

**FRACTIONATED HEIR PROPERTY AND ITS IMPACT ON  
AFRICAN-AMERICAN LAND TENURE: CASE STUDIES**

by

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**Introduction**

During the past 34 years, the Federation of Southern Cooperatives/Land Assistance Fund (FSC/LAF) has fought for the rights of black landowners in the rural South. This organization has focused its energies on the devastating issue of Black owned land and its rapid disappearance from the economic fabric of the South. The decline in Black owned land is viewed as the repression of Black political and economic empowerment.

The FSC/LAF has continued its program of legal, financial and technical assistance, as well as an outreach and community organizing to educate black landowners regarding their rights and responsibilities. Over the years, the FSC/LAF has directly assisted over 5,000 black landowners to retain and develop their land. The result of assisting these 5,000 clients has directly and indirectly prevented the loss of over one hundred thousand acres of land valued conservatively in excess of 50 million dollars.

The FSC/LAF has identified certain major contributors to Black land loss in the rural South, which are as follows:

- Poor or no Estate Planning
- Partition sale of Heir Property
- Tax Sales
- Adverse Possession

- Unfair Lending Practices
- Bankruptcy/Foreclosure

This paper will focus on the area of Estate Planning, and how poor estate planning can lead to the loss of land. This will be demonstrated through the three case studies.

The first two case studies are cases that are awaiting resolution. The last case study will show how a family successfully retained their land, due to the perseverance and assistance of the FSC/LAF.

#### **CASE STUDY 1: CHARLES JAMES**

(The names in this case study have been changed due to client confidentiality.)

##### **Narrative**

Mr. James' case exhibits a classic fractionated heir property challenge. The client's father died in 1984, but he left no will. According to Mr. James, the father left approximately 67 acres of land to James' and his 5 siblings. The siblings are all living heirs. Since the death of their father, the heirs have been paying taxes on the land.

Mr. James states that he is the only heir currently residing on the land, on approximately 1/4 acre. He advised that a warehouse has been on the land for at least 40 years.

A year ago, the heirs decided to divide the land. Consequently, they sought the assistance of an attorney to conduct a title search of the land. They also wanted to determine the exact location of the 67 acres of land; however, this was where the problems began. It appears that no attorney, black or white, wanted to assist the James.

He stated that an attorney would review the case, and then advise Mr. James, "I cannot get involved in this case," and would refuse to discuss the case further.

At this point, Mr. James was very frustrated. He sought the assistance of yet another attorney, Mr. Wendell. As his predecessors, Mr. Wendell refused to handle the case; however, Mr. Wendell did offer further explanation. According to him, the land in question had been illegally used for years, and that explained the presence of the warehouse. It appears that a certain influential district judge was involved in the business. In addition, a particular local bank financed this venture. Mr. Wendell advised Mr. James that because of this business arrangement, no attorney, including himself, would handle his case.

Mr. James was extremely angry after hearing this, so he decided to go the local courthouse and conduct a title search without assistance of an attorney. However, when he went to the courthouse, a Mr. Blake refused to allow him access to the records. Mr. Blake appears to be a figure of authority, probably the clerk.

Mr. James and his siblings are angry because they are paying exorbitant taxes on land, which may have been illegally taken from them. Furthermore, he is unable to obtain any information on the land. Finally, local attorneys refuse to provide assistance to the James heirs. What can they do to protect their interests and obtain clear answers regarding the 67 acres of land?

## **Analysis**

### **A. Issues**

#### **1. Claim of Ownership**

The first issue that this case study raises is the question of ownership. The James heirs are aware that their father owned 67 acres of land, and the land passed to them through intestacy. However, the James do not know where the land is actually located. This is a serious problem because without knowledge of location, they are unable to identify the 67 acres, and began to assert ownership of the land. Furthermore, there is always the danger of adverse possession, which may be a strong possibility in this situation. The warehouse has been present on the land that Mr. James believes belongs to the heirs for a long period of time. Adverse possession is a claim of ownership by one who is not the true or original owner of a piece of property. Possession must be held under color of title or claim of right, it must be actual, open and notorious (notice to actual owner), possession must be exclusive and hostile to actual owner's title, and possession must be continuous and uninterrupted. Therefore, the James may no longer own all 67 acres if part of that land has been adversely claimed.

