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‘What does the deed say?’

Leaving it to the kids can mean a complicated and long process

Translate

Christine Parker at home in La Plata, Md., on July 26. Parker, a certified financial planner, helps clients tackle complex questions about passing on wealth. “If you leave a property to one person, it’s easy,” she said. “If you leave it to multiple people, that’s where the entanglement comes in.” SAMUEL CORUM — THE NEW YORK TIMES

By Martha C. White
The New York Times

Christine Parker, a certified financial planner, helps clients tackle complex questions about passing on wealth. Yet one of her first questions when people tell her they inherited real estate is deceptively simple: "What does the deed say?"

Many people think of their real estate in terms of "leaving it to the kids." The reality isn't so straightforward, said Parker, the founder of Parker Financial in La Plata, Md. "Dividing assets can sometimes be complicated, especially when it's real estate," she said.

Parker has firsthand experience of how easily inherited property — and the wealth it holds — can be lost.

By the time she learned that she and five other relatives had a claim to land that wasn't included in her grandmother's estate, the county had seized the property and sold it for unpaid taxes. Reclaiming it would have entailed incurring expensive fees, buying out the owner and paying off the lien — in coordination with her co-owners, not all of whom were on board.

"If you leave a property to one person, it's easy," Parker said. "If you leave it to multiple people, that's where the entanglement comes in." Her experience, she added, informs how she talks to clients about financial legacies: "I really have brought this to the forefront of the discussion."

Informally bequeathed and jointly inherited real estate can become a legal quagmire. When inheritors lack legal ownership, the real estate becomes what is called heirs' property. This status puts the real estate at high risk of a forced sale, and prevents descendants from building generational wealth.

"It's the most unstable form of group ownership of property in this country," said Thomas W. Mitchell, a law professor and the founder and director of the Initiative on Land, Housing & Property Rights at Boston College Law School. He and other experts say families need more awareness.

"People are sitting on what could be potentially used to help them move out of poverty or build incomes so they can have generational wealth," said Jennie Stephens, the chief executive of the Center for Heirs' Property, a South Carolina nonprofit that helps families clear heirs' property titles. "The use of it can't be maximized when it's jointly owned," she added.

The problem is especially acute for Black property owners. Since 1910, the Census Bureau estimates, 80% of Black-owned land has been lost to heirs' property. The government has called it "the leading cause of African American involuntary land loss."

The roots of the issue stretch back to the post-Civil War Reconstruction era. Black families owned land, homes and farms but were routinely denied access to legal services. Without the ability to write and file wills, record deed transfers, or otherwise create legal records of ownership, owners were vulnerable to predatory speculators.

Note

"What initially was a story of a lack of practical access to attorneys over generations becomes normalized," Mitchell said. Even today, many owners of what becomes heirs' property die without a valid will, or their heirs fail to make it legally binding.

The legacy of exploitation also contributed to a lack of trust in financial and legal institutions that still exists. The history of land loss makes people reluctant to become involved, Stephens said.

Tiffany Tate, an entrepreneur in Winston-Salem, N.C., worries that her late grandparents' North Carolina home, built on land they had bought after laboring as sharecroppers for years, could be at risk. "To be able to buy their own land and create this homestead and raise all their children there was a big deal," Tate, 40, said. "They worked hard against pretty clear odds to be able to do that."

The daughter of her late aunt, her mother and another aunt all have a claim to the property. "I'd like to purchase it so it and the land can stay in the family, but none of those decisions have been made," she said, adding that her mother hasn't been eager to discuss the topic.

Parker said some of her clients' older relatives were also reluctant. Some of them don't even want to create a will or an estate plan because of a long-standing mistrust of legal and financial institutions.

Mitchell said that while this wariness was understandable, property owners risked their financial legacies after their death.

The biggest risk that heirs face is a forced sale. For decades, heirs' property owners, many of them Black, have been targeted by speculators and developers who buy a fractional ownership stake from a single heir in order to trigger what is called a partition sale. In this court-ordered process, sales happen quickly and with little notice to the public, and the buyer must pay in cash, virtually guaranteeing fire-sale prices.

Developers have exploited partition sales to acquire land at below-market prices for over a century, said Michael Neal, a senior fellow at the Housing Finance Policy Center at the Urban Institute, a think tank. Weaponizing the courts to trigger these sales became a key part of developers' business model, he said.

"What makes the economics work is the ability to obtain those homes at below market value," Neal said.

Heirs also lose access to the equity in that real estate. When property is still in the name of a dead relative, current owners can't use it as collateral or borrow against it, even for taking out a home-equity loan to pay for repairs. They also can't generate income from the property or tap government assistance programs including loans, grants and property tax relief.

"If you don't have clear title, if there's not a deed in your name, many states have really stringent proof-of-ownership requirements and no flexibility, so you can't qualify for these programs," said Heather Katharine Way, a clinical professor and the director of the Housing Policy Clinic at the University of Texas School of Law.

If original owners or their heirs are unable to keep up with property taxes, property can be seized. Way's research found that single-family homes owned as heirs' property had an 18% delinquency rate, compared with 2% for other homes. Another analysis found that more than half of property tax foreclosures were heirs' properties.

"Inheritance is playing an increasingly common entryway into homeownership, so it's very important that our laws are helping to facilitate that for the most vulnerable members of our society," Way said. To that end, more than half the states, including many Southern states where heirs' property has been common, have passed versions of the Uniform Partition of Heirs Property Act, legislation intended to prevent partition sales.

"The UPHPA gives them due process protection, which is aimed at keeping the property in the family whenever possible," said Jane Sternecky, legislative counsel at the Uniform Law Commission, which developed the model legislation.

But even the law's proponents admit that it can't shield heirs from the complex and costly legal quagmire that a cloudy title creates.

Untangling the red tape to sell a piece of property owned by potentially dozens of descendants is an arduous process. Gem McDowell, principal attorney and founder of the Gem McDowell Law Group in Mount Pleasant, S.C., said one sale he had worked on involved 38 descendants and had taken two years to close.

"It's a shame because the land has value, but it's like herding cats," he said.

If the original property owner dies without a will, conflicting claims about oral agreements between parents and children can leave families at loggerheads, and even wills that bequeath an equal share of the home to children can lead to clashes.

"Usually the issue has nothing to do with the land, but it has to do with a family dynamic that was never addressed," Stephens said.