**UNDERSTANDING HEIRS’ PROPERTY AND ITS IMPACT ON THE ACCUMULATION OF BLACK WEALTH IN AMERICA**

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My session will focus on heirs’ property in Black communities, how millions of acres of Black-owned heirs’ property has been lost due to abusive legal practices used against Black landowners, and current efforts to bring about partition reform to address these social injustices. Topics of discussion will revolve around the following:

1. **LAND OWNERSHIP POST-EMANCIPATION**
2. SPECIAL FIELD ORDER NO. 15 [[1]](#footnote-1)
3. Approved by President Abraham Lincoln and issued by Union General William Tecumseh Sherman on January 16, 1865. The order was issued after General Sherman and Secretary of War Edwin M. Stanton met with 20 leaders of the black community in Savannah, Georgia, consisting of mostly Baptist and Methodist ministers.
4. The result: redistribution of 400,000 acres of land formerly owned by Confederate landowners to freed slaves.
5. The land covered by the order:

“The islands from Charleston, south, the abandoned rice fields along the rives for thirty miles back from the sea, and the country bordering the St. John’s river, Florida, are reserved and set apart for the settlement of negroes now made free by the acts of war and the proclamation of the President of the United States.”

1. Management of the land:

“. . . no white person whatever, unless military offices and soldiers detailed for duty, will be permitted to reside; and the sole and exclusive management of affairs will be left to the freed people themselves . . . the negro is free and must be dealt with as such.

1. How much allotted:

“. . . each family shall have a plot of not more than (40) acres of tillable ground . . .” Fun fact: the mule is not actually mentioned in the order, but you need something to till that ground . . .

1. Freedman’s Bureau: The Bureau of Refugees, Freedmen, and Abandoned Lands, referred to as the Freedmen’s Bureau, was established March 3, 1865 to help former slaves and poor whites in the South. One of its roles was to help settle former slaves on the land confiscated or abandoned during the Civil War.
2. Short-lived Relief: Special Order No. 15 was revoked by President Andrew Johnson, who had taken office after Lincoln’s assassination. Sympathetic to the confederate cause, he returned the land set aside for the freed slaves to former slaveholders.

II. THE RISE AND FALL OF BLACK LAND OWNERSHIP SINCE THE LATE 1800’s[[2]](#footnote-2)

A. 1875-1910:

1875: 3 million acres

1890: 8 million acres

1900: 12 million acres

1910: 15 million acres

B. 1910-1970: Black-land ownership **declined from 15 million acres to 5.5 million acres.**

C. Virginia: 1954-1969:

From 1954-1969, Black land ownership decreased by 53.2% in Virginia from 877,100 acres to 410,674 acres.

III. FACTORS CONTRIBUTING TO BLACK LAND LOSS[[3]](#footnote-3)

A. The rise of White supremacy and legalized segregation

B. The Boll weevil’s destruction of cotton crops in the South

C. The Great Migration

D. Racist policies in state and federal agencies- 1997 lawsuits *Pigford v. Glickman*

E. Commercial and residential real estate development

F. Heirs’ Property

IV. HEIRS PROPERTY - CHARACTERISTICS

A. A term used to describe a type of land ownership resulting from property passing without the benefit of a will where descendants share a claim to the estate

B. Two or more owners and property is held as tenants in common

C. No rights of survivorship- when a co-tenant passes away, their fractional interest passes to their heirs

D. The more owners you have, the bigger the problem

V. HEIRS PROPERTY – VULNERABILITIES[[4]](#footnote-4)

A. Ineligible for federal programs and assistance, including FEMA grants and USDA programs

B. Unavailable for use as collateral for a loan or mortgage

C. Less likely to have access to public utilities

D. More susceptible to loss due to tax sales

E. Vulnerable to forced partition sales- one of the biggest threats to ownership

VI. PARTITION SUITS

A. All it takes is one of the owners to file suit to force the sale of the property

B. One of the owners could sell their interest to a third party, who can then file suit

C. The judge can order the property physically divided or sold. Partition sales are more the rule nowadays.

VII. REFORM EFFORTS IN VIRGINIA AND BEYOND[[5]](#footnote-5)

1. Uniform Partition of Heirs Property Act (UPHPA)-developed in 2010 by the Uniform Laws Commission
2. Has been adopted in many states, including Virginia.
3. Adopted in Virginia in 2020 – SB 553 – Amends Virginia Code Sections 8.01-81 and 8.01-83 and adds new Sections 8.01-81.1, 8.01-83.1, 8.01-83.2, and 8.01-83.3, and repeals Section 8.01-83.3
4. Virginia’s approach: the reforms adopted from the UPHPA are applicable to all partition actions, not just heirs property.

1. Gates, Jr., Henry Louis Gates. “The Truth Behind ’40 Acres and a Mule’”, <https://www.pbs.org/wnet/african-americans-many-rivers-to-cross/history/the-truth-behind-40-acres-and-a-mule/>. [↑](#footnote-ref-1)
2. Kahrl, Andew W. “Heirs Property and African American Land Loss: Historical and Legal Perspectives” as presented at the Virginia State Bar Advanced Real Estate Seminar, Williamsburg, Va., March 2020. [↑](#footnote-ref-2)
3. Id; Roberts, Phillip M., “Boll Weevil,” <https://m.georgiaencyclopedia.org/articles/business-economy/boll-weevil?amp> [↑](#footnote-ref-3)
4. Id., at Kahrl [↑](#footnote-ref-4)
5. Gogal, David J. “Virginia’s Approach to the Uniform Partition of Heirs Property Act (UPHPA) as Adopted by the General Assembly in 2020” [↑](#footnote-ref-5)