file a title opinion. One attorney reported that they had never filed a title opinion, because they *"have not ever had the resources to really do a full and deep dive on a property to get to a point where (they would) feel comfortable filing something."*¹² While title opinions are not always completed and filed before an heir moves through the resolution process, they are a tool that provides a high level of confidence in the accuracy of the property's records.

Although the first phase of title resolution is primarily research and not legal action, there are several costs for heirs to consider. Potential costs associated with the first

phase of work are genealogy research (whether it involves an attorney, paralegal, community-based practitioner, professional genealogist, or private investigator), title searches (conducted by an attorney or a tile company), and records requests (for birth, death, marriage, or adoption certificates when establishing the family tree, and past deeds to the property for title work). The costs for all steps of this phase vary widely by state, case complexity, and organization or firm, but can range from \$700-\$4,000 at a minimum. This minimum estimate would be for non-legal fees, such as records requests, genealogy research, and title searches. If a client is working with a private attorney, they would also need to consider the cost of their attorney's hourly rate.

"I think the two biggest (areas for funding) ...are **title searches and heir searches**, when those issues pop up. Because (when) it's the attorney or the paralegal trying to hunt that stuff down... **they're just taking time away from their cases and they're slowing down the process** of just getting more people served."

Florida Attorney

Based on interview responses, the average timeline for title work and a title opinion to be completed is 2-6 months. This timeline does not include the client intake process or family tree research, which varies widely on a case-by-case basis. Interview participants shared timelines as short as several weeks and as long as one year for this step, based on clients' responsiveness, case complexity (including factors such as the number of heirs known or unknown, how many generations current heirs are removed from the last landowner of record, varying state proceedings or records depending on where heirs live, etc.), and the workload of the attorney or legal organization.

Title Work: Once Completed

Benefits: The heirs have a documented record of every title transfer, lien, or debt associated with the property, as well as the living heirs to the property.

Why it might not be completed: Heirs may not be able to locate or pay for all of the property transfer records, or afford a third-party title search. A title opinion may not be completed if an attorney does not have enough information about the family tree or chain of title.

Why a client would move on: A title search and opinion can allow an heir to clear any clouds on their title, and confirm their ownership of the property.

At this point in the process, clients may choose to close their case. If an heirs' property owner began the legal process with a goal of finding all of the heirs, identifying liens on their property, or understanding the history of the property's ownership, they will have met their goal before beginning phase 2. In some cases, the heir may also be able to use their family tree, title search, or title opinion as proof of their ownership interest, if that is what they needed to achieve. If the client chooses to move forward to phase 2, it is likely that they are seeking individual ownership, partition, a formal update of their property records, or another form of resolution.

Phase 2

Phase 2, which includes steps that may be taken to consolidate ownership and update relevant property records, can begin after title work is complete.

The steps in Phase 2 include:

- Consolidation of ownership
- Confirmation of ownership

Steps in Phase 2 may not be completed chronologically. Consolidation and confirmation of property ownership can be interchangeable in the title resolution process. One of these steps may happen without the other, depending on the client's goals, family dynamics, and the available resources and capacity of the client and their attorney.

It is important to note that not every heirs' property case involves ownership consolidation.

Some heirs do not wish to divest other heirs of their interests in the property, and some families want to continue holding their land collectively. In some cases, when heirs' property owners seek legal assistance, they are trying to secure a home repair loan, manage their utilities, assume a deceased relative's mortgage, or take other action that is blocked by their lack of clear title. In such instances, heirs can sometimes achieve their goals by confirming ownership, or demonstrating an ownership interest with a title opinion or another legal document declaring that they have an ownership interest in the property.

"Ultimately the goal (for the family) is not a payday, it's to **preserve the family land**. That's pretty consistent."

Texas Attorney

Step 5: Consolidation of Ownership

Once an heir has established their family tree, completed a title search on the property, and potentially had a title opinion completed and filed by their attorney, they may decide to move forward with consolidating ownership of the property. This involves reducing the number of individuals or groups with legal interests in the property. Consolidation can be accomplished in multiple ways, depending on family dynamics, resources available, and the end goals of the client.

Consolidation of Ownership: Step Breakdown

Step: The client may work with other heirs to agree on ownership consolidation, or pursue legal actions to consolidate ownership.

Time needed: Between 3 months for simple consolidation and 2 years for court processes.

Cost: Between \$1,500 and \$10,000 for entity formation and court processes.

Why do it? This step can allow owners to reduce the number of heirs to the property before updating property records.

If heirs' property owners decide to consolidate their ownership, they may have several options available via litigation. Heirs' property owners can use lawsuits to consolidate their ownership. Different lawsuits can be pursued by a client's attorney to achieve their goals, depending on the state, municipality, family dynamics, and other relevant legal considerations. Quiet title, adverse possession, and partition actions are all forms of litigation, and can be used to reduce the number of individual heirs with claim to the property. Because these are legal processes, clients may have to pay for court fees, filing fees, and court reporters, in addition to any fees they might be paying an attorney. While not always available, legal aid organizations may cover these costs for the client if the client meets income or other eligibility guidelines for waived or covered fees. If working with a private attorney, clients will often be responsible for all court fees as well as attorneys' fees for their case. For some litigation, it is also necessary to notify other heirs, both known and unknown, that action is being taken to consolidate ownership or subdivide the property. Sending notice to known heirs requires certified mail and service of legal documents. Notifying unknown heirs requires publication in newspapers.

"If the result is to do a partition and sell it and give everybody some money, we are generally less likely to do that because that's just getting people money, and **what we try to (save) is their homes.** And if we have somebody who really wants it as a home, but doesn't have the resources to buy the other heirs out... that's a challenge."

Illinois Attorney

Partition actions can result in physical division of the property or sale of the property. Partition in-kind requires a survey of the property, and results in each heir having a smaller physical portion of the property for themselves. A partition sale results in the property being sold as a single parcel, and proceeds from the sale are divided among the heirs. Partition actions are not always a desirable outcome, especially if heirs are living on the property. If a client is living on heirs' property, and seeking legal services to access home repair or other ways to use their land, a partition action might bring

distant heirs' attention to the property, and lead them to believe that they could profit from a sale. If the family pursued a partition sale, the client living on the property would only be paid the share of the profits that correlates to the size of their interest, and only after attorney's fees, court costs, and other expenses are paid out of the total sale profits. That share may not be enough for the client to purchase another home or property. Ultimately, trying to clear their title to access capital for home repair would leave them with nowhere to live. In these cases, the client needing home repair is unlikely to have the funds to buy out the interest of other heirs, or to go through the court processes of consolidating title. Attempting to consolidate ownership can also result in increased risk of displacement and land loss due to family dynamics or other factors. As a private attorney shared in an interview: *"I explain to people, 'if you don't want the property any more you can get your money out of it,' and they go, 'well, I only own 1/20th of this property. If I sell the property*

and we get \$1 million, I get... \$12,000 and then I'm homeless. In the meantime, I don't have a roof and my property's falling apart."¹¹³

Many legal aid and nonprofit attorneys reported that they do not file partition actions or take contested cases. Attorneys shared that, while they would defend against a partition action, their organizations do not pursue partition against other heirs, because doing so could remove heirs' right to property ownership. Instead, nonprofit or legal aid attorneys may provide their clients with "several people's names and also tell them to contact the local bar, lawyer referral services, (because) typically lawyer referral services are more affordable than the people that are not on that list... it's hard to find another free service that deals specifically with clearing up title."¹¹⁴ Similarly, almost one fifth of attorneys shared that their representation requirements include that the case is non-adversarial, meaning that all, or at least a majority, of the heirs are in agreement before the attorney takes the case. Because it is so common that legal aid services cannot be used for litigation cases, heirs' property owners who qualify for legal aid services may be forced to hire a private attorney if they are seeking consolidated title but are not in agreement with all of the other heirs. This means that low- or moderate-income property owners may have to pay a private attorney's hourly rate to consolidate their title, even if they qualify for free legal aid services.

Several attorneys expressed a preference for non-adversarial means of consolidation, like voluntary buyouts. Voluntary buyouts between heirs can allow some heirs to transfer

their interest in the property by paying other heirs an agreed-upon value for their share. Buyouts are not always possible for families, since they require large sums of money to be immediately available. Alternatively, if all the heirs agree to physically subdivide the property, division would require surveying services, land appraisals, and other associated expenses. All of these steps add additional cost and time to the process.

"The danger with putting our clients on title with other heirs is, depending on their relationship, one of the other heirs could file a partition which **would jeopardize the homeownership of our client...**"

Pennsylvania Attorney

If heirs' property owners want to consolidate their ownership to an entity, rather than to an individual, they may choose to form an LLC or trust. Entity formation allows families to consolidate their individual interest while still retaining collective ownership. However, these two options require cooperation and agreement between all heirs, and forming a limited liability corporation (LLC) requires more funds from the family to pay the costs associated with business formation. Forming a trust also requires additional fees and family members to be appointed to advisory and management roles for the trust. As one attorney shared: *"When I'm working with very low-income clients, we would never put property in a trust. That would be very expensive."*¹¹⁵

Consolidation of Ownership: Once Completed

Benefits: The heirs can decrease the overall number of owners, and create a plan for property management.

Why it might not be completed: Heirs may desire to retain collective ownership of their property. If not, heirs may disagree about consolidating ownership or not have access to the funds required to proceed with court processes or buyouts.

Why a client would move on: If heirs want to record their newly consolidated ownership, they will move on to updating existing property records.

Step 6: Confirmation of Ownership

Confirmation of ownership involves updating relevant property records to include the names of all living heirs who will keep an interest in the property and removing the names of any deceased persons.¹¹⁶ In some states, affidavits are acceptable documents to use to update property records. However, in other states, full estate administration or probate processes are required to be completed for every deceased heir to update property records. One attorney shared they *"have to go to court in order to actually transfer ownership of property"* in Florida.¹¹⁷

Confirmation of Ownership: Step Breakdown

Step: The client and attorney take action to update relevant property records with the name(s) of living heirs.

Time needed: Between 1 and 2 weeks to process updates with the relevant recorder of deeds.

Cost: Between \$50 and several hundred dollars for filing and administrative fees, depending on the municipality and the number of heirs involved.

Why do it? This step can allow owners to legally document and record the names of all living owners of the property in the public record.

"Maybe we can't do a probate for some reason or another, but we can do an affidavit. We would record **an affidavit of heirship that would allow them to get utility benefits or tax relief.**"

Illinois Attorney

Certain legal documents can be used in some states and municipalities to secure resources and capital without consolidating title.

Documents such as heirship affidavits, heirship deeds, affidavits of descent, or determinations of descent can sometimes be used for securing disaster relief or assuming a mortgage, but are not recognized by all states, municipalities, or lenders. These are "transactional" forms of resolution that do not require court processes, but affidavits also do not legally transfer title to a property. These documents can be presented to

title companies, lenders, or courts to document a client's ownership share of a property, but can still be challenged if a formal probate process is not completed. Affidavits and other similar documents are sometimes the only affordable tool available for low-income or rural families to document ownership between generations.

Heirs can keep their individual ownership and still manage the property together. If consolidation of ownership is not appropriate for the heirs, they may choose to enter into a tenancy in common agreement, which can be drafted by an attorney with the heirs' guidance. Such an agreement is essentially a legal contract, outlining what each heir's responsibilities will be, and how each heir has permission to use the property. Each heir would keep their interest in the property, but have a clearer understanding of the other heirs' expectations and needs.

Phase 2 Considerations

Among attorneys interviewed, a recurring theme was that many clients declined to move forward with Phase 2 or "clearing title" after locating heirs and completing and filing a title opinion. Steps taken in

Phase 2 of the resolution process are not necessary for every heirs' property owner to achieve their goals, and many do not move past a title opinion because of the uncertainty of time and cost required, or because they do not want to consolidate their title. The overall costs for the second phase can be between \$4,000 and \$10,000 at a minimum, to cover court fees, property appraisals, surveys, probate, and recording fees. These costs do not include attorney fees, and would increase if a client were working with a private attorney. Attorneys reported an average timeline of 1-3 years to complete a full probate process and litigation actions to consolidate title.

"...to get all the way to clear title is going to be **impossible** in some of these situations **without a huge investment of resources**, both from the family and from (funders) with the current systems that exist."

Arkansas Attorney

"Most of the time, the family doesn't want to divide the property up, **they want to keep it as a whole.**"

Georgia Attorney

Once an heirs' property owner has moved through the legal process of title resolution, they may have achieved one or more among a variety of different outcomes.

Because each client can work with their attorney to determine which steps in the resolution process are necessary for their case, achieving resolution or accomplishing the clients' goals often includes some, but not all, steps in the title resolution process. While some clients' primary goals

include identifying and recording all living individuals with interests in the property, clients' goals do not always include or require confirming ownership or consolidating ownership to a single individual or entity. Some attorneys, especially legal aid providers, reported prioritizing addressing their clients' housing needs, not title consolidation and confirmation, as resolution. Resolution may be individual ownership, a complete family tree, entity formation, a property sale, or another outcome.

Confirmation of Ownership: Once Completed

Benefits: The heirs will have a record of ownership that is recognized by lenders, municipalities, home repair programs, disaster relief programs, and others.

Why it might not be completed: There may be too many heirs involved with the property to feasibly record all names, or heirs may not have the funds for administrative fees.

Why a client would move on: If heirs confirm their individual ownership before consolidation, they may choose to consolidate their ownership once there is an official record.

II. Definitions of Resolution/Clear Title

In legal cases involving title work, “resolution” does not have a universal definition.

Definitions of resolution provided by interviewees revealed that the perceived success of a case is highly dependent on the goals of the client, the resources available, and the capacity and past experiences of the attorney. Many definitions also depend upon the contractual expectations of philanthropic funding. Figure 5 compares attorneys’ definitions of resolution for heirs’ property cases across legal aid providers, university law clinics, and private practices.

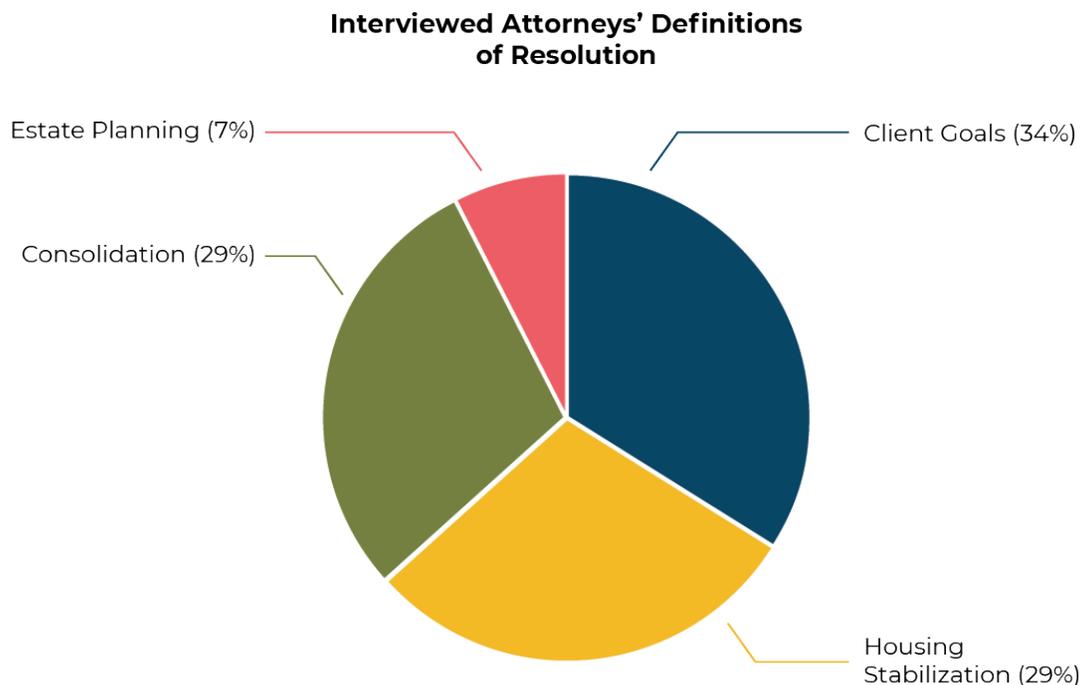


Figure 6: Interviewee’s definitions of resolution in order of prevalence included client goals (34%), housing stabilization and wealth retention (29%), consolidation of ownership to fewer heirs or confirmation of ownership (29%), and completed estate planning (7%).

The goal of “clear title” also has multiple definitions.

When some practitioners and funders referred to “clear title” or “clearing title,” they meant consolidating ownership to one person and updating the relevant property records to show that one individual holds the title to the property. For others, “clear title” meant establishing and recording a clear chain of title with no gaps in ownership, documenting every

"I push back on the idea of... having title resolved as the primary outcome, because I think that is **not always the most appropriate resolution** and it pushes people to move faster than they need to."

North Carolina Attorney

living individual who has an interest in the property, or resolving all liens and claims found during a title search on the property.

“What does success look like, **really keeping the goals of the family in mind**? It is their property, their asset, and they should have, within the law, the ability to do what they want to do with it, right? So yes, it may be your preference to work with families that are only going to have one sole owner and have a full clear title. And if that's what the family wants, great. Make it happen. But if it's not, **are there resources available for those families as well? Are there models for collective ownership or collective management?**”

Funder, National

Goals for resolution also vary widely across geographies and cultural approaches to land management.

Regional, cultural, and familial traditions sometimes favor collective ownership of property. It is important to recognize that shared ownership of real property is a legally valid form of land management, and a way for families to share a vital resource. As one attorney stated, *“owning (heirs’ property) is not a bad thing... the funding is to solve the issues associated with heirs’ property, not the ownership itself.”*¹¹⁸

Attorneys’ definitions of resolution aligned with the frequency of their pursuit of litigation.

Litigation was more commonly mentioned by attorneys who represent clients with goals to confirm and consolidate their ownership. Attorneys who defined resolution based on housing stability, affordability, or safety (i.e. assumption of a mortgage, homestead exemption, home

repair, etc.) were less likely to pursue pathways to resolution that involve litigation than attorneys who defined resolution based on consolidated ownership.

III. Civil Codes and Land Laws in Tribal Lands and Native Hawaiian Homelands

Legal Support for Tribal Land Laws and Legal Infrastructure

Most of the attorneys interviewed for Tribal land laws represent Tribes and Tribally Designated Housing Entities (TDHEs). Researchers interviewed four attorneys representing 57 Tribes across a variety of geographies. Half of those attorneys interviewed represent Tribal members and Tribes across a specific geography. One attorney represents Tribes, Tribal nonprofits and organizations in a specific geography, and another attorney represents Tribes and tribal organizations across the nation. Given that the majority of attorneys interviewed represent Tribes, Tribally Designated Housing Entities (TDHEs), housing authorities, nonprofits, and organizations, the findings presented in this section are focused primarily on developing Tribes' legal infrastructure to support the timely achievement of sustained, affordable housing goals.

Each Tribe is its own sovereign nation with its own customs and laws regarding land and conveyance. In addition, Tribes have varied processes for conveying land and addressing housing needs for their members, influenced by their history, impacts of federal laws and proceedings, current geographic location, and internal infrastructure. Thus, the findings represented here only reflect the insights shared by the attorneys interviewed, and their experiences with their clients. Their experiences do not represent all Tribes, given the immense diversity of Native Nations. This section does not include findings from attorneys representing housing entities or organizations led by or serving Native Hawaiians or Alaskan Natives.

The majority of interviewees highlighted that when Tribal members' housing goals are impeded by the way their land is held, they often turn to their Tribe's housing entity or organization, or the Native Community Development Financial Institution (CDFI) that provides financing to members of their Tribe. The attorneys interviewed shared that, given the scope of their roles, they are not the primary point of contact for issues with land, housing, or conveyance for individual members of the Tribe, and the practitioners with more experience supporting Tribal members impacted by land issues, including fractionated interests, are Native CDFIs and Tribally Designated Housing Entities and organizations. Because the scope of this research is focused on interviews with attorneys representing Tribal departments, entities, and organizations, further research is needed to highlight the unique experiences of addressing housing needs for Tribal members with fractionated interest in land.

"Success would be defined by making sure they have the **legal infrastructure necessary to do what they need to do.**

It's making sure they have the laws in place, a mortgage law that the Tribe adopts, and they have (those) processes."

New Mexico Attorney

All attorneys interviewed work to support achieving housing goals for the Tribe and Tribal members. Interviewees defined success as developing the Tribe's legal framework needed to achieve housing goals in a timely manner. A majority of attorneys were on retainer with a Tribe or Tribally Designated Housing Entity, or housing non-profit organization, and they provided services as requested by their clients. Goals were defined based on the particular requests of their client, and the attorneys often referred to their work in terms of projects, not cases, given the very long-term commitment needed to achieve robust legal infrastructure changes. Completion of the project

was often defined as meeting the goals outlined by the client. All attorneys stressed the importance of developing a legal infrastructure that respects, recognizes, and supports the Tribe in their sovereignty to handle their land and housing processes internally.

Interviewees identified the following goals and definitions of success across many of their projects:

- Supporting the Tribe in gaining approval to probate trust land under the American Indian Probate Reform Act of 2006 (AIPRA).
- Establishing the legal infrastructure necessary for the Tribal Court to handle probate matters related to fixtures on trust land.
- Providing legal guidance to Tribes in developing Tribal leasing laws to allow them to approve leases and mortgages on Tribal trust or restricted fee land without further federal approval, through the Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012.
- Assisting the Tribe in developing the required Memorandum of Understanding (MOU) with federal agencies and secondary mortgage market lenders to expand financing opportunities.
- Providing education for Tribes and their housing staff on the process of establishing the legal frameworks and infrastructure needed to support internal management of land leasing and probate systems, and to strengthen their readiness to access mortgage financing.
- Training the next generation of lawyers in Tribal land law and estate planning to increase Tribal members' access to legal services that support their housing goals.

Probate of Land Held in Trust or Restricted for the Tribe

Since the federal government holds title to Tribal trust lands, including lands held by individual tribal members in trust (referred to as allotted lands), the probate process involves transferring the beneficiary title to the rightful heirs. The applicable probate laws depend on whether the land is held in trust on behalf of a Tribe or an individual Tribal member, and whether the Tribe has its own probate laws. Federal probate laws apply when a Tribe does not have a probate law for transferring ownership of Tribal trust lands. Federal probate laws also govern the probate of allotted lands held in trust for individual Tribal members.

Attorneys described the typical process that Tribal members within the Tribes they represent take to probate allotted land held in trust for individual Tribal members. The process begins with identifying all individuals who may have inheritance rights to the land, collecting any valid wills, and contacting family members to verify and gather necessary information. A key step involves determining which of the identified heirs are enrolled members of a federally recognized Tribe. Once this information is compiled, a probate package must be prepared in accordance with federal regulations before proceeding to a preliminary hearing before a federal judge. Attorneys noted that federal judges have some discretion in resolving ownership issues during the probate process, including the authority to subpoena witnesses. In some regions, the limited availability of attorneys to represent individual Tribal members results in probate decisions being made without input from legal counsel familiar with the Tribe's customs and practices, or without advocacy for the individuals and families involved.

When a deceased Tribal member does not specify how trust land should be divided, the attorneys noted that the default presumption is often joint tenancy with rights of survivorship. Under this arrangement, as one heir passes away, their share is redistributed among the remaining heirs. This stands in contrast to tenancy in common, where the deceased heir's interest would be passed on to their own surviving heirs, potentially increasing fractionalization.

Interviewees shared that joint tenancy with rights of survivorship was viewed by some as an effort to gradually consolidate ownership across a generation. Consolidation may also be pursued by the heirs by purchasing other owners' interests. Interviewees also shared that Tribes have offered to purchase all the interests as another form of consolidation. As explained further below, an important distinction in the probate process through the federal government is that the process is only for trust land, and does not include any structures, or fixtures, on the property.

The American Indian Probate Reform Act of 2006

The American Indian Probate Reform Act of 2006 (AIPRA) established a process for Tribes to receive approval to probate trust and restricted land. Three of the four attorneys interviewed mentioned supporting Tribes in the process of seeking approval to probate trust land through the provisions of the AIPRA.

The steps outlined by attorneys for their clients seeking approval to probate trust and restricted Tribal land included:

- Since the interviewees' clients, the Tribes, had existing Constitutions and Legal Codes, the first step involved drafting an amendment of the Tribe's Constitution or Tribe's Legal Code to place probate laws under the guidance of the Tribe's leadership.
- Increase community buy-in and trust in Tribal court via community education and outreach
- Increase Tribal Court capacity to handle probate cases of trust land, including training community advocates and spokespersons who can practice in the Tribal legal system
- Amend the Constitution or Tribal Law with the approved and needed land and probate laws
- Submit the Tribe's probate codes to the Federal Government for approval
- Receive approval for the Tribe to probate trust land and restricted land
- Establish the Tribal court's process to probate Trust land

Attorneys highlighted that the AIPRA process often unfolds in distinct stages, with each step treated as a sequential, but separate project in collaboration with their clients. One attorney presented the complexities of engaging with two legal systems through this process:

"It's a two-step process. We have to get the membership to agree to allow us to amend the Constitution, and then we'd have to petition for that authorization from the federal government."¹⁹

Given the complexities of the AIPRA process, attorneys estimated that it could take up to five years to complete all the necessary steps. These include securing the Tribes' membership approval, obtaining leadership approval to amend the Tribal Constitution,

"The Department of the Interior took the position that they, and only they, can probate trust assets. But [now] Tribes can, with the approval of the federal government, get permission to probate trust assets as well."

Washington Attorney

receiving federal authorization to probate the Tribe's trust and restricted land, and establishing the internal systems to manage the process effectively. The necessary steps vary by Tribe, based on their established processes for amending their Constitution, their internal infrastructure, and the buy-in of the leadership and the membership.

While the steps to obtain approval for the Tribe to probate trust land are complex, multiple interviewees emphasized the importance of Tribes managing this probate process internally. One attorney reflected:

"I think the shading that happens in the readings [of the law] gives an indication of the values and the concerns of the person making the interpretation. [With Tribes interpreting the law and Tribes applying the law], I think you're going to get something that is truer to the values and the concerns of a community when it's by somebody from within the community rather than by somebody outside."

Interviewees stressed that when legal interpretation allows for discretion within the boundaries of law, those decisions should be made by individuals from the Tribe, or at minimum, by someone deeply familiar with the Tribe's customs and values. This approach ensures that probate decisions reflect and uphold the priorities of the Tribal community. Attorneys also stressed the importance of the Tribe managing the probate of their land in alignment with their rights as a sovereign Nation.

"It's kind of a fundamental act of the sovereign to be able to determine land ownership and how it is passed from one generation to the next."

Washington Attorney

Conveyance of Fixtures on Trust Land

An important distinction in the federal probate process for trust land is that the beneficiary's interest applies only to the land itself and does not extend to any fixtures, or structures, on the property. Interviews with the attorneys highlighted the variation in how fixtures on trust land are conveyed, influenced by factors such as the Tribe's laws, customs, and legal infrastructure; the requirements of the financing source or program; and the family's wishes and intentions.

“The federal government has taken the position that fixtures on trust land are not trust, and so the Department of the Interiors’ probate of trust property **does not address the issue of ownership of fixtures** of houses, of sticks and mortar, on trust land. So, there’s this gap at this point in determining the legal rights to those structures.”

Washington Attorney

Two attorneys shared their experiences advising individual Tribal members and Tribes on supporting the conveyance of property on trust land. One attorney noted that probate of structures was not a common client request. However, requests for legal advice were more frequent in cases involving land disputes that involve a structure or in situations where a family member sought clear title to a property after the original owner died without a will, and was a member of a Tribe without an established probate or inheritance process for structures. The attorney stated that for the housing authority,

they hoped for *“security or surety for people who are heirs to show a potential lender that they hold the title to that parcel.”*¹²⁰

An attorney highlighted a sample case involving a home on trust land where the original owner died without a will or any other form of estate plan. The housing authority, a client of the attorney, requested legal guidance on how to achieve clear title for their Tribal member. The attorney provided legal services by filing a petition with the Tribal court, noting that the prior owner died without a will and that multiple heirs agreed on who should inherit the home. They sought a court order affirming that the specific tribal member should inherit the home, formalizing the agreement, and ensuring recognition under Tribal law.

There are cases where the family does not agree on who should inherit the home. The housing authority or department works to ensure that a new owner is established and that someone assumes the mortgage. When there is no will, disagreement among family members, and conflicting testimonies regarding inheritance, the process involves reviewing the Tribal code for any law pertaining to probate and disputes over fixtures on the reservation. By petitioning the court, the decision of who becomes the new owner of the home can be left to the discretion of the Tribal judge. If Tribal law does not provide specific guidance on how to select one person as the owner, then ownership of the fixture is distributed equally. An attorney stressed the distinction between shared ownership of a structure and rights to the land, which might be held as a beneficiary interest in trust land, or through allotment, leasehold interest, or another form of landholding.

An attorney highlighted cases where an heir lost their rights to the land but still owned the structure or retained some interest in it.

In such cases, the heir could transfer the title of the structure, including having the right to sell the house back to the Tribe. If the structure is movable, the person could elect to relocate it. However, very complex cases have arisen where one person holds rights to the land, including through beneficiary interest, leasehold interest, or land assignment, while a different person holds title to an immovable structure on that land.

“I've seen situations (where) a person (is) devising the sticks and mortar to one person, but not devising any interest in the real property to that person and so there (is) a fight among the beneficial interest holders in the trust property, to the point that the person's asked to remove the sticks and mortar from the land because they have no right to have it there or they're being told that they have to purchase some kind of easement, but **they have no leverage in negotiating.**”

Washington Attorney

Probate of Structures in Tribal Court

Interviewees noted that the ability to provide clear title was important both for individual families and for the Tribe, stating, “essentially, [we] have a system that creates clouds on title to fixtures. Housing is a problem on the reservation. So, the last thing you want to do is to mess up ownership of the property so that it becomes unusable by anyone.”¹²¹

To address the gap between probate for land held in trust and the structures on the reservation, an attorney is undertaking a multi-year process to develop legal infrastructure that aligns with Tribal sovereignty and supports the conveyance and probate process for all assets, including land and fixtures, on the reservation through the Tribal court. The steps the attorney is taking towards supporting their clients’ aspiration to manage the probate and transfer of property across generations include:

- Hosting information sessions for Tribal members
- Drafting amendments to the Tribe’s constitution
- Developing Affidavits of Successorship
- Pursuing quiet title actions in Tribal court
- Holding intensive training for select Tribal members to serve as court advocates
- Building trust in the Tribal court among the Tribe’s membership
- Amending the Tribe’s constitution
- Creating a probate process for structures and non-trust or restricted land
- Initiating steps to seek approval via the AIPRA

The complete process may take a minimum of three to six years to complete. The attorney discussed the importance of taking time to build the community’s trust in the

Tribal court, stating, “We have to amend the Constitution in order to be able to even start that process. Part of my aim is to build trust in the community for Tribal court.”¹²² Time is also required to work within the guidance of Tribal leadership to draft amendments to the constitution. The attorney’s clients’ laws require membership voting to approve amendments. Time must be taken to inform the community about the proposed amendments, address questions and concerns, and hold a vote. Continued commitment to the development of the legal infrastructure is crucial. The attorney stressed, “It’s got potential, and as far as I see it, it’s critical for sovereignty,”¹²³ highlighting the importance of long-term investment and commitment to these efforts.

Estate Planning for Tribal Members

Estate planning for Tribal members can be influenced by a variety of considerations, including the individual’s and family’s desires, alignment with the Tribe’s laws for inheritance and the Tribe’s customs, how the land is held, how any structures are financed, and access to culturally aligned legal services to draft the estate plan.

Familiarity with the Tribe’s culture and laws, as well as applicable federal laws, is essential for estate planning. Attorneys noted that depending on how the land is held, estate plans may need to comply with federal laws in addition to Tribal inheritance laws. They shared instances where wills were drafted but ultimately deemed invalid due to noncompliance with Tribal laws, and, in other cases, due to failure to meet applicable federal requirements.

Attorneys highlighted the importance of nuanced approaches to estate planning. An attorney noted that some clients seek estate planning to protect their family’s generational connection to the land, while others aim to preserve the land as an asset and source of generational wealth. Efforts to increase access to legal services for estate planning included initiatives that involved attorneys from the region. However, these initiatives sometimes presented complications due to a lack of cultural competence among outside attorneys, and unfamiliarity with Tribal customs and laws:

*“One of the greatest problems that I have bringing in attorneys from the outside is that they cannot see the land in the way that more traditional people see the land, the land means so much more than just money, if you think about sovereignty, or **what does it mean to have a homeland?** In cases of allotments, that’s a connection that goes back generations. If it is the same family that were the original allottees, [they] chose that piece of property as where they would make their stand on, where they traditionally gathered certain medicines, somebody’s fishing grounds, some place where there are family cemeteries. There’re all kinds of different elements at play here on pieces of land, there’s all kinds of history.”¹²⁴*

The attorneys noted that some federal housing programs required a successor provision, so that if the person who signed the homebuyer agreement died before the end of the agreement term, a successor would be automatically assigned to take over the agreement. These were 25-year agreements from the mid-1990s, which are now nearing the end of their terms. An attorney shared that some of their clients, housing entities and departments, incorporated similar successor provisions in their own homebuyer programs. These agreements are contractual relationships that do not require probate. Instead, they allow for automatic transfer to the person obligated to assume the contract, which simplifies the process.

Estate planning, even when drafted in compliance with the Tribe's laws, customs, and applicable federal laws, is most effective when executed accurately. Multiple attorneys shared instances where critical steps in the execution of the estate plan were not completed, resulting in complications for both the family and the Tribe's housing department. Culturally competent attorneys with expertise in Tribal law, federal law, and most importantly the Tribe's customs and culture, are essential to drafting valid wills and ensuring they are properly executed.

Helping Expedite and Advance Responsible Tribal Home Ownership (HEARTH) Act of 2012

The Helping Expedite and Advance Responsible Tribal Home Ownership Act (HEARTH Act) of 2012 includes provisions for Tribes to receive approval from the federal government to manage their land leasing processes.¹²⁵ Tribes can submit their governing leasing regulations to the Secretary of the Interior for approval. Once the regulations are approved, the Tribe can govern and manage surface leases internally.

*The biggest problem is time delays. They take forever to review leases, to provide title status reports, to record, and my clients always complained about that. I saw two Tribes had this exemption that they had received in the 70s or 80s. I told my clients, hey, let's go get this exemption for everyone else, and long story short, it's what we did.*¹²⁶

Multiple attorneys mentioned supporting their clients through the process of receiving approval to manage the surface leasing process with the HEARTH Act provisions.

Across interviews, it was noted as a multi-step process that begins with understanding their clients' goals and supporting the Tribe through the process of developing their leasing and land assignment ordinances and regulations. One attorney noted that in the process of drafting or revising the ordinances, they included language specifically for land leases. Next, the Tribe must submit the ordinances to the Bureau of Indian Affairs for approval. Attorneys noted that the length and complexity of the process and legal support varies; as some of their clients request legal services to draft the ordinances from scratch, other clients request revisions to the ordinances to meet the HEARTH Act requirements,

and other clients have already received approval, but request advisement on implementation and use of the ordinances.

Attorneys reported that some of their clients sought legal support to implement land ordinances under the HEARTH Act to enable more timely and efficient mortgaging of Tribal trust lands, including the mortgaging of land assignments, with the goal of increasing private equity investments and individual homeownership opportunities..

However, the attorney noted a decrease in legal services requested for assistance with land ordinances in relation to the HEARTH Act:

The reason why I think land assignments have sort of fallen off is private investors don't seem to be as comfortable with a security interest that's tied to a tribal land assignment. A couple of clients still rely on land assignments, but it's harder to get private equity investment.¹²⁷

Approval through the HEARTH Act has had varying impacts on clients, which attorneys attributed to several factors. Most clients represented by the attorneys interviewed sought approval through the HEARTH Act to allow the Tribe to approve land leases and mortgages in alignment with their sovereign rights, and to expedite the land assignment process, often with the explicit goal of creating more timely pathways to homeownership through mortgage lending. Multiple attorneys noted that to lenders, land assignments are less preferable than land leases,, with one interviewee stating, *“private investors don't seem to be as comfortable with a security interest that's tied to a tribal land assignment, and I don't know that it's truly a founded concern.”¹²⁸* Another attorney noted that during the drafting process, they included language and provisions for land leases, which has better supported the mortgage lending process.

Memorandums of Understanding for Mortgage Lending

Mortgage lending on a reservation often requires a signed Memorandum of Understanding (MOU) between the governmental agency involved and the Tribe.

MOUs outline agreements between the lender, including federal agencies and private financial institutions, and the Tribe, including a review of the Tribe's mortgage laws. Attorneys noted that while there are similarities across MOU requirements, some lenders have unique criteria for approval.

Attorneys explained that the MOU process can vary in length and complexity based on several factors, including prior approval from the Tribal Council, the Tribe's current mortgage laws, and whether the Tribe has received approval via the HEARTH Act to manage land leases. When clients request legal services to support mortgage lending on the reservation, attorneys noted that some clients have model mortgage laws approved by federal agencies and request revisions to meet MOU requirements, while others have mortgage laws that are not actively used, or clients may not even be aware those laws

exist. Some clients require legal services to draft mortgage laws from scratch. One attorney shared:

When my client called me, they stated, 'the Tribal council wants me to do mortgage lending.' The first thing I asked them was, 'do they have a mortgage law?' They said, 'I don't know.' So, I called HUD (and) asked, 'does this Tribe have a mortgage law?' And they did. They had a mortgage law just sitting in the books from when the Section 184 program was first started in 1996. So, we looked at it, made some changes, and took it to the Tribal Council for approval. Because the request was coming from the Council, it was so easy. They're going to approve it to make this happen.¹²⁹

Attorneys outlined the process they undertake with their clients to pursue a signed Memorandum of Understanding:

- Client requests legal services to set up mortgage lending on the reservation
- Attorney reviews MOU requirements for the specific lending program. Multiple attorneys noted that revisions and drafting of mortgage laws and ordinances are best designed to meet requirements across multiple lending programs
- Identify whether the Tribe has existing mortgage laws
- Revise or create mortgage laws to align with the Tribe's processes and lender requirements
- Seek approval from Tribal leadership and council
- Adopt mortgage laws
- Sign an MOU with federal agencies and/or Government Sponsored Enterprises to enable mortgage lending for Tribal members on the reservation

Drafting or revising their clients' mortgage laws and signing the MOU is only the first step. Attorneys also provide guidance on developing internal policies and procedures to achieve their clients' goals of efficient pathways to mortgage lending. An attorney explained, "[My client] wanted to remove their internal delays for approving leases. We amended their leasing and mortgage laws to delegate the leasing and mortgage approval process to the housing authority [THDE], instead of requiring leases and mortgages to be approved by the Tribal Council."¹³⁰

The second phase of the work involves developing internal policies for the Tribe's housing entity or department, supporting the housing authority board in approving policies and programs, and creating or revising processes within the Tribe for coordinating and recording leases. This may include developing or continuing development of a realty office. At this point, the Tribe has the laws, policies, and procedures in place to make mortgage lending possible and efficient. However, it is important to note that having the legal infrastructure does not guarantee lending activity.

Legal Infrastructure

Essential legal infrastructure includes land laws, mortgage laws, probate of land beneficiary interests, and signed memorandums of understanding (MOUs), as well as established processes and procedures for recordation, leasing, and probate. These components are necessary to manage lending, conveyances, and land and property transactions. All attorneys interviewed provided advice and support across these areas to help strengthen their clients' legal infrastructure in alignment with Tribal sovereignty and to provide a pathway toward secure homeownership on the reservation.

The internal governance structures of the Tribe also guide the approach and nature of legal services provided. An attorney highlighted a unique project where their client, the housing department, sought legal services to draft new ordinances at the request of the Tribal Council. The Tribe was governed by an elected Tribal Council. In this case, the attorney drafted the new ordinance, and the elected Tribal Council reviewed and adopted the ordinance. Any similar project with another Tribe can be entirely different from what this attorney described, as such work is dependent on the client, attorney, and Tribe. Multiple attorneys noted that projects of this nature with their clients (departments within Tribes with this form of governance) typically take about six to eight months. The longest portion of the process is usually collaborating with the Tribal leadership and the housing department to understand their needs, provide guidance, and draft the ordinance.

Other Tribal governance structures require a more extended process. For some clients, an attorney supports the drafting and amendment process through a general council form of government, where every Tribal member meets periodically throughout the year and quorum is required to commence the meeting. In these governance structures, the ordinance is introduced to the Tribal council. Then, there is a period of public comment and input from the membership. The proposed ordinances are presented at one of the periodic meetings of the Tribal members, followed by ample opportunity for discussion amongst the members, and usually continued discussion at one to two subsequent meetings. These gatherings allow the community to learn more about the proposed legal changes, raise questions and concerns, and become more comfortable with the amendments. Following the period of member input, and in some cases, voting, the ordinance can be presented to the Tribal Council again for consideration for passage. For clients with this type of governance structure, the process of amending Tribal law can take up to two years.

“When a client tells me they want to do something, the first thing I do is [look at] their legal infrastructure, **their capacity**, and determine ‘how do we make it work with what they have?’”

New Mexico Attorney

Supporting the development of recordation offices begins with evaluating the Tribe's existing legal and procedural infrastructure, identifying what is needed to achieve the client's goals, and determining which department within the Tribe is best suited to manage land transactions. Attorneys shared that, in some cases, clients were recording land-related activities on physical records stored in filing cabinets. In other cases, attorneys discovered that the Tribal Council's secretary maintained an excellent recordation system for notes, resolutions, agendas, and other Council documentation. In those instances, attorneys recommended that the secretary expand their responsibilities to include land transactions, and provided the necessary training to do so. Other clients had established realty offices that managed land transactions for the Tribe, and attorneys provided advisement on integrating new procedures in alignment with revised laws and ordinances. This support also included internal evaluations of software and hardware used to host records, as well as systems for filing, identifying, and retrieving records, including infrastructure to track existing liens.

Funding for Legal Infrastructure

Financial capacity to pay for legal services vary across Tribal clients. Most attorneys interviewed were on retainer, fixed-term legal service agreements, or long-term contracts with their clients. The attorneys' clients from Tribes with strong economic bases, including revenue from gaming or a large tax base, were better positioned to financially support the legal costs associated with developing internal legal infrastructure. Other clients were heavily dependent on federal funding to access legal support for land and housing-related services.

Interviewees noted the potential impact of philanthropic funding in supporting the development of legal infrastructure, particularly for smaller Tribes without independent sources of revenue. One attorney noted that their clients with limited funds would first prioritize the highest-need step in the legal infrastructure process, and then, once additional funding was secured, they would resume the work.

Attorneys called for dedicated funding for legal services to:

- Amend or create land laws needed for approval via the HEARTH Act and AIPRA
- Develop internal procedures to manage leases, assignments, and probate processes
- Build capacity and provide education to develop trained personnel
- Provide seed funding to establish a realty or recordation office and hire necessary staff
- Purchase software for accurate and efficient recordkeeping

Two attorneys estimated that for a small to medium-sized Tribe, \$100,000 to \$120,000 in startup infrastructure funding could support legal fees, training, and initial staffing.

However, funding needs vary depending on the client's goals and the existing legal infrastructure.

All attorneys emphasized the importance of Tribes having the financial support needed to achieve their goals around land and housing governance, and to do so effectively, efficiently, and in alignment with their rights as sovereign Nations. In addition, attorneys highlighted that funding dedicated to the continued development of legal infrastructure will have a lasting impact, as it supports improved pathways to achieving housing and conveyance goals for all current and future Tribal members.

IV. Civil Codes and Title Resolution in Hawai‘i, Puerto Rico, Guam, and Commonwealth of the Northern Mariana Islands

Native cultural practices blend with Western property laws. HAC researchers interviewed attorneys practicing in Hawai‘i, Puerto Rico, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI). These attorneys highlighted the complexities present in their regions, where western property law and customary land transfer practices require a nuanced understanding of both systems to effectively serve clients with issues related to their land tenure or title.

Land Stewardship in Hawai‘i

The Kuleana Land Act of 1850 was passed by the Hawaiian monarchy to protect land ownership rights of Native Hawaiians as foreign settlers to the islands exerted pressures to privatize land ownership and claim property. The Act granted Land Commission Awards to Native Hawaiians who could prove their relationship to and use of the land. One attorney noted, “Kuleana is a Hawaiian word, I think the literal translation means responsibility. It’s your responsibility to work this property.”¹³¹ Native Hawaiians were given ownership of plots of land following proceedings that determined ownership based on testimonies regarding land boundaries, homesites, and use of the land. While the land awards were meant to protect land stewarded by Native Hawaiians, the new individualized ownership model was unfamiliar to the new owners, who had held land communally for generations. Titles for these land awards were recorded by hand in the Native Hawaiian language, in ledgers.¹³²

“...you have to consult with people **familiar with the traditions.**”

CNMI Attorney

To clear title on kuleana lands, attorneys face unique challenges. An attorney who practices in Hawai‘i shared that the process is expensive and arduous, because it requires exploring records handwritten in Native Hawaiian with the assistance of a translator familiar with the language. Titles often must be traced back to the original recipient of the land award in the mid-19th century, through many generations of Hawaiians,

and may not have traceable lineages. As the interviewee stated:

*There’s a lot of property in Hawai‘i that’s historical family property that never really went through probate. Over the years, there is (sic) many generations of people, especially a lot of people who we don’t know what happened to them, or we don’t know if they moved away, we don’t know if they have kids, or what happened with their families...going back to the 1850’s.*¹³³

The attorney also noted that while identifying the original record for the property, there have been frequent cases where the handwritten record had a single name, not a full name that could support identifying the original owner. Many original kuleana lands have been lost because of speculation and predatory acquisition of land held by multiple descendants of a landowner.

Some families intentionally use communal land practices as a form of resistance and cultural preservation. The same attorney in Hawai'i noted that when working with clients, it is important to understand how they view their relationship to the property and which systems they, and their families, elect to use for conveyance practices. The attorney noted:

I think what they've learned, what they've come to believe, is that by not following [probate through the courts], nobody can ever come in and put a mortgage on the title and foreclose it and take their family's property. So, they leave it, and they're fine with it. They all work out amongst their family members. Like who gets to use what and when.¹³⁴

Some families intentionally elect to keep the title “unclear” from a legal perspective, and use familial agreements to manage land use, as a form of generational practice as well as a form of protection against land loss. However, similar to other forms of clouded title issues, there are continued vulnerabilities related to property with unclear title.

Owners of kuleana lands and properties with unclear title in Hawai'i often face similar issues as heirs' property owners. The attorney noted that research to clear title, including genealogy and family tree research, and locating the original record from the government presents challenges and can be very costly. The process can involve exploring property records across multiple forms of government, with varied recordation practices in different languages. The attorney noted that their clients are often the residents or hopeful residents of the property. The status of the property title inhibits their ability to obtain funding for home repair or construction, or use the property productively for agricultural purposes. Their clients, who often have been paying taxes and investing time or money in the property, seek legal services for a specific purpose, often to build a home, and in some cases, sell the property.

“[Probate] involves huge numbers of people, who all own tiny little interests in property that a lot of times is rural or agricultural, not conducive to splitting up in a fair way or really using in its present state for anything other than just sitting there.”

The attorney shared that cases involving kuleana lands, or older generational properties intentionally held communally, often do not have a pathway towards clearing title, resulting in limited options for the family. Legal services are still offered to the clients to try to begin the process of identifying and notifying heirs and examining records, regardless of the complexity of the case. The attorney noted the impact of these properties being unusable for the family, but vulnerable to speculators, sharing:

It's been the case where we've had investors or neighbors buy a portion of the property, Then, they want to go through the regular partition case. So, we'll go and track down all the interest owners, and a lot of times, we're trying to buy them out. A lot of them [interest owners] are homeless, even though they own a property. They're in homeless camps, living in burned out cars.¹³⁵

The attorney recounted multiple situations where, in the process of supporting a client in a partition case against an investor or outside purchaser, they assist with notifying the other heirs, often to pursue buy-out options. While identifying and notifying heirs, they mentioned often finding heirs in homeless encampments, living in cars, and generally unhoused, even though these heirs are technically property owners. After notifying them that they are property owners, the attorney has fielded questions from the heirs facing homelessness who did not know they had claim to land, and want to know how they could use it to provide stable housing for themselves. However, given the title structure, the attorney has to inform them that while they have ownership interest in the land, there are very limited options to use the land productively or to provide housing.

Probate in Guam and CNMI

Similarly to kuleana lands in Hawai'i, land ownership laws in the Commonwealth of the Northern Mariana Islands are intended to protect the ownership interests of Native residents of the islands. An attorney who practices in the CNMI shared that landownership with fee simple title is limited to the indigenous population, and all others are restricted to a 55-year lease at most. Oral, or "traditional" property transfers are still more common than written wills, so often "*there's (sic) gaps in the chain of title*" when people try to sell land.¹³⁶ Probates are opened to fill the gaps, but when a will is not available, courts will subdivide the property according to the family's wishes. There are also stringent environmental regulations in place on the islands, and multiple rounds of inspection and planning must be conducted before a family is permitted to lease their land for development or another use.

In the CNMI, two primary cultural identities shape today's land tenure practices. Family members play important roles in property transfer in the Chamorro and the Carolinian Islander cultures, both of which are prevalent in the CNMI. In these traditions, when a landowner dies, the eldest child becomes a "cultural trustee" and oversees the management of the property within the family. That child may be responsible for determining who receives shares of the property, and how it can be used in the future. In an interview, an attorney shared that these traditions of oral land conveyance were legally recognized until 1984.

Oral land conveyances did not require documentation outside of the family's memory. Without written records of property transfers after a family member died, there are many opportunities for disagreement between siblings. The practice of customary adoption in

CNMI can also complicate the probate process, because if an heir was adopted according to custom (which would likely not involve formal records) but other heirs disagree on the legitimacy of the process, disputes will likely lengthen the overall timeline to resolution. Oral conveyance without documentation can also lead to usage issues if a family member wants to borrow funds to build on the property, because no written records of the property's ownership exist.

Probate in Puerto Rico

Attorneys in Puerto Rico need to have knowledge of the Spanish Civil Code as well as U.S. laws to practice probate. In interviews, attorneys in Puerto Rico explained that the Spanish Civil Code dictates how assets are distributed after death. Before 2020, the code required that one third of all assets be divided equally among all of the decedent's children. This provision was enacted to ensure that all children would have access to their inheritance, even if they were born outside of a recognized marriage. Another third of the

"Something that...lending in general could take into consideration (is) the **diversity of title issues.**"

Puerto Rico Attorney

estate must go to a single family member, and the final third can be passed to anyone. In 2020, a revision to the civil code was adopted, allowing half of an estate to be left to anyone, and requiring the remaining half to be distributed to forced heirs, which includes all the decedent's children and surviving spouse. If a will is not written and filed according to these rules, or was drafted before 2020 and did not follow the original civil code, the attorney who

drafted it can be sued and stripped of their license. This makes the estate planning and probate process risky for attorneys, as they will be held responsible if a client does not disclose information about all of their children. These requirements also make heirs' properties often unavoidable in Puerto Rico, as a portion of all estates must be subdivided and distributed to all of the property owner's children.

In the early 20th century, the Spanish Civil Code in Puerto Rico was perceived as a victory for social justice. Many property-owning individuals and wealthy citizens at the time had children outside of recognized marriages, often parenting children with enslaved people. Because the code required that at least one third of all estates are divided among all of an individual's children, it became a point of pride, as it guaranteed that people would have access to their generational wealth, even if they were not born within a legally recognized marriage.

The continued practice of the Spanish Civil Code is somewhat controversial in Puerto Rico. When the United States gained control of Puerto Rico, not all of the existing laws were changed. An attorney in Puerto Rico shared that the criminal code and other legal procedures are identical to procedures in the United States, but the civil code remains

unchanged. Some individuals in Puerto Rico argue that the Spanish Civil Code unnecessarily complicated legal proceedings, while others view it as something to celebrate, as the code is still recognized “despite 100 years of colonialism.”¹³⁷

Title resolution requires notarizing estate documents, which can be risky for attorneys in Puerto Rico. All public notaries in Puerto Rico are required to be licensed attorneys, and, as with the consequences of filing an invalid will, the attorney will be held legally responsible for notarizing documents that do not accurately follow all codes and regulations. Because notaries must be attorneys, and because of the risks involved with notarizing documents, the fee for clients to have something notarized is also substantially higher in Puerto Rico.

A declaration of heirs is a legal document that names everyone with rights to an heirs’ property, but does not provide heirs with individual ownership. To complete a declaration of heirs, an attorney must take several steps to gather legal documents that prove the heirs’ relationship to the previous property owner. These documents include the death certificate of the previous property owner, birth certificates of all of the heirs to the property (and their children or grandchildren, if necessary), a court document certifying that the property owner did not have a legal will, and another court document certifying that the owner never had a will drafted by a public notary, as well as proof that the deceased did not owe money to their children. These documents must be taken to a notary, in order to prepare a document summarizing all of the information. Finally, the heirs must obtain documentation from the Treasury Department to certify that they do not owe any money to the government from the estate. With these processes completed, the heirs can present their documentation to have the property records updated to include the names of the living heirs. This update to property records does not necessarily give the heirs the ability to utilize the property as if they had clear title, because they are all still collective owners, but the heirs could then ask another public notary to file for partition of the property, and physically divide it amongst themselves.

Each step taken to reach a declaration of heirs involves multiple costs, according to interviewed attorneys. Filing fees for courts are roughly \$120. To send notice to other heirs costs between \$100 and \$120 per person, and if any heirs are unknown, sworn statements must be made, at a cost of \$25 per person. Notifying heirs through newspaper publication can cost roughly \$700. Other steps in the process, such as records requests, can carry administrative fees as well. When a resolution is reached, notice must be published again in newspapers. And finally, if the property is partitioned, a survey is required, which costs between \$1,000 and \$1,500. These fees, compounded with attorneys’ fees and the costs of notarizing documents, can bring the price of a declaration of heirs to between \$5,000 and \$8,000.

To reach individual ownership and “clear title” in Puerto Rico, adverse possession is often the most viable option. An attorney shared that they often resolve heirs’ property

cases through adverse possession claims, especially if an heir has lived on the property for several years and does not have information about their other family members. If an heir has occupied a property publicly for 10 years in good faith (meaning that they believed the property was theirs when they began to occupy it), they are eligible for their attorney to file an adverse possession claim on their behalf. If they have occupied the property in bad faith (meaning that they knew that they did not own the property when they began to occupy it), they must have lived on the property for 20 years before filing for adverse possession.

Findings: Funder Interviews

Defining Resolution

Grant funding for heirs' property and title resolution work is provided by a variety of entities across multiple sectors. Funding for heirs' property work is available through municipalities, financial institutions, national and local foundations, nonprofits, private companies, and intermediaries. Organizations vary in size, capacity, and length of time spent investing in this work.

Funders' measures of success included prevention and resolution of heirs' property, defined by and in alignment with their organizational goals. Many of the funders interviewed viewed success as "resolution of title issues," and "clearing title" as consolidating ownership to a single individual. Other definitions were less specific but included similar themes: preserving or accessing generational wealth, improving economic mobility, and home preservation. Some funders expressed a particular focus on prevention of title issues through community education and estate planning. Success was often measured by counting completions of legally valid wills and other forms of estate planning.

"If the people who are using the property could somehow be given **financing to buy out** the other people who are not using the property and don't care about it, that would **fix the whole problem.**"

Hawai'i Attorney

Funders' overall goals for heirs' property work varied and often aligned with how they defined success for grantees' activities. Interviewees expressed a range of hopes for what their investments in heirs' property and land tenure work might achieve, revealing not only their goals but also their visions for the next steps forward in this field and for heirs' property owners themselves. One funder stated, "*we want to end heirs' property,*"¹³⁸ which aligned with their focus on estate planning efforts and established annual benchmarks. Another funder, who primarily supports education efforts for practitioners focused on title resolution and prevention, emphasized the importance of equipping practitioners with knowledge to better support and educate their communities. They shared that their work "*overall is that we give knowledge to the hands of the people that need it so that they can make the best-informed decision for their situation. We hope the land is more secure, but if it's meant to always be heirs' property, [we hope] that they have the support. We feel that knowledge is power.*"¹³⁹

Another funder, who stated, "*the purpose of this is more around community driven infrastructure and long-term change,*" provided flexible, multi-year funding. Their measures of success included grantees demonstrating investment in their communities

and showing “movement towards a much longer-term infrastructure change,”¹⁴⁰ without relying on specific metrics. Another interviewee noted, “Everybody is motivated to see a positive result... to see a new customer come into the fold because they have an asset to back up their needs financially and provide collateral that they didn't have before. The community benefits because there is more economic activity that results from this.”¹⁴¹ With a focus on enabling consumers to leverage home equity for themselves and the community, this funder tracked how their grantee defined success as consolidated and confirmed ownership by a single titleholder.

“...if we can empower that family to be aware of the risks, be aware of the disadvantages and advantages, then **they can make the best, informed decision** that impacts their legacy, and that's what we really want them to have—is that power—**versus feeling powerless.**”

Funder, Regional

Types of Funders	<ul style="list-style-type: none"> Foundations Housing Finance Institutions Private Companies Nonprofits Intermediaries Municipalities
Capital Sources for Funding	<ul style="list-style-type: none"> Investments and Business Revenue Federal Grants State and Municipal Funding Cy Pres Awards from Class-Action Lawsuits Interest in Lawyer Trust Accounts Donations and Philanthropic Commitments
Funding Channels and Programmatic Portfolios	<ul style="list-style-type: none"> Heirs' Property/Tangled Title Tribal Communities Civil Legal Justice Foreclosure Prevention/Homeownership Stability Community Investment/Neighborhood Preservation Impact Divisions Reparations Sustainability

Figure 7. Overview of funder interviewee organization type, source of capital for funding, and internal funding channels and programmatic portfolios.

Overall, the funders’ goals for investing in heirs’ property and land tenure work often aligned with their definitions of success and informed the structures of their funding, including required outputs and activities from grantees.

Funding Resolution

Funding organizations hold their heirs' property investments in a variety of portfolios and programs. While the most common programs were related to foreclosure prevention, housing stability, and homeownership preservation, other investments fell under community service, neighborhood development, impact investments, home repair, small business support, and affordable housing programs. Only three entities had programs explicitly focused on or created for heirs' property or tangled title.

Heirs' property funders have sources of capital that impact their investment capacity. Funding organizations reported securing capital through federal grants, state or municipal funds, donations and philanthropic commitments, investments or business revenue, interest from lawyer trust accounts, and even cy pres awards (settlement distributions granted to an organization)¹⁴² from class-action lawsuits. Entities that disperse federal, state, or municipal funding often reported acting as intermediaries, applying for funding in order to allocate capital to partner organizations who work directly with heirs' property owners. The necessity of applying for and receiving funding to continue their own investments highlighted that even funding organizations do not have unlimited access to capital to sustain heirs' property work. Similarly, organizations that allocate funds from business revenue or philanthropic donations are limited in how much they can provide by the performance of their investments and the commitment of donors.

Many funders for heirs' property work are intermediary organizations. Among funders interviewed, over a quarter of interviewees represented organizations that redistribute awarded funding to practitioners, rather than using their own sources of revenue. These organizations support their own heirs' property programs, initiatives, and grants by applying for funds from primary funding sources. While these intermediaries are often supporting local or regional initiatives, they are competing with other organizations for what is, overall, a limited amount of funding opportunities.

Allowable activities and uses of funding are often restricted by the funder. Some funding organizations limited the use of their awards to only certain initiatives or portions of the legal process. For example, an intermediary reported prioritizing preventative action in their heirs' property program by requiring a minimum number of estate plans to be executed for each tangled title that is cleared by their funding recipients. The most common eligible uses of funds from funding organizations were attorney salaries, educational events, and estate planning services. However, it is common that only portions of attorney salaries are paid with grant funding, so that funds are only allocated towards certain tasks completed by the attorney. By supporting specific activities, funders are directing attorneys' time according to their investment priorities.

When legal organizations are pressured to meet minimum outcomes, they allocate their time to maximize their reporting over their cases' complexities. Organizations and attorneys funded by grants with strict metrics for outcomes were the most likely to report

turning clients away because of case complexity. These attorneys also shared that they host events like wills clinics and estate planning workshops, because they allow attorneys to maximize their outreach and results with minimal resources. However, wills drafted by attorneys who do not specialize in, or thoroughly understand, heirs' property can create heirs' properties in the future if not drafted correctly, or if the wills leave properties to multiple future heirs. Drafting low- or no-cost wills is only effective as a preventative measure if the attorney understands how to avoid the creation of heirs' property, and if the property owner understands that the will must be probated by a family member after their death.

Legal services are funded through specific legal organizations, most commonly legal aid providers.

Almost all funders seeking to provide legal services for heirs' property owners do not subsidize private attorneys' fees or provide capital to homeowners to seek their own assistance; rather, they provide grant funding to legal organizations for staff salaries and operating costs. This form of funding prioritizes low-income heirs' property owners who are facing issues related to their tangled title, as most legal aid clients seek assistance because they are facing housing instability, and they must meet income and asset requirements for representation.

Organizational prioritizations for investments directly impact how funding is distributed.

Many funders that reported goals of clearing tangled titles or securing immediate housing stability allocate their funds to legal aid organizations, university law clinics, nonprofits, or intermediaries that fund such organizations. In contrast, a select few interview respondents shared that their organization prioritized long-term, structural work focused on policy reform, research, and capacity building to create community-level ecosystems that can address heirs' property in the future. These organizations fund entities like CDFIs, research entities, community development organizations, and universities that are working toward long-term solutions for heirs' property owners to utilize their

"I'm aware that we still have a ton of **attorneys and law professors who are creating heirs' property**, left and right...it's (the client's) choice if you choose to do that. But you better well educate folks on what they're doing if they do that, particularly in a non-UPHPA state. And attorneys just aren't doing that.... I'm concerned that we're nipping a problem in the bud, but there's roots spreading all over the place (that) we're not seeing, because we're letting the wills continue to be created."

North Carolina Attorney

"I think it's important for funders to explain why they want to fund what they want to fund.... **That's helpful** to people like me, to... attorneys, nonprofit attorneys, **to know why funders want to invest.**"

North Carolina Attorney

properties. Both ends of this funding spectrum are necessary to support heirs' property owners: in the short-term, funding is needed to help heirs remain housed in secure, healthy, affordable homes whenever possible, and in the long-term, research on and development of programs is needed to allow heirs' property owners to retain their properties while accessing the benefits of landownership. These programs will require self-sustaining sources of funding in order to have long-term success.

Grantee Criteria and Funding Requirements

Every funder interviewed for this project had different methods for identifying potential grantees. Sixty-seven percent of funder interviewees provided funding for heirs' property work based on prior established relationships. Relationships led to invitations to apply for funding, after the funding organization had an understanding of the applicant's experience, programs, and priorities for their work. Some grants are only available to organizations that have participated in a funder's past work or heirs' property events, and at least one funder reported making grants that had been directly negotiated with recipients. These funders, who prioritize direct connections with recipients, were also more likely to share that their funding is not available for general application or proposal, and is invitation-only.

Of the 21 funders interviewed for this research, 14 reported that their funding is only available by direct invitation to established partners, meaning that the organization has invested time in building a relationship with the funder. Only seven funders had programs with an open request for proposals, and three of those were only available to established affiliates working in specific geographies. City-based funders were five of the participants, and nine were limited to either specific states or counties. One state funder only invests in specific types of initiatives. Only one interviewed funder, an intermediary, has a program that was open across the country, but it was not specific to heirs' property work, and applicants competed with other programs for the available awards. This program is also no longer operating, as its primary funder does not *"have the same goals moving forward."*¹⁴³

Selection criteria are commonly dependent on prior experience working with heirs' property owners. However, at least one funder shared that an organization can be eligible through current heirs' property work. Two different organizations require that a grant recipient has at least several years' experience working in the heirs' property space to be selected for funding.

Two funders, both municipalities, provide funds in the form of reimbursements.

Reimbursements are either provided to heirs' property owners for fees associated with estate planning or legal services, or as grants to legal organizations providing direct services. Both municipalities prioritize title resolution with their investments, but only one of the two allows funding to be used for overdue taxes, title searches, recording fees, records requests, and other court fees paid by the client, and, once a property is recorded under a client's name, funds can be used for home repair or down payment assistance.

Although the funding ultimately goes to the heirs' property owner, payments are funneled through legal aid organizations, which act as intermediaries between the funder and client.

One organization provides flexible funding to address civil legal issues for Tribes and Tribal members.

With a goal of “self-determination, sovereignty, and honoring their Tribal jurisdiction,”¹⁴⁴ this organization created an open-ended application process for Native-led and Native-serving legal aid entities to secure funding for initiatives designed by and with Tribes. Designed in partnership with Tribes and informed by community conversations, the funder aimed to create an accessible grant program. Drawing on insights from Tribal members, the organization accepted written or oral applications in any language and encouraged applicants to outline their own goals for the funding. To select grantees, the funder assessed whether the proposals were community-driven, what needs would be met, and the ideas that shaped the applicant’s approach. The flexibility in the program design reflected the need for funding to support both direct legal services for Tribal members and long-term legal infrastructure for Tribes, including development goals for Tribal courts to process land and property conveyances in alignment with the Tribe’s laws, customs, and practices, in a way that upholds Tribal sovereignty. The funder also intentionally considered the staffing capacity of partner organizations and Tribes, shaping the length of the application and the requirements for grantee reporting. Believing that prescriptive grantmaking could inhibit the growth possible through immediate access to capital, the organization continued to evolve its grantmaking process through partnership, feedback, and community-led dialogue, with the aim of building stronger, more equitable partnerships with grantees.

“The idea was, ‘how can we invest in more funding and **decision-making power** to Native communities who **already know** what issues they’re having?’”

Funder, State

Grant Amounts and Timelines

Interviewees reported a range of grant sizes available to different grantees. The largest

“I think there is **value in heirship work being multi-year**... It takes time to connect with the people that need to be educated on this particular issue.”

Funder, National

one-year sum of funds from one organization was \$10 million, which provided funds nationally to CDFIs, research entities, universities, legal services, and local community development organizations. Another national funder distributed \$5.9 million in one year, among non-profits, legal aid providers, local governments, housing authorities, and organizations that are affiliated with the funder. Funders who distributed several million dollars across the country provided grants of up to \$200,000

maximum if the applicant did not match the funds, and up to \$500,000 maximum of funds were matched. Among municipalities and organizations that fund either one or two specific legal aid providers, annual grant amounts were similar, ranging from \$250,000 to \$350,000, to fund attorney and support staff salaries and cover client expenses associated with clearing title.

Funding Processes by Type of Funder

Funder Type	Local Organization	Municipality	State Organization	Regional	National
Total Funding	\$5,000 - \$1 million, One or two year	\$400,000 - \$800,000, Multi-year	\$5 million total, in ~\$250,000 awards, Multi-year	>\$10,000 - \$6 million, in ~\$150,000 awards, One year	\$30,000 - \$14 million
Grantee Selection	Direct negotiated grantmaking, open RFP for local organizations	RFPs or invitations to apply based on relationships	Open-ended RFP for proposals in any language, written or oral	Direct outreach via relationships, RFPs for partners, chosen based on experience with heirs' property	Direct negotiated grantmaking, invitations to apply based on relationships
Grantee Type	Local legal service providers (legal aid and university)	Legal service providers, local intermediaries	Legal service providers	Private attorneys, non-profits, legal aid, university law clinics, legal aid via partners	Established partners: non-profits, universities, legal aid providers
Allowable Uses	Attorney salaries, mediation, direct legal services, community education, estate planning, title resolution	Full representation, estate planning, client expenses, mediation, publication, family tree research	Civil legal services, legal infrastructure	Training, coalition and partnership building, direct legal services, community education, client expenses	Research, information sharing, policy and systems change, direct legal services, title clearing, estate planning, capacity building, government partnerships, land use
Required Outputs	300 open cases between 4 attorneys and 1 paralegal, 1000 closed cases between 5 - 6 attorneys	200 - 300 clients per year	Infrastructure and systems change, direct legal service	Established in application, often closed cases, consolidated ownership, cleared titles	Determined during negotiations

Figure 8. Comparison of funding allocations, grantees, uses, and outputs between organizations and municipalities that fund heirs' property work.

Some organizations had pointed reasons for providing only one year of funding at a time.

Funders whose revenue relies on external sources cannot guarantee multiple years of funding when they distribute awards. One funder also reported that offering grants on a yearly basis, and therefore requiring recipients to reapply annually, maintains a relationship and open communication with the organizations they work with, which was a goal of the funding organization. Many organizations who have relatively new funding programs have begun by only providing annual grants, with an understanding that their funding schedules may change as the programs evolve.

"I think something that we're increasingly trying to be cognizant of is **how much information do we need to document impact** versus how much information is just too much of a burden for the practitioners, right?"

Funder, National

Of the funding organizations that do provide multi-year funding to their recipients, all but one reported providing a maximum of 2-3-year grants.

One organization will fund programs for up to 5 years at a time. These funders were more likely to provide resources to organizations that have a preexisting relationship with the funder, rather than seeking recipients through public requests for proposals. In addition, all but one of the funders that provide multi-year grants have a relatively established program focused on heirs' property work. Some of these funders shared that they understand the time and uncertainty associated with title resolution, and they recognize that providing funds for more than one year at a time can give the organizations working directly with heirs' property owners the ability to plan ahead.

Some of the largest sources of funding are being reduced for future grant cycles. Of eight funders who were able to share figures for their funding in 2023 and 2024, three reported decreased funding between those years, and one reported a complete end to funding. Three others that reported increasing funding amounts have programs that are restricted by geographic area. Overall, the information shared across interviews with funders demonstrated an ongoing decrease in funding allocations for heirs' property work, with no confirmed plans to increase available nationwide funding to date.

There are gaps to be bridged between legal practitioners, community organizations, and funders of heirs' property work. Cross-sector communication between practitioners and their funders is necessary to expand understanding of what resources can alleviate undue burdens on legal organizations and their clients, and how funds can be better leveraged to support organizations. By setting expectations and goals for funding together with attorneys and legal professionals, funding organizations can maximize the impact of their investments for heirs' property owners.

Impacts of Investments

Some funders shared quantifiable impacts of their programs' investments over certain amounts of time. One program has provided resources to clear titles to \$20 million worth of heirs' property, and another is funding title resolution for approximately 40 families

annually, at a cost of \$12,000 to \$15,000 per family. One funder that uses business streams of revenue to support heirs' property owners reported that they had seen high levels of success when funding private attorneys working on specific cases.

"Our strategy in this has been to intentionally break down many of the power dynamics that exist in the grant-making funder world and to have a very **person-centered approach.**"

Funder, State

Many funders shared an awareness of changes their investments make in how people understand heirs' property.

Progress has been made so "*people are aware of end-of-life planning and (know) where to go when they have an issue of probate,*" in communities without widespread knowledge of the estate planning process.¹⁴⁵ One funder shared that their investments have been made in order to give families the knowledge, necessary tools, and ability to make decisions about their property and legacy. Overall, funders reported a change in their work and understanding of heirs' property and a potential for systems change. In their fields, "*... we see quite a lot of additional*

conversations happening across the industry, a lot of awareness, a lot of folks embedding this type of work into their daily priorities in a way that was not the case before."¹⁴⁶

"There's still a lot of work to be done to bring low- to moderate-income homeowners **into the financial mainstream.** I just feel like we take it for granted that there's a two-tiered financial service system... We know that... the home technically for low- to moderate-income households is their largest asset purchase that they'll make in their lifetime. It is where they're holding all their **savings and equity to pass on to future generations.**"

Funder, National

Discussion

Interviews with attorneys, mediators, and funders revealed different approaches to heirs' property work. While many practitioners identified the complex nuances involved in the legal process to "resolve" heirs' property, funders often recognized that the process is nuanced, but that their organizations are involved in heirs' property work for specific reasons.

Funding and service barriers

Requests for funding are largely centered on flexibility. Attorneys reported that funding would be more beneficial if they could provide input on what outcomes are possible in a given amount of time, if the funds could be used for direct costs throughout more of the legal process, and if multi-year grants were promised to their organization. Several attorneys, primarily in legal aid or nonprofit firms, shared that their intake criteria are connected to strict reporting requirements and expectations attached to their funding; organizations that must meet minimum case numbers are more likely to deny clients with more complex cases including higher numbers of heirs or disagreement among family members. These potential clients are often the most in need of low-cost, long-term assistance. The most common request for funding heard from practitioners was to increase their capacity to take on complex cases (by hiring new attorneys and support staff, which would require multi-year commitments), and many also said that funds for buyouts would solve many of their clients' cases. Legal organizations that pay for court fees, records requests, and other client costs made clear that those expenses are written explicitly into their applications for funding, because they would otherwise not be able to use funding for them.

Nuances between cases may block some families from accessing legal services.

Although many funders support legal organizations with attorney salaries and legal expenses, attorneys raised concerns about limitations on client eligibility. If heirs' property owners have a case that seems too complex or would take too many resources from the firm, they are often turned away despite needing assistance the most. Additionally, if

"When you have a theory of change that involves changing a system, that's an **immediately difficult pitch to make**, because how do you show system changes happening and show (performance indicators) in a couple of years when **it's really a 5- to 10-year long process** and it's happening?... it's harder to make the argument (to) stick with us for 5 to 10 years, and we'll get this done. (Funders) want to see three-year funding horizons, (a funder) wanted to see a one-year funding horizon, and **I can't give you anything in that year. I can claim to, but it's just not the kind of enduring change that needs to happen for the whole system.**"

North Carolina Attorney

clients seek help but do not want to consolidate their ownership to a single entity, they may be denied assistance because their goals do not align with the goals of the legal organization's funder or grant. Families in legal deserts who do qualify for legal aid representation face obstacles of distance, limited internet and cell phone service, and time needed to travel to and from their attorney meetings.

Private attorneys are necessary to resolve some heirs' property cases, but cannot always take on all of the clients who need their services.

Opportunities for private attorneys to assist moderate-income clients who do not qualify for legal aid are a necessary step to make legal assistance accessible to all heirs' property owners. Private attorneys may also fill in to take on clients who live too far from a legal aid organization, and private rural attorneys have the cultural competence to serve the communities in which they live. Many of the private attorneys interviewed for this research provide heirs' property services for a reduced or waived fee because of their clients' economic limitations, but this limits the attorneys' ability to keep their business funded without taking on other cases. If private attorneys had access to grants or other funding to sustain their heirs' property work, they could more efficiently provide low-cost or free legal assistance to clients who do not qualify for legal aid services but cannot afford the attorneys' hourly rate.

"I firmly believe that problems **cannot be grant funded out of existence.**"

Funder, National

"We talk a lot about title clearing as the sole and primary kind of tool that we use to clear heirs' property. But I think it's important to realize that **the status of title as it is has protected that land as well.**"

North Carolina Attorney

More complex heirs' property cases are more likely to be barred from pro bono legal services.

Rural heirs' property owners face the physical challenges of legal deserts, and are more likely to be denied free legal services for complex cases with multiple generations of heirs involved. If a low-income heirs' property owner does not have cooperation from their other family members, they may be denied legal assistance that is necessary for them to achieve housing security or fund home repair, because their legal aid provider will not take on an adversarial case.

The heirs' property ecosystem must have methods to support the immediate housing needs of people who will continue to be heirs' property owners, either by choice or necessity. These methods need to be shaped by available funding streams, the capacity and willingness of attorneys to handle complex and multi-generational cases, and a higher level of flexibility in the housing and finance systems to support communal property ownership. Comprehensive and collaborative local and national funding systems are necessary to increase investments in heirs' property initiatives.

Recommendations: Funding Strategies informed by Interviews

Policy

State-level policy changes can reduce the costs of resolution and prevention. In states that recognize affidavits of determination or descent, heirship affidavits, and other legal documents that affirm collective ownership of heirs' property, heirs are able to access home funding and financing, are better able to manage their property together if they wish, and can reach a form of resolution that does not commonly require drawn-out legal proceedings. Estate planning can also be made more efficient with transfer-on-death instruments. This form of estate planning, including enhanced life estate deeds, transfer on death deeds, and others, transfers property ownership to identified beneficiaries immediately upon a property owner's death. These instruments remove the need for a beneficiary to probate a deceased owner's will within a certain window of time, and they can simplify the process of resolution for living heirs.

"I would love for there to be some kind of **specialized loan** to deal with (buyout for the UPHPA), that had a lower interest rate"

New York Attorney

"...the sad part about it when it's dealing with our clientele is that we have (the UPHPA) that can be very beneficial to them and we can help them to litigate it. But if they **can't come up with that money** to buy out that family member that wants the partition, **it's all for naught**. There's really nothing we can do... Sometimes when we advise clients under this, we tell them that there's a likelihood that you **won't get too far if you can't come up with the money**."

Florida Attorney

Adopting policies that recognize these forms of resolution and prevention can provide tailored approaches to challenges faced by heirs' property owners. Policymakers can also approach communal living arrangements with respect for their tradition and purpose, and funders can invest in pathways, such as simplified probate procedures, cooperative ownership models, or family trusts, that preserve family autonomy and provide enforceable legal protections.

Attorneys call for direct funding

Multiple attorneys reported that direct access to flexible capital for their clients could preserve their clients' homeownership in many of their cases. Attorneys that have experience working with the UPHPA shared that their low-income clients are often unable to

take advantage of the buyout process guaranteed by the legislation, because they do not have access to a loan or other forms of financing to purchase other heirs' interest. Providing methods for heirs' property owners to preserve their landownership via the UPHPA can make the legislation more effective for a broader group of families.

Attorneys requested flexible funding that provides longer grant periods, adaptable outcome expectations, and expanded eligible uses of funds. Philanthropic funding for legal services is commonly tied to strict reporting requirements (i.e. a minimum number of titles cleared or estate plans completed) and is typically restricted to specific costs, like attorney salaries. Practitioners noted that funding would be more effective if designed with their input. They emphasized the need for multi-year grants, outcome expectations that aligned with their capacity during the grant period, and funding for more direct costs. Figures 9 and 10 compare direct requests for funding from attorneys, by phase of the resolution process. Most requests involved funds for direct client costs (i.e. filing or recording fees, buyout funds, and legal or court fees), non-legal work associated with title resolution (i.e. title searches or genealogy research), and capacity expansion for the legal organizations themselves.

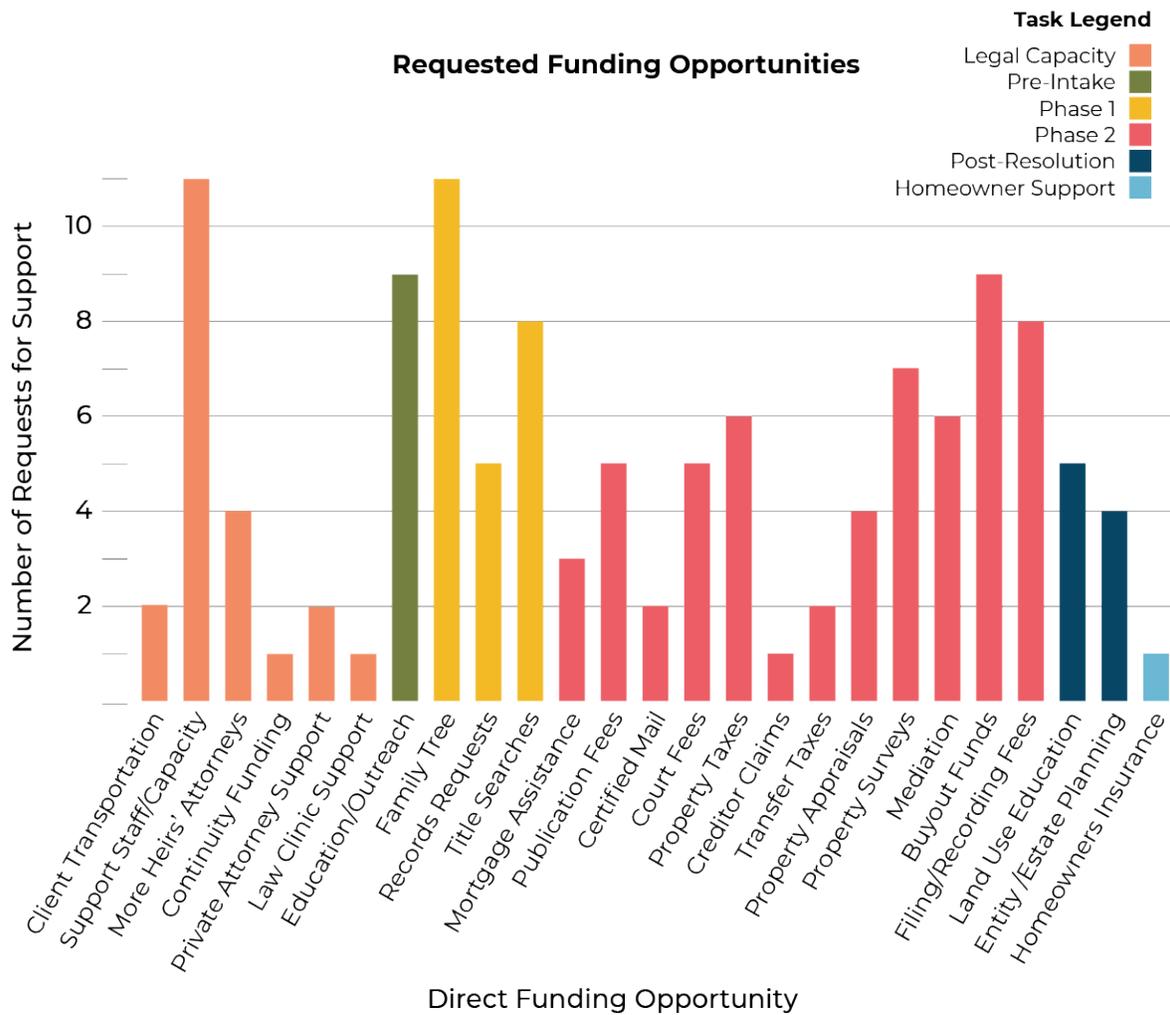


Figure 9. Direct funding opportunities in each step of title resolution, and frequency of calls for funding by attorneys in interviews.

Requested Funding Opportunities By Phase of Resolution Process

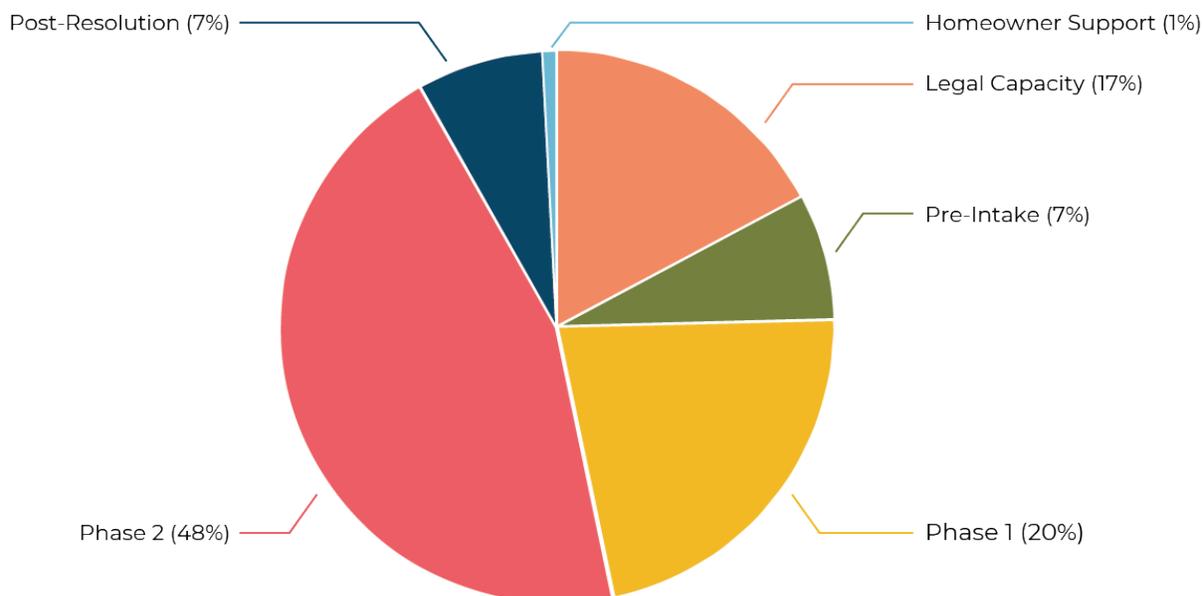


Figure 10. Frequency of attorneys' calls for funding, by phase of the resolution process.

In adversarial cases, funding for mediation services can help families reach consensus on managing their property. Both attorneys and mediators shared that mediation can be an effective strategy for families who have histories of disagreement, because it *“provides a third party who's not in your family who doesn't know all the details (of family dynamics), to help get a little space in (the conversation).”*¹⁴⁷ When heirs' property cases are stalled or unable to proceed because of family dynamics, providing an opportunity for open discussion between heirs may allow progress to be made towards a form of resolution.

"A lot of people just like to fund lawyers, but **lawyers can't function without their support staff.**"

Missouri Attorney

Support staff are necessary for legal aid organizations to handle cases efficiently. While many of the funding models for legal aid organizations are annual grants to cover attorneys' time or costs associated with title resolution, many legal aid attorneys rely heavily on paralegals and other support staff to manage their caseloads. Multi-year grants to fund competitive salaries for non-attorney legal professionals would be significantly less expensive than funding an attorney salary, and

would allow attorneys to spend more time on direct legal work, rather than genealogy research, title searches, and other indirect expenses that are still needed for heirs' property cases.

Strategies to lower legal costs for clients and funders

High costs can be offset if non-legal services are performed by organizations or individuals outside the legal organization. Funding can be provided to non-legal entities to assist with the resolution process as well. While much of the legal process to clearing title must be completed by a licensed attorney, steps like genealogy research, mediation, and other non-legal tasks can be completed by community-based organizations and nonprofits. Some community organizations and think tanks already provide support to heirs' property owners by providing title search services, helping to establish family trees and identify heirs, facilitating communication between all heirs, and facilitating consolidation of title to one individual or an entity.¹⁴⁸ Since these organizations do not provide legal services to heirs' property owners, they do not need to keep an attorney on staff and may employ a paralegal or other professional who can work with families to build their family trees or collaborate with extended family members. Without a licensed attorney, the organization cannot file legal documents or represent a client in court, but they can assist with some of the resource-intensive aspects of the process with a much lower overhead cost. It is essential for the organization to contract and collaborate with a licensed attorney to ensure that all information and services provided are accurate and adequately prepare owners to become clients with a legal entity. Figures 10 and 11 show steps in the resolution process that can be completed by non-legal organizations, and how funding streams may facilitate collaboration.



Figure 11. Comparison of steps to title resolution that require an attorney or can be completed by community-based organizations with legal guidance.

Potential Funding Streams for Community-Based and Legal Organizations



Figure 12. Demonstration of funding streams for steps with the most requests for support, through collaboration between community-based and legal organizations to accomplish client goals.

Technical Assistance and Training Funds

Tribal legal organizations and Tribally Designated Housing Entities (TDHEs) need funding to establish their own legal infrastructure. If legal organizations and TDHEs are supported with the up-front costs of building the physical infrastructure of offices and recordation centers, as well as the human infrastructure of training Tribal members in the Tribe's processes of land transfer, the Tribes will have more sustainable autonomy over how land is held and passed between generations. This approach will allow property owners to work directly with members of their own Tribe, who understand their traditions around holding land as well as the relevant laws that are necessary to navigate.

"There is not truly a universal... curriculum that's going to be able to be implemented across all Tribal communities."

Funder, Regional

"Everybody doesn't come to the table understanding how this all works out, and unfortunately **there's a collection of different reasons why this might be difficult** for some people."

Florida Attorney

Families owning heirs' property can support each other as they prepare for the legal process. In discussions with interviewees, ideas were shared about a cohort model for families to prepare for beginning the legal process of clearing their title. In such a model, multiple families who enter a cohort together could provide support and strategies to one another about establishing family trees, contacting distant relatives, and securing title searches for their properties. If families have completed all of these steps before they hire an attorney, the

time taken for resolution and the cost of the case could both be significantly reduced.

Small business coaching can help private attorneys manage the cost of heirs' property cases. Many of the private attorneys interviewed for this research were also the owners of their firm, acting as both CEO and attorney, often with only themselves or one other attorney or paralegal on staff. As these attorneys are taking on multiple roles in their work, they could benefit from coaching or training to assist with their financial and business management skills. Providing business training could be a low-cost method for enabling private attorneys to take on as many heirs' property cases as possible while still maintaining a sustainable business model.

Resources are needed to invest in training for current heirs' property attorneys. Probate law, and heirs' property cases in particular, are not areas of law that can be effectively practiced by any attorney. Experience and education are necessary for attorneys to understand the most effective approaches for their clients, ways to practice with cultural

competency around the practices of communal landownership, and how to respect their clients' wishes without creating future heirs' properties. In Tribal courts, attorneys must understand which applicable Tribal codes are relevant to their cases, the municipal jurisdictions that overlap with Tribal lands, and the customary practices of the landowners in the community. Educational services for attorneys will not only expand options for heirs' property owners to access legal services, but will also prevent the creation of future issues.

University law clinics have potential to act as a valuable resource in heirs' property work, currently and in the future.

Students working and learning in university legal clinics are exposed to the nuances and complications of heirs' property cases, while receiving guidance from experienced educators. In return, universities are able to invest students' time in cases that would otherwise be too complicated, expensive, or long for a practicing attorney to take on. This model can empower law students to handle complex cases when they begin to practice in the future, while providing low- or no-cost legal services to clients who are currently facing challenges associated with heirs' property ownership.

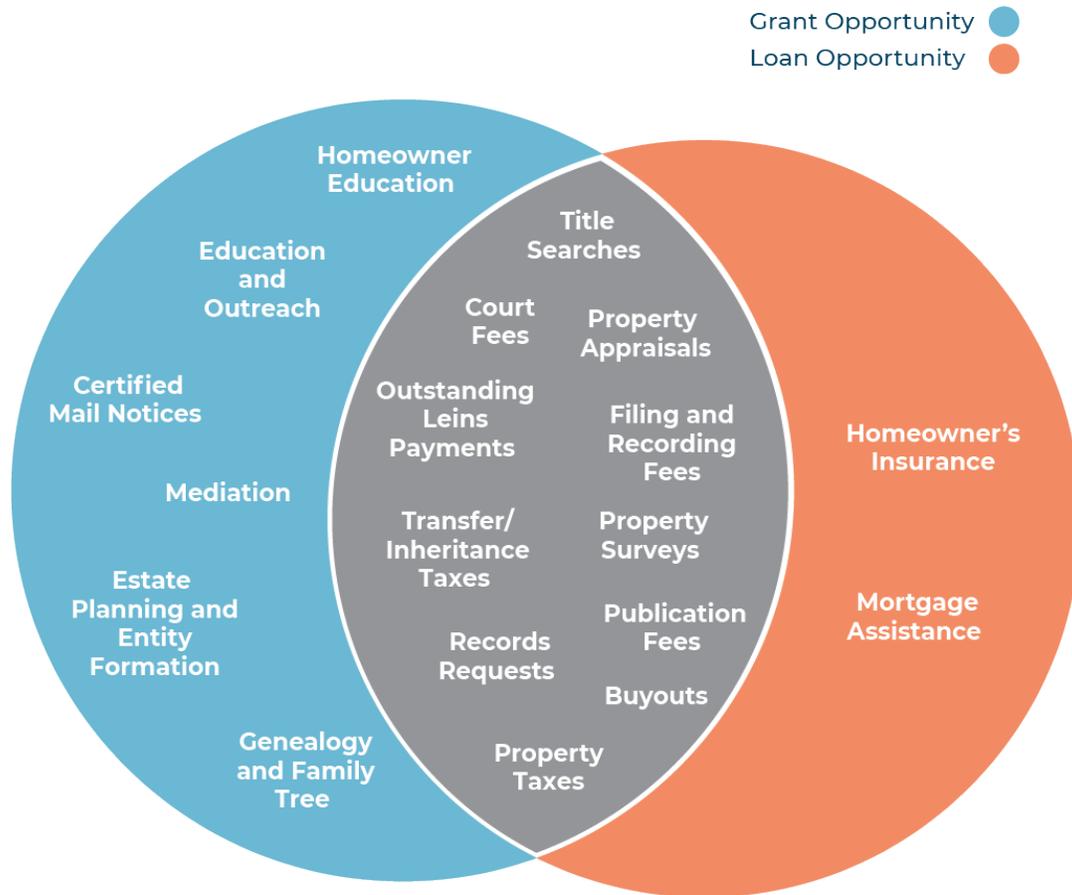
(The legal clinic has) "a few cases... (that are) **really tangled cases over several generations involving scores of heirs**, which are too much for private attorneys. So, we're taking them as kind of hard cases that legal aid or other NGO's just couldn't get their hands around, knowing it's going to take several years..."

North Carolina Attorney

Funding for the title resolution process can take the form of grants or loans.

Understanding the title resolution process helps identify which steps may be appropriate for funding through grants to organizations and direct support to homeowners via grants, low-interest loans, or financial packages that include grants and loans. Increased access to capital for tax or mortgage assistance, estate planning, entity formation, or other client costs can support heirs' property and collective landowners complete title resolution. Additionally, flexible grants allow legal and community organizations to better support the resolution process by allocating funds based on their expertise and in alignment with community needs.

Funding Opportunities for Grant and Loan Products



Any step of the resolution process can be fully or partially grant-funded.

Grant products may be awarded to community-based organizations or legal providers, while low-interest loan products can be made available to heirs' property owners to cover costs not provided by a legal or community organization.

Figure 13. Comparison of steps that can be funded by grants, low-interest loans, or both.

The process of title resolution has multiple opportunities for direct investment from external partners throughout each of the phases. If funders have the ability to provide either flexible or direct funding for multiple steps along the timeline of resolution, they can broaden the scope of their funding impact. Each step of the resolution process is affected by the complexity of the case in question, which is determined by factors including the number of heirs and the level of agreement between them. However, even intensely complex cases have opportunities for highly effective funding interventions that will

increase the likelihood that the clients' goals are reached. Multiple individual steps of the resolution process can be funded directly; family tree or genealogy research can be funded to enable heirs to complete a step that often consumes a large amount of time and resources when help is not available, property surveys or title searches can be paid for by grant funding when the cost is otherwise prohibitive, and certified mail fees can be funded when there is a long list of heirs who must be contacted. All of these steps, and others, are commonly cost prohibitive to heirs that wish to resolve their title issues. Funding for such steps can allow heirs' property owners to get closer to reaching their desired goals.

Funding impacts can be measured in multiple ways to show the effectiveness of investments over multiple years. If multi-year funding is available to practitioners working with heirs' property owners, annual impacts can still be understood by the numbers of cases begun or opened by the funded organization, numbers of family trees completed, or by alternative metrics such as the average number of heirs per case. Funding commitments that span multiple years were directly requested by interviewed attorneys, and are effective in supporting program longevity, which was noted in funder interviews. These long-term investments allow for significant impact while granting practitioners the flexibility to discern which cases they can and should take on, rather than denying cases because they are unlikely to result in singular ownership. They also allow families with more complex cases, which are often the most in need of legal assistance, to be served if practitioners are not under direct pressure to open and close cases in a predetermined timeframe. By tracking the completion of individual steps in the resolution process, funders can measure the impact of their investments while still providing autonomy to legal professionals and other practitioners. Interviewed funders who use this approach to their investments also reported that they build relationships with their recipients, and learn about the best ways to allocate their resources as programs evolve over time. These alternative methods of measuring outcomes also respect families' goals, capacities, and timelines for resolution, and recognize that resolution timelines depend on the clients' responsiveness as much as on the practitioners' efforts.

In alignment with interviewee's recommendations to explore funding for discrete steps in the resolution process, Figure 14 presents specific fundable tasks and their likely timelines for completion are compared to the number of heirs involved in the case.

While the number of heirs is only one factor in determining a case's complexity, the tiers of complexity are based on interviewees' scales used to decide which cases to accept in order to meet funding metrics.

Case complexity based on number of heirs is as follows:

- Simple Case: Fewer than five heirs
- Complex Case: Five to 29 heirs
- Very Complex Case: 30 or more heirs

The graphic presents three potential funding strategies based on success metrics:

- All steps can be funded in a one-year grant-cycle for all cases, regardless of complexity, if success metrics are measured by number of cases opened.
- If success measures are determined by steps completed, more complex cases can be served with multi-year funding
- Success measures based on steps completed within a one-year cycle may reduce the number of complex cases that can be served; however, measuring completion of steps verses number of consolidated and confirmed ownerships can create more opportunities to support a broader range of cases.

All tasks, regardless of their perceived complexity, can be started if funding is available to do so. If “success” is defined by opening a case or beginning a step of the resolution process, every case has multiple opportunities to “succeed.”

For steps in phase 2, the likelihood of completion assumes that clients’ goals align with the outlined steps, prior steps have been completed, and the client is prepared to take the next step. For example, if a client with a complex case has completed all steps in phase 1, consolidating ownership aligns with their goals, and they are prepared to buy out other heirs’ ownership interests, funding for buyout costs would likely be used within a one-year cycle.

The most important takeaway from attorneys was a request for funders to trust and respect their legal expertise and their relationships with clients by providing flexible funding that allows them to determine the best uses of funds to meet clients’ goals.

Multi-year funding with more flexible allowable uses, along with innovative and expansive success metrics, could give attorneys and heirs’ property owners the critical support they need.

Likely Completion Timelines for Funding Opportunities by Case Complexity

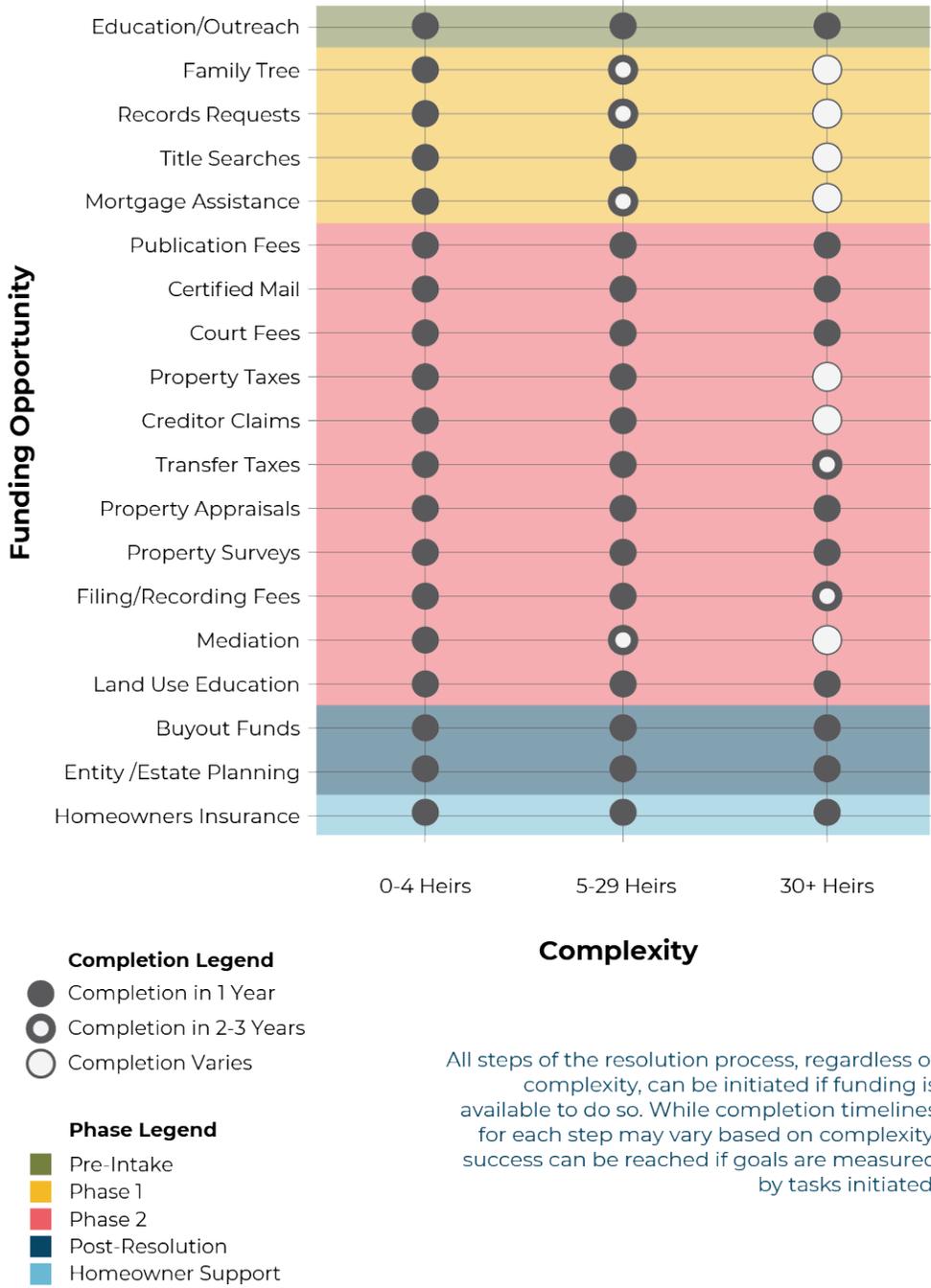


Figure 14. Potential points of intervention in the title resolution process, and expected timelines to completion based on case complexity.

Conclusion

"... one of the **major flaws** in property systems in this country is **not recognizing communal living**... it fractures family to insist on a single ownership model... a huge advancement and a huge improvement would be to be able to recognize...**members of a household can include anybody who's living there**..."

New Mexico Attorney

Collaboration and cross-sector communication is needed to develop local and national funding ecosystems for increased heirs' property investments. Nationally, entities with self-generating revenue from business or investments are necessary to provide broad funding opportunities to intermediaries and nonprofit organizations. Locally, municipalities can fill a primary and important role in providing funding opportunities, and local organizations and businesses must work to inform tailored approaches to heirs' property in their communities. Developing informed tools and resources, like this research, is necessary to increase awareness of heirs' property issues broadly, and to suggest new ways to invest in support for heirs.

Multiple sources of revenue are needed for heirs' property work. As intermediary organizations, national funders, and local programs are searching for viable funding opportunities for this work, a diversified network of options will allow for broader support. In particular, self-sustaining, revenue-generating programs are needed to decrease reliance on grant funding from philanthropic and government entities. Understanding the aspects of title resolution that can be funded with grants or loan products can support continued research to design effective models of long-term, self-sustaining revenue programs. Further research should include opportunities to provide capital to heirs' property owners without clear title, so that more pathways to financial success can be made available. The mainstream financial system must create opportunities for heirs' property owners to participate in the wealth building and preservation that should be available through property ownership.

"I think tenancy in common is a **viable way to own property**, and it has been, and it will continue to be"

Funder, National

Notes

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