

# Lost Inheritance

## *Black Farmers Face an Uncertain Future without Heirs' Property Reforms*

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### HIGHLIGHTS

*Black farmers in the United States lost nearly 90 percent of their farmland during the 20th century. Researchers and advocates have identified the legal tangle known as heirs' property as a potential leading cause of this historical and ongoing loss of wealth. Heirs' property is land passed down through generations to multiple heirs without a clear legal title, and Black landowners have been disproportionately affected due to systemic racism in the United States. As a result, landowners underutilize otherwise productive farmland, have difficulty accessing federal loans and grants, and lose land to predatory buyers through sales forced on heirs who might have farmed it. The federal government has an obligation to help these landowners resolve title issues and improve their access to federal funding, which would support a new generation of Black farmers in rebuilding wealth for their families and communities.*

During the 20th century, Black farmers lost 90 percent of their land, valued at \$326 billion. The number of Black farmers declined 98 percent, a much larger decline than for White farmers. At the peak of Black farm ownership, in 1920, 925,708 Black farmers operated in the United States—one in seven farmers. Almost a quarter of them were landowners, collectively owning roughly 15.5 million acres. Today, only 48,697 Black farmers operate in the United States, or one in 72 farmers. Their farms total 4.7 million acres, about 0.5 percent of total US farmland.

Researchers and others have attributed much of the land loss to a complex web of factors driven by structural racism in US society and in the federal government that is present to this day. One of the underappreciated causes of Black land and wealth loss is heirs' property, property passed through generations without a clear title that assigns ownership to the current group of heirs. The impact of heirs' property is so great that the US Department of Agriculture (USDA) called heirs' property “the leading cause of Black involuntary land loss.”

With heirs' property, multiple heirs—even dozens—own a fractional interest in the property. Any decisions regarding the land, such as clearing the title or its use, need to be agreed upon by all heirs, but a single heir can force a partition sale through the court system. Such a system leads directly to land loss, as predatory speculators find heirs willing to sell their shares and then benefit from court-ordered auction sales below market price. In addition, heirs' property prevents wealth-building and investment due to, among other reasons, lack of access to federal loans and funding, such as funding for farm conservation.

Heirs' property significantly affects Black families. Unfortunately, due to numerous barriers to research, the actual prevalence of heirs' property among Black farmers and landowners is not known. However, extrapolation of existing studies shows that 1.6 million acres, valued at \$6.6 billion, are locked in heirs' property across the 365 counties of the “Black Belt” area in 10 states. A new study released in 2023 shows that within 11 states in the South, 496,994 parcels (5.3 million acres valued at nearly \$42 billion) may potentially be heirs' property.

Other studies focus on the prevalence of heirs' property among small groups of Black farmers and landowners. While difficult to generalize, these studies provide a sobering extrapolation for the potential extent of Black farmers' land in heirs' property. For instance, one study shows that more than a third of surveyed Black farmers were affected by heirs' property. This could mean that over 10,000 Black farmers who own all or some of their land may be experiencing heirs' property issues. But not all landowners farm; some landowners may be actively prevented from farming by heirs' property. In another study, over half of Black landowners had their land partially or fully locked in heirs' property, and some of those landowners did not use their land productively or at all.

## Policy Recommendations

Heirs' property requires prompt action by the federal government to address past injustices and prevent future injustices. The USDA should consult those who have been, or currently are, affected by heirs' property, as well as community-based organizations and scholars with deep engagement in the topic. The following policy recommendations are only foundational—they must be informed by lived experience, frequently evaluated, and adjusted to serve Black farmers and landowners effectively. We recommend the following actions by Congress:

**Provide funding directly to Black farmers and landowners to resolve heirs' property issues.** Congress should provide accessible funding directly to heirs' property landowners in the form of grants. Any loan-based program should be coupled with loan forgiveness provisions. This could include loan cancellation through conservation programs.

**Require the USDA to provide a nonburdensome path to establishing a farm number.** USDA programs such as loans offered by the Farm Service Agency (FSA) and Rural Development, as well as cost-share programs offered by the Natural Resources Conservation Service (NRCS) and the Forest Service, require a farm number, but landowners and farmers with land in heirs' property can face many barriers when trying to get one. A *non-burdensome* path to establishing farm numbers would render heirs' property owners eligible for such programs.

**Demand equity in the administration of the Environmental Quality Incentives Program (EQIP) and the Conservation Stewardship Program (CSP) for farmers with heirs' property.** Heirs' property producers have historically faced difficulties accessing funds from EQIP and the CSP because of competition with other producers who do not have clouded titles. The NRCS should establish a pool of funding specifically for heirs' property producers.

**Expand access to housing programs operated by the USDA.** This expansion should include both single-family-housing direct home loans and a guaranteed loan program, as well as a home repair program to allow co-tenants residing on heirs' property to maintain adequate housing.

**Fund community-based organizations that provide mediation and legal services for Black farmers and**

**landowners.** Community-based organizations have decades of experience supporting Black landowners and farmers in their fight against land loss. Dedicated multiyear funding would enable continued and expanded services, including direct legal representation in title resolution actions, estate planning, family mediation, and legal advice.

**Fund interdisciplinary research on Black land loss, including studies assessing the scale of heirs' property.** Funding should be allocated to research how heirs' property is labeled, streamline data collection and analysis, and quantify the impact of Black land loss on families and communities. Research and extension funding should be directed to 1890 Land-Grant Institutions and to experts in food and agriculture who are Black, Indigenous, or other people of color.

**Establish an Office of Heirs' Property Education, Research, and Outreach.** Across the country, local USDA offices—including the Forest Service, FSA, Rural Development, and NRCS—are taking various actions on heirs' property. To ensure that these services are coordinated, an Office of Heirs' Property Education, Research, and Outreach should be established in the USDA secretary's office, or in the Office of the Assistant Secretary for Civil Rights.

**Provide incentives to states that have adopted the Uniform Partition of Heirs' Property Act (UPHPA).** UPHPA provides legal protections for tenants in common, including the right of first refusal, which allows them to make the first offer on the property. The act also includes a requirement to sell the property for a reasonable market value and provides farmers with a less-burdensome path to obtaining farm numbers.

**Facilitate the entry of new farmers who are Black, Indigenous, and other people of color into the profession through funding.** Given the historic injustices perpetrated by the federal government and legal systems, as well as the history of violence toward, and intimidation of, Black landowners, the USDA should provide additional reparative payments to beginning and continuing Black farmers who still encounter difficulties in accessing and keeping land, financing their operations, and receiving appropriate technical assistance.