#### **2. Bureaucracy**

Another issue of concern is bureaucracy laced with racism. A common problem associated with black land loss is the racial discrimination prevalent in county courthouses. In addition, many of the county officials show a lack of respect for basic human rights. This is evident from the fact that Mr. James was denied

access to public records. This is information that he is clearly entitled to because he had the original deed. The system is deeply permeated in corruption and racism, so how does a man like Mr. James fight for his basic rights? He was unable to secure a local attorney, because the attorneys are unwilling to jeopardize their careers by handling such a controversial case.

### **3. Tax Implications**

The final issue is whether the James' should be paying taxes on the 67 acres of land. This question warrants further inquiry, because other individuals may also be paying taxes on the land. This issue is problematic because if the James' do not pay the taxes on the land, they could lose it. Land can be lost because of delinquent taxes. There are county, municipal and state taxes to be paid regularly and failure to do so can lead to a tax sale. Thus, the state may foreclose the land if the taxes are not paid. Fortunately, the owner can redeem land sold at a tax sale, but this can and does present a serious financial burden. Nonetheless, it is best that the James' continue to pay the taxes, but take aggressive steps to obtain a title search of the 67 acres of land.

#### **B. Preventative Measures**

Further analysis of the James case demonstrates that certain measures could have been undertaken to prevent the problem in question. However, it is evident that the James were not properly educated or advised about their rights and responsibilities as landowners. So what could the James have done to prevent the current problem?

1. **Proper Estate Planning** - Poor or no estate planning is a contributor to black land loss. Estate Planning is the legal method of conveying land from a grantor to another individual, group of individuals, or interest. In this case, the James' father did not engage in proper estate planning, and he died intestate. He may have employed the following preventative measures:

a. ***Deed*** - The James' father may have conveyed land to each heir through a deed. A deed is written document that conveys title from one person to another. Deeds must be signed, sealed, delivered to the heir in question, contain adequate descriptions of the land, and recorded.

b. ***Will*** - It is common for a person to die without a will, and then his estate passes through intestate succession.<sup>1</sup> A will is a written document that explains how an individual wants his/her property distributed after they die. Generally, the will must be in writing, requires the testator's signature, at least two witnesses<sup>2</sup>, and terms of the will must be freely made<sup>3</sup>. The James' father could have prevented the current problem if he had drafted a will, and distributed his property in the manner he desired.

2. **Immediate Action** - The facts indicate that the James' father died in 1984, 17 years ago. The heirs should have immediately investigated the circumstances

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<sup>1</sup> Dying without a will, such that the state must determine the most equitable way to distribute the deceased's property between his/her creditors, heirs and interests.

<sup>2</sup> Witnesses should not have an interest in the will, nor should they be beneficiaries of the will.

<sup>3</sup> Fraud, misrepresentation, coercion are grounds for invalidation of the will.

surrounding the 67 acres of land, and contested the presence of the warehouse on the land. However, they waited until recently to research the issue.

3. **Partition Sale** - A partition sale is a forced sale of land, public or private, under concurrent ownership arrangements, typically tenancy-in-common.<sup>4</sup> This may also be a strategy that could have been employed by the heirs; however, there could be no guarantee that they would have been the successful bidder. In fact, there are very few documented cases where blacks have been successful bidders at a partition sale in the South.

4. **Outreach Assistance** - Case studies such as the above referenced case demonstrate the urgency for outreach assistance. Through outreach assistance, the James' could have been properly advised and educated as to their legal rights and responsibilities regarding the land at issue. The FSC/LAF serves in this capacity, its role would be to:

- Locate all potential heirs
- Locate a reliable and responsible attorney to conduct a title search.
- Obtain consent from all heirs, and appoint an Administrator for the estate.
- Secure an agreement between the heirs as to the ownership or division of the land.

The problem now is to obtain a title search to determine whether or not it is too late to implement a comprehensive strategy regarding this case.

## CASE STUDY 2: JUANITA BROWN-SMITH

### Narrative

The second case study is that of Juanita Brown-Smith. Mrs. Juanita Brown-Smith is the great-granddaughter of the late Mr. Jim Brown. In 1887, Jim Brown purchased 100 acres of land in North Carolina, and it appears that he wanted to divide the 100 acres evenly among his four sons<sup>5</sup>. However, Mr. Brown failed to draft four separate deeds or a will that would formally signify that each brother owned their respective plot of land.

In addition, the four sons never divided the land and left no wills. Mr. Brown died intestate in 1902.

Mrs. Brown-Smith does not know who all the heirs are to her great-grandfather's property, but in a title search, the property was listed as that of "the heirs of Mr. Jim Brown."

Mrs. Brown-Smith has built a home on her great-grandfather's property, and has resided there for the past 15 years.

In past years, Mrs. Brown-Smith's first cousin, John Brown, has sold his interest to a waste disposal plant located adjacent to Mrs. Brown-Smith's land. He has also sold the timber to another land speculator.

Mrs. Brown-Smith is worried her cousin will sell his interest in the 25-acre plot of land on which her house sits. What can she do to protect her home?

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<sup>4</sup> There are two types: Partition-in-kind, sale of property with distribution of sale proceeds to interestholders.

## Analysis

Mrs. Brown-Smith's great-great grandfather did not effectively convey the land to his four' sons because he died intestate, nor did he convey the land through deed to each son. A deed is a written document that conveys title to land from one person to another. To be recognized as valid, most states require that it contain adequate descriptions of the land, and that it be signed, sealed, and delivered and recorded in a local courthouse to give notice of ownership. Failure to convey the land by deed to the four sons by their father, their father's failure to execute a will equitably dividing the property, or otherwise, transformed the 100 acre plot to "heir property."

When land is not passed down through estate planning means - i.e. will or trust- the land becomes "heir property", which means that interest in the land is transferred to a broad class of heirs through state intestacy rules. This is called "heir property," and its effect is the fractionation of the land into many interests. Heir property is a major contributor to land loss, particularly among AfricanAmerican rural communities.

With heir property, no single heir has sole property ownership/interest in the land. The state allows all *rightful heirs to inherit an interest in the land*. Typically, state intestate laws create tenancies in common. With tenancies in common, all heirs have a common, undivided interest in the land and there is no management structure to maintain the land.

Tenancies in common are problematic because the "freeloader syndrome" becomes a frequent occurrence. In this case, Mrs. Brown-Smith has made improvements to her great grandfather's land by building a house on it. She has also been paying taxes on the property. These efforts to improve and maintain the land benefit all interest holders in the land and do not bar them from selling their interest.

Since there is no obligation to maintain the property, including payment of taxes on the land, this type of ownership structure is highly susceptible to judicial partitions, public auctions and tax sales. The forced sale of land can extinguish land ownership by an entire family unless an individual or the collective family interestholders can outbid others, particularly land speculators.

With partition sales, any co-tenant may force a sale of the land, ending the tenancy in common without the consent of the other co-tenants. The land can either be physically divided (partition in kind) or sold (partition sale). With partition sales, a cotenant can sell his/her interest in land to a stranger. Opportunistic land speculators seize this opportunity to purchase an interest in the land and then seek a partition sale. The waste disposal plant probably does not have clear title to the land upon which it is located because all heirs did not agree to sell.

## **Preventative Measures**

### **1. Partition-in-Kind**

Mrs. Brown could seek a partition-in-kind; however, this may be very complicated because many of the heirs cannot be located and/or unknown. Therefore, it may be impossible to determine how many parcels the land will be divided into. In most cases, identifying all interestholders can be cumbersome and futile, and it is common for courts to grant a partition sale, even if it is against the interest of those identifiable interestholders. It is often difficult, if not impossible, for family members to outbid land speculators in partition sales. The facts indicate that Mrs. Brown-Smith's cousin has demonstrated that he is willing to sell his interest to land speculators.

## **2. Family Buy-out**

Another potential solution is that Mrs. Brown-Smith could either buy-out her cousin's interest herself, or she and the other known interestholders could buy out his interest collectively. This would solve the immediate problem by eliminating a family member who may not be concerned about loss of family ownership. However, unless Mrs. Brown-Smith and/or the other known heirs can offer the cousin at least as much money as land speculators are willing or capable of offering, they may lose out. Further, this action will not deter other heirs from selling their interests to "strangers."

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### **CASE STUDY 3: ARMISTEAD ENGLISH**

#### **Narrative**

The third case study example cited is that of the late Mr. Armistead English. The Land Assistance Fund (LAF) was successful in defeating actions by a local white attorney to force the sale<sup>6</sup> of a black family's land that had been partitioned to 70-90 relatives all heirs of the late Mr. English. The late Mr. English owned 300 acres of land in Monroe County Alabama.

Under Alabama law, when a landowner dies intestate, then the ownership of the property is divided among the living heirs. In the case of the family of Mr. English, and in hundreds of other instances across the South, anyone of the heirs can force the sale

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and division of proceeds of the land. T.M. Brantley, the local white attorney, had obtained 7/90ths of the deceased Mr. English's 300 acres and pressed for a sale. In this case, LAF attorneys fought provisions in the Alabama code to allow this practice to the extent of filing appeals to the Supreme Court on the basis of constitutional guarantees that provide that "no one shall be deprived of his property without equal consideration under due process of law." However, the Supreme Court declined the appeal and the sale was forced, against the family member's will.

Fortunately, the English's were able to out-bid Brantley and other whites gathered at the partition sale, because of assistance from the LAF. The LAF assisted the English family in raising sufficient capital to bid at the court auction, of land they themselves owned. The family paid \$72,000 for their own land, which was valued at time of more than \$150,000. Therefore, due to the presence of the LAF, the English family retained their heritage and established an economic base from which local family members may prosper and distant cousins feel proud in the sense of ownership and accomplishment.

## **Analysis**

This case study is unique in that the English family was successful in out-bidding the interested white buyers. Few Blacks are capable of bidding successfully for large tracts of land. Unscrupulous persons such as the local attorney, Brantley, count on the lack of black capital at forced sales as a cheap way of acquiring land at rates far below its true market value. The strong presence of the LAF in this particular case, was what saved the English land.

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<sup>6</sup>A forced sale is an involuntary sale of land that refers specifically to the partition sales, foreclosure sales and sheriff's sale.

However, the irony of stories such as the one above, is that the English family had to pay for land that had already been paid for by their father and grandfather prior to 1910, when it was first acquired. This practice is indefensible and immorally constructed to deprive poor people of ownership and opportunity. Without prompt assistance from LAF, the English family would have had their land taken from them.

Nonetheless, the LAF has witnessed, with a great deal of chagrin, the loss of thousands of acres of black owned land through forced sales. When funds permit, the LAF has prevented considerable amounts of black owned land from being lost via forced sales, sometimes acting in concert w/ the owners, and on other occasions acting alone and outbidding all others. Next to "voluntary sale", the partition sale remains the leading single cause of black land loss in the rural south. This case also led to a change in the Alabama law gaining intestate recession. A bill was introduced by state legislators who were supporters of FSC/LAF that allows heirs the opportunity to purchase the interest(s) of an heir(s) who is attempting to force a sale. Similar laws were passed in Georgia and South Carolina. They are by no means perfect, but do provide some protection for those heirs who want to keep the land.

## **Conclusion**

So what do the case studies signify? They clearly demonstrate that the deprivation of black ownership and opportunity may be the results of various reasons. Case study one shows a family is in danger of losing their land because of poor estate planning, and lack of knowledge regarding their rights and responsibilities as landowners. The second case study exhibits the problems that may arise due to one heir's lack of interest in

preserving family ownership of land. The final case study is hopeful, because it shows that there are success stories despite the overwhelming loss of black land ownership. However, the reality is that the English family was only successful due to the persistence of the LAF.

The FSC/LAF will continue to educate community organizers and staff, paraprofessionals and community leaders about current land loss issues. We will also continue to assist landowners in locating competent legal assistance when necessary, and educating landowners about his/her rights and responsibilities. Furthermore, we constantly facilitate information flow to minority landowners by publishing and distributing generic legal education about major land loss issues.

Outreach assistance is the key to minimizing land loss. If we continue to educate rural landowners about the significance of proper estate planning, we will eventually turn the tide of black land loss in America.