

BOARDING UP VACANCY WITH STATUTORY SOLUTIONS: MODIFYING THE PARTITION PROCESS FOR HEIRS PROPERTY AND INVESTING IN ESTATE PLANNING TOOLS

INTRODUCTION: THE HUMAN COST OF VACANCY

“Behind every vacant property there is a story,”¹ and that story represents a wickedly complex narrative. Consider the story of 900 N. Payson, a historic and tragic rowhouse located in Baltimore, Maryland.² This once-beautiful property was one of seventeen two-story rowhouses constructed on its street in West Baltimore in 1904, and it began housing mainly European immigrant families as early as 1905.³ The first floor served as a butcher shop and a grocery store, and two families used the second floor as their home.⁴ Ultimately, the fate of 900 N. Payson was influenced by the notorious color-line of West Baltimore, Fulton Avenue, which segregates white and Black communities.⁵

Fulton Avenue was only four blocks east of 900 N. Payson.⁶ In December 1944, a white landlord rented one of the other Payson rowhouses to a Black family. Soon, white families began to move away while Black renters faced retaliation.⁷ Upticks in crime, new chain businesses, and lower consumer populations led to the foreclosure of 900 N. Payson in the early 1960s, and it sat vacant until it was purchased for \$101 in 1976.⁸ Eventually, 900 N. Payson was sold to another family, but upon the husband’s death in

1. JENNIFER R. LEONARD & ALAN MALLACH, CTR. FOR CMTY. PROGRESS, RESTORING PROPERTIES, REBUILDING COMMUNITIES: TRANSFORMING VACANT PROPERTIES IN TODAY’S AMERICA, CTR. FOR CMTY. PROGRESS 8 (2010), <https://community-wealth.org/sites/clone.community-wealth.org/files/downloads/report-leonard-mallach.pdf> [https://perma.cc/2WMJ-5EJZ].

2. Tim Prudente, *Collapse: The Rise and Deadly Fall of a Baltimore Rowhouse*, BALT. SUN (July 12, 2018, 5:00 AM), <https://www.baltimoresun.com/maryland/baltimore-city/bs-md-ci-rowhouse-collapse-20180515-htmlstory.html> [https://perma.cc/5MP7-KUGZ].

3. *Id.*

4. *Id.*

5. With the end of World War II, Black families began to purchase property west of Fulton Avenue, an area of West Baltimore that used to only include segregated white neighborhoods. *1930-1965: The Great Depression and World War II*, BALT.’S C.R. HERITAGE, <https://baltimoreheritage.github.io/civil-rights-heritage/1930-1965/> [https://perma.cc/K4FM-K7XM].

6. Prudente, *supra* note 2.

7. *Id.*

8. *Id.*

1998, the property was only worth \$7,500.⁹ The widow, who no longer lived at the property, was unable to afford the property taxes for 900 N. Payson, but was also unable to sell or improve the property.¹⁰

Because the owners were no longer able to maintain the property, Baltimore city housing inspectors labeled 900 N. Payson as “unfit for human habitation in November 2008.”¹¹ Typically, this constitutes a condemnation as fine notices are sent to the owner with current title of the property;¹² but in this case, that owner had passed away ten years prior.¹³ The city continued to send certified mail to the deceased until a title company conducted research and found that the estate was undergoing tax-foreclosure proceedings in Baltimore Circuit Court.¹⁴

Baltimore continued to track the worsening state of 900 N. Payson during this time, and its city records showed three hundred separate observations of code violations and dangerous conditions on this property.¹⁵ Eventually, Baltimore officials sent the title of the property to city attorneys in January 2013, but 900 N. Payson physically deteriorated for three more years as companies continued to transfer the property without documentation.¹⁶ It was not until March 28, 2016, that the city and the West Baltimore community witnessed the full destruction of the dilapidated property—the entire rowhouse blew over and crushed Mr. Thomas “Phil” Lemmon, a sixty-nine-year-old resident who had been parked in front of 900 N. Payson in his favorite Cadillac.¹⁷

9. *Id.* The husband, Eugene Boykins, would remain on the deed for ten more years. *Id.*

10. *Id.* In the article, Sharron Boykins declines to comment on her inability to sell the home, but she did write in court proceedings that she had asked the city to take the property to no avail. *Id.*

11. *Id.* The city inspectors did not take ownership of the property. *Id.*

12. Condemnation is “the process by which government or a government-empowered private entity appropriates or ‘takes’ property for public use without the owner’s consent.” Robert H. Levin, Student Article, *When Forever Proves Fleeting: The Condemnation and Conversion of Conservation Land*, 9 N.Y.U. ENV’T L.J. 592, 594–95 (2001). Here, Baltimore did not want to own the property; the city wanted to prevent the public from living in an unsafe property. See Prudente, *supra* note 2.

13. Prudente, *supra* note 2.

14. *See id.*

15. *Id.*

16. *Id.* The title of 900 N. Payson had been reassigned to three mortgage companies. The first two companies went bankrupt, and the final company never recorded its official deed. The debt of the mortgage itself may have been an insurmountable cost for any of the previous owners. *Id.*

17. *Id.* The surviving children of Mr. Lemmon attempted to bring wrongful death actions against the owners of 900 N. Payson, but no legal actor could tell the family who owned the property at the time of its collapse. *Id.* This was due to the infuriating complication of recorded deeds, city policies on tax liens, and other localized property rules that go beyond the scope of this Note.

I. A TERRIBLE EXPANSION: DANGEROUS VACANT WASTE SPREADS ACROSS THE COUNTRY

The tragic and preventable¹⁸ death of Mr. Lemmon led to significant vacancy reform in Baltimore,¹⁹ but nearly twelve percent of all rental property in the United States remains vacant.²⁰ As the history of 900 N. Payson exemplifies, vacancy has a strong foothold in historically underserved portions of the country, with its worst impacts echoing through minority and low-income communities.²¹ Following the white flight²² of suburbanization, urban centers saw a decline in their population and an increase in their vacant property rates.²³ To tackle vacancy problems in their cities, local government officials have to define vacancy before developing solution-oriented initiatives.²⁴

According to advocates with the National Vacant Properties Campaign, a vacant property may exhibit one or both of the following traits: 1) it poses a threat to public safety as a nuisance²⁵ and 2) the property owner has foregone basic duties of ownership, such as paying taxes or maintaining the property.²⁶ Local stakeholders and state officials can provide more specific definitions of a vacant property, but generally, a vacant building has been uninhabited for at least a year and has structural damage that threatens the community's well-being.²⁷ Regardless of the statutory requirement or

18. Baltimore demolished 185 vacant properties after Mr. Lemmon's death, but sadly, these mitigation efforts did not start in time to prevent the collapse of 900 N. Payson. *Id.*

19. By 2018, Baltimore had spent over \$9 million to demolish or fix the most dangerous vacant properties in the city. *Id.* These efforts did not address the need for affordable housing, though.

20. See Housing Vacancies and Homeownership (CPS/HVS), U.S. CENSUS BUREAU tbl.10 (2020), <https://www.census.gov/housing/hvs/data/ann19ind.html> [<https://perma.cc/48J8-38JF>].

21. *Id.* at tbl.8. In predominantly white neighborhoods, the vacancy rate is less than one percent; however, predominantly Black neighborhoods have a vacancy rate of over thirty-three percent. See *How Does Baltimore Count Vacant Buildings?*, VACANT BLDGS. 101 (Oct. 5, 2016), <https://baltimoreheritage.github.io/vacant-buildings-101/guides/counting-vacants/> [<https://perma.cc/UW63-RG97>].

22. White flight is defined as, "chiefly U.S. the migration of white people from inner-city areas (esp. those with large non-white population) to the suburbs." *White flight*, OXFORD ENG. DICTIONARY (3d ed. Mar. 2015). White flight not only segregated neighborhoods, but it led to abandoned rental property, shutdown schools, absent police, and depressed business activity. See ISABEL WILKERSON, *THE WARMTH OF OTHER SUNS* 396 (2010).

23. The population rate has declined sixty-three percent in St. Louis City, Missouri, since its peak in the 1950s. *Vacancy Reading List*, STL VACANCY COLLABORATIVE, <https://www.stlvacancy.com/reading-list.html> [<https://perma.cc/74CV-2T5Y>].

24. See *How Does Baltimore Count Vacant Buildings?*, *supra* note 21.

25. Typically, a property becomes a nuisance when it no longer provides habitable living conditions, such as an unsound exterior structure, a missing roof or wall, or many other structural deficiencies in the property. See Heather K. Way, *Informal Homeownership in the United States and the Law*, 29 ST. LOUIS U. PUB. L. REV. 113, 182 (2009).

26. NAT'L VACANT PROPERTIES CAMPAIGN, VACANT PROPERTIES: THE TRUE COSTS TO COMMUNITIES (2005), <https://files.hudexchange.info/resources/documents/VacantPropertiesTrueCosttoCommunities.pdf> [<https://perma.cc/YTN7-8U7Q>] [hereinafter NVPC].

27. *Id.*

agreed-upon definition, vacant property creates substantial harm and waste within cities, and this risk is experienced both communally and personally in multiple ways.

First, local governments spend millions of municipal dollars to board up or otherwise maintain vacant properties. In the early 2000s, St. Louis spent over \$15 million demolishing vacant properties,²⁸ and Philadelphia spent nearly \$2 million cleaning and clearing vacant lots.²⁹ Second, cities miss out on a wealth of property tax while the housing stock remains vacant and tax delinquent.³⁰ In St. Louis alone, there are over 24,000 vacant parcels that, in total, have an assessed property value worth nearly \$80 million.³¹ Research in St. Paul, Minnesota, showed that the city loses nearly \$8,000 in revenue when it demolishes a home, compared to the nearly \$14,000 in property tax the same vacant building could generate in twenty years if rehabilitated.³²

Third, vacant properties' abandoned, semi-enclosed structures create ideal venues for criminal activity.³³ A study in Austin, Texas, reported that in neighborhoods with the highest rates of vacancy, 83% of abandoned and semi-enclosed property "showed evidence of illegal use."³⁴ Additional data from social science research shows that increased foreclosure rates lead to more vacancy and higher crime rates; this argument was demonstrated with a 1% increase in foreclosure leading to 1.5–2.5% increases in crime rates for neighborhoods in large, populous cities such as New York, Pittsburgh,

28. *Id.* at 1. As of 2018, St. Louis City has 4,000 vacant buildings needing to be demolished, which could cost \$40 million. Mayor Lyda Krewson, *A Plan to Reduce Vacant Lots and Buildings*, STLOUIS-MO.GOV, <https://www.stlouis-mo.gov/archives/mayor-krewson/initiatives/vacancy.cfm> [<https://perma.cc/AND8-C6KQ>]. Compare this to the rest of the city budget: Human Services (\$1.3 million), Police Training (\$1.5 million), City Recreation (\$1.6 million), and Planning & Urban Design (\$422,183.86). See Department Expenditures, STLOUIS-MO.GOV, [https://www.stlouismo.gov/government/departments/budget/transparency/expenditure/departments.cfm?fiscalYear=2018&fund=1010&departmentSearch=\[https://perma.cc/93VR-XNPZ\]](https://www.stlouismo.gov/government/departments/budget/transparency/expenditure/departments.cfm?fiscalYear=2018&fund=1010&departmentSearch=[https://perma.cc/93VR-XNPZ]). Detroit has also spent \$265 million to demolish over 15,000 vacant properties. See Christine Ferretti, *Last Detroit House Demolished in \$265M Blight-Removal Effort*, DET. NEWS (Aug. 14, 2020, 3:10 PM), <https://www.detroitnews.com/story/news/local/detroit-city/2020/08/14/last-detroit-house-demolished-blight-removal/3349213001/> [<https://perma.cc/G2MZ-75HT>].

29. NVPC, *supra* note 26, at 1.

30. *Id.* at 7.

31. *Statistics for St. Louis Vacant Properties*, STL VACANCY COLLABORATIVE, <https://www.stlvacancy.com/statistics.html> [<https://perma.cc/EKY9-WK54>]. Additionally, the City Forestry Department has spent over \$17 million on basic maintenance costs over the last five years for these vacant properties. *Id.*

32. Edward G. Goetz, Kristin Cooper, Bret Thiele & Hin Kin Lam, *Pay Now or Pay More Later: St. Paul's Experience in Rehabilitating Vacant Housing*, CURA REP. 12–15 (Apr. 1998), <http://carmenrue.com/files/monticello/pdf/landbank/Pay-Now-or-Pay-More-Later-Goetz-et-al.pdf> [<https://perma.cc/277Y-T53S>].

33. See NVPC, *supra* note 26, at 3.

34. *Id.*

and Chicago.³⁵ Vacant property can also easily catch fire, through arson or natural causes, which can spread to nearby parcels.³⁶ An annual report on vacancy fires across the country has determined that each year, around 28,000 vacant buildings go up in flames, causing hundreds of injuries and \$900 million in property loss.³⁷

The unrelenting threat of these dangerous vacant structures takes a psychological toll on individual community members, as well. During the St. Louis Vacancy Summit in 2017, twenty-six percent of the present community members stated that they either experienced a violent crime or feared a violent crime may occur inside a vacant property near their home.³⁸ Not surprisingly, community growth and stabilization across the country is nearly impossible in census-block neighborhoods with lower incomes and higher vacancy rates.³⁹ Longtime residents have proudly built their familial generational wealth around their property, and they do not want to lose their

35. Lin Cui & Randall Walsh, *Foreclosure, Vacancy, and Crime* 2–4 (Nat'l Bureau of Econ. Rsch., Working Paper No. 20593, 2014), <https://www.nber.org/papers/w20593.pdf> [<https://perma.cc/MW8H-WNEV>].

36. See NVPC, *supra* note 26, at 4. In St. Louis City, vacant buildings account for more than forty percent of all fires requiring emergency responses. Christine Byers, *Thousands of Vacant Buildings Take Heavy Toll on St. Louis Police, Firefighters*, ST. LOUIS POST DISPATCH (Dec. 24, 2018), https://www.stltoday.com/news/local/metro/thousands-of-vacant-buildings-take-heavy-toll-on-st-louis-police-firefighters/article_aa50237e-f71c-5e25-abad-1492307b6ad3.html [<https://perma.cc/23JX-BACX>]. Vacant structure fires quickly spread to destroy neighboring and inhabited structures before the fire department can even arrive. See Jennifer Ann Wilson, *Detroit Family's Home Damaged After Abandoned House Next Door Catches Fire*, WXYZ DETROIT (Nov. 21, 2020, 4:11 PM), <https://www.wxyz.com/news/detroit-family-s-home-damaged-after-abandoned-house-next-door-catches-fire> [<https://perma.cc/Z76W-NQ92>].

37. U.S. Fire Administration, *Vacant Residential Building Fires*, TOPICAL FIRE REP. SERIES 11, 2 (Aug. 2010), <https://www.usfa.fema.gov/downloads/pdf/statistics/v11i3.pdf> [<https://perma.cc/Z3Q3-KY49>].

38. See STACY ROSS, SUMMIT PLAN. COMM., WORKING TOGETHER: THE ST. LOUIS VACANCY SUMMIT FINAL REPORT 3 (2017), https://www.stlvacancy.com/uploads/1/2/7/4/127463804/vacancy_summit_report.pdf [<https://perma.cc/A994-2RVC>].

39. See Prudente, *supra* note 2. These parts of American cities were once middle-income neighborhoods built in response to industrial growth in the mid-twentieth century; but now, these areas are overwhelmed with aging housing stock in desperate need of repair. Alan Mallach, *Setting the Stage to Revive America's Middle Neighborhoods*, NEXT CITY (Nov. 19, 2018), <https://nextcity.org/features/view/setting-the-stage-to-revive-americas-middle-neighborhoods> [<https://perma.cc/8Y5E-TSC2>]. The negative feedback loop of destabilization and vacancy circles around a deficit of financial resources and an inability to attract new residents and funding because properties are vacant. *Id.*

wealth⁴⁰ due to others' negligence or carelessness.⁴¹ Nonetheless, these same invested residents may have to consider moving to escape the physical and psychological toll of vacant properties.⁴² Taken altogether, the financial strain, the wasted tax base, and the criminal magnetism of vacant properties create a hardship for current residents while also deterring future residents.

Vacant property must be systematically and nationally addressed by partnerships between community members and governmental stakeholders, and the first step should be preventing properties from becoming abandoned and then vacant in the first place.⁴³ Currently, many state and local regimes have administrative and statutory tools that enable interested third parties to rehabilitate, demolish, or otherwise repurpose vacant property while fewer resources are dedicated to vacancy prevention initiatives.⁴⁴ Preventing vacancy deserves as much attention as strategies to abate vacant properties because prevention enables families to retain wealth and avoid a cycle of debt,⁴⁵ while abatement and mitigation tactics respond to the physical structure.⁴⁶ A solution to vacancy requires a combination of proactive and preventive policy interventions, but currently, there is insufficient emphasis

40. See Lisa A. Keister & Stephanie Moller, *Wealth Inequality in the United States*, 26 ANN. REV. SOCIO. 63 (2000). Discriminatory barriers have led to stark contrasts in accumulated wealth and debt between white and Black families: in the 1980s, the median net worth of Black families was only 6% of white counterparts, despite earning 60% of the white median income; again in 1992, only 25% of white families had debt or zero assets, but 60% of Black families had debt. *Id.* at 73. This pattern of severely racialized wealth means that white young people are more likely to have a stable source of wealth, and Black young people are likely to inherit debt. See Fabian T. Pfeffer & Alexandra Killewald, *Generations of Advantage. Multigenerational Correlations in Family Wealth*, 96 SOC. FORCES 1411, 1432 (2018).

41. See Alan Mallach, *Homeownership and the Stability of Middle Neighborhood*, in ON THE EDGE: AMERICA'S MIDDLE NEIGHBORHOODS 65, 66 (Paul C. Brophy ed., 2016). Vacancy is especially problematic in these definitional "middle neighborhoods" because these neighborhoods (defined as areas and neighborhoods that were predominantly single-family homes with middle-income households, expanding from the late nineteenth century up until the early 1960s) combine an aging housing stock and a disinvestment of public resources. *Id.* at 65.

42. See Ferretti, *supra* note 28. Stephenie Lee, the neighbor of the destroyed property, hated the burnt structural remnants across the street, but she did not have the financial means to make a move. *Id.*; see also NVPC, *supra* note 26, at 11. Vacancy costs to other homeowners include higher insurance premiums, wasted property value, and a sentimental feeling of loss that leads to a poorer quality of life. *Id.*

43. See Way, *supra* note 25. Local legal partnerships with neighborhood associations have made great strides in rehabilitating properties while maintaining the historical character of the neighborhood. See Andrea Y. Henderson, *Grant Will Support Free Legal Help in St. Louis Neighborhoods with Vacant Properties*, ST. LOUIS PUB. RADIO (Oct. 21, 2019, 7:36 PM), <https://news.stlpublicradio.org/health-science-environment/2019-10-21/grant-will-support-free-legal-help-in-st-louis-neighborhoods-with-vacant-properties> [<https://perma.cc/QJ7J-VVR3>]. Major cities also utilize land banking authorities to transfer ownership of vacant or abandoned properties to new purchasers. For more information on this policy intervention, see *infra* Part IV.

44. See *infra* Part IV for a short discussion of these other policy tools, receivership statutes, and land banks.

45. See Mallach, *supra* note 41, at 68.

46. See NVPC, *supra* note 26, at 5.

on preventing property from becoming vacant. However, a legislative solution that may prevent property from being abandoned and becoming vacant is being enacted across the country—the Uniform Partition of Heirs Property Act (UPHPA).⁴⁷

This Note will proceed with Part III, a discussion of the historical and contemporary causes of vacancy—namely, debt foreclosure costs and intestate succession.⁴⁸ Next, Part IV will discuss the policy intervention tools that seek to abate vacant properties⁴⁹ and contrast these tools with the UPHPA.⁵⁰ Finally, Part V will analyze the UPHPA and suggest revisions to strengthen its impact to prevent families from abandoning heirs property.⁵¹ Policymakers should revise the UPHPA language⁵² to simplify the process for consolidating title of current heirs property and invest in more robust estate planning tools to prevent vacancy.⁵³ Together, this national effort at tactical revision and resource investment will protect familial homes and prevent the next generation of homeowners from having to bear the burden of neighboring vacant property.

II. HISTORICAL AND CONTEMPORANEOUS CAUSES OF VACANCY

Vacancy is a pernicious, steady decline of property value and community stability that does not happen overnight. Decades ago, conscious governmental planning created the undesirable foundation for the vacancy landscape in today's American cities. A large cultural movement of the United States, the Great Migration of Black families out of the Jim-Crow era southern regions of the country, received a fearful response from white politicians marked by draconian policies that boxed in urban growth in an ineffective manner.⁵⁴ The aftershock of these calculated choices harmed the development of communities then, but it also led to ongoing community disinvestment from both residents and government officials today.⁵⁵

47. UNIF. PARTITION OF HEIRS PROP. ACT (UNIF. L. COMM'N 2010), <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=4617097f-e6aa-d511-3c68-f3f21b1927e9&forceDialog=0> [https://perma.cc/GM3A-WRWS] [hereinafter UPHPA].

48. See *infra* Part III.

49. See *infra* Part IV.

50. See UPHPA, *supra* note 47.

51. See *infra* Section IV.C.

52. See *infra* Section V.A.

53. See *infra* Section V.B.

54. See Prudente, *supra* note 2.

55. See generally THE PRUITT-IGOE MYTH (Unicorn Stencil Documentary Films 2011). A harrowing documentary of a public-housing complex gone terribly wrong, this film illustrates the horrific confluence of many poor decisions: intentional segregation of the housing project; a steady decline of police response to the property; a population vacuum out of St. Louis City and into St. Louis

A. Cultural Background: A Great Migration to Unwelcoming Cities

To understand the glut of vacancy across the country, it is necessary to understand the origin story and development of now-vacant communities. Perhaps one of the most understudied cultural movements of the twentieth century was the Great Migration⁵⁶: the unprecedented movement of Black Americans from the southern parts of the United States to urban centers across the country.⁵⁷ Stretching over a period of nearly sixty years, six million Black Americans moved out of the South and into cities such as New York, Detroit, Chicago, Los Angeles, Philadelphia, and St. Louis.⁵⁸ This vast movement of people drastically reshaped the cities. For example, during the Great Migration, Chicago's population of Black Americans grew from 44,103 individuals to over 1 million.⁵⁹ The northern cities were not prepared for such a large influx of minority populations, and so they quickly drew up new plans on where and how to create residences for the newcomers to the labor class.

Unfortunately, most major cities created redlined lending districts⁶⁰ and racially restrictive covenants⁶¹ to control first, whether Black families would be able to buy homes at all, and second, where they may be allowed to rent homes.⁶² Financial institutions have engaged in a long, sordid history of discriminatory lending that has limited the developmental goals and prosperous potential of many minority communities.⁶³ The federal lending

County; and most devastating perhaps, a residential loss of faith in the Pruitt-Igoe living community. *Id.* The complex cost \$36 million to construct, but its demolition was nationally televised less than twenty years later. Tim O'Neil, *45 Years Ago: A Final Blow Is Dealt to Pruitt-Igoe*, ST. LOUIS POST DISPATCH (Apr. 1, 2018), https://www.stltoday.com/news/local/metro/45-years-ago-a-final-blow-is-dealt-to-pruitt-igoe/article_e2a30e7c-f180-5770-8962-bf6e8902efc1.html#:~:text=Igoe%2C%20heralded%20as%20the%20city's,story%20buildings%20and%202%2C868%20apartments [https://perma.cc/R82J-Q6T6].

56. See WILKERSON, *supra* note 22, at 8–9.

57. *Id.* at 9.

58. *Id.*

59. *Id.* at 11.

60. Redlining is defined as “the action or practice of a bank, etc., in refusing to grant a loan or insurance to an area considered to be of significant financial risk, or offering these services at prohibitively high rates.” *Red-lining*, n. OXFORD ENGLISH DICTIONARY (3d ed. Sept. 2009).

61. Though famously struck down as unconstitutional in the 1948 Supreme Court case, *Shelley v. Kraemer*, racial restrictive covenants were a common urban planning tool in the mid-twentieth century that allowed homeowners to write explicit racial restrictions into their property deed agreements to prevent future sales to minority buyers. 334 U.S. 1, 8–10, 23 (1948).

62. BRUCE MITCHELL & JUAN FRANCO, NAT'L CMTY. REINV. COAL., HOLC “REDLINING” MAPS: THE PERSISTENT STRUCTURE OF SEGREGATION AND ECONOMIC INEQUALITY 9 (2018), https://ncrc.org/wp-content/uploads/dlm_uploads/2018/02/NCRC-Research-HOLC-10.pdf [https://perma.cc/6QFV-UET4]. For a historical map of redlining, see Univ. of Richmond, *Mapping Inequality: Redlining in New Deal America*, <https://dsl.richmond.edu/panorama/redlining> [https://perma.cc/Z8SJ-4493]. This map outlines the segregated and disinvested communities that are impacted by vacancy today. See *infra* note 65.

63. See MITCHELL & FRANCO, *supra* note 62.

program managed by the Home Owners' Loan Corporation (HOLC)⁶⁴ used localized appraisal strategies to strictly prohibit loaning money to individuals living in “hazardous” communities, which were largely minority populations.⁶⁵ For almost one hundred years, the HOLC and local lending authorities downgraded countless neighborhoods based on the quality of housing stock, a survey of rent and sales in the community, and, most notoriously, the racial and ethnic classifications of the neighborhoods.⁶⁶ Bad financial grading of entire census-block neighborhoods led to a relentless decline in property and wealth in these communities.⁶⁷ On top of downgraded and vacant housing stock, minority individuals in these communities have continued to feel the financial detriments of restrictive lending in the form of discriminatory mortgages.⁶⁸ This pattern of discriminatory lending poses a significant obstacle for minority families to achieve economic mobility, as it is difficult to build intergenerational wealth without owning property.⁶⁹

64. The HOLC was created by the Home Owners' Loan Act in 1933, and it loaned the equivalent of \$700 billion today to new homeowners under the Federal Housing Administration. *See Home Owners' Loan Act (1933)*, LIVING NEW DEAL, <https://livingnewdeal.org/glossary/home-owners-loan-act-1933/> [<https://perma.cc/4HE2-ADJK>].

65. *See* MITCHELL & FRANCO, *supra* note 62, at 5.

66. *See* Univ. of Richmond, *Introduction to Mapping Inequality: Redlining in New Deal America*, <https://dsl.richmond.edu/panorama/redlining/#loc=5/39.1/-94.58&text=intro> [<https://perma.cc/2JAV-3XLM>].

67. *See* MITCHELL & FRANCO, *supra* note 62. According to an HOLC property appraiser from May 4, 1937, a central portion of Baltimore received a security grade of “D” or “hazardous” due to “considerable vandalism,” an “[e]stimated annual family income [of] [\$]1,000,” “[o]bsolescence,” and “[Black] concentration.” Univ. of Richmond, *Baltimore, MD, D4*, <https://dsl.richmond.edu/panorama/redlining/#loc=12/39.299/-76.705&city=baltimore-md&area=D4&adview=full&adimage=3/83.51/-143.876> [<https://perma.cc/L3BG-2Y9A>]. Eighty years later, that same portion of Baltimore has 4,781 vacant buildings, which is nearly a third of Baltimore's total vacancy. *Vacant Buildings*, OPEN BALTIMORE, <https://data.baltimorecity.gov/datasets/vacant-building-notices-open-1/explore?filters=eyJDb3VuY2lsX0Rpc3RyaWN0IjpbIjkiXX0%3D&location=39.298913%2C-76.674077%2C12.92>. This western neighborhood of Baltimore encompasses the exact street where Mr. Lemmon was killed by a vacant building—North Payson Street. *Id.*

68. Lincoln Quillian, John J. Lee & Brandon Honoré, *Racial Discrimination in the U.S. Housing and Mortgage Lending Markets: A Quantitative Review of Trends, 1976–2016*, 12 RACE & SOC. PROBS. 13, 15–16 (2020).

69. *See infra* note 84 and accompanying text; Bradley Hardy & Trevon Logan, *Race and the Lack of Intergenerational Economic Mobility in the United States*, in VISION 2020: EVIDENCE FOR A STRONGER ECONOMY 157, 159 (Washington Ctr. for Equitable Growth ed., 2020). Researchers have found that Black children growing up in densely-segregated regions are expected to have a lower mean income rank. *Id.*

B. Debt Attachment to Property

For families that were able to acquire property in these allegedly financially hazardous communities,⁷⁰ their battle towards intergenerational wealth has been complicated by the prickly nature of debtor-creditor law in the United States.⁷¹ Creditors such as circuit courts, the IRS, or even Medicaid programs are able to attach judgments and debts to most personal property owned by the debtor in order to guarantee payment or collection of judgment.⁷² Also known as writs of execution, these creditor rights create a legal pathway to enforce a money judgment,⁷³ but these judgments may result in vacant, abandoned property.⁷⁴ When creditors attach judgment rights to low-value property, no matter the current owner's financial condition, the property becomes encumbered with an insurmountable debt.⁷⁵

Rather than waste scant time, money, or efforts to rehabilitate a property that may be worth significantly less than the debt it entails, owners will abandon their property to a bank, a sheriff's office, or even a municipal agency in their community.⁷⁶ In some states, local governments move the

70. Home ownership began to increase across the United States during the Great Migration. See Mallach, *supra* note 41, at 64–66. Homeowners may be emotionally attached to their property because it is their “single greatest financial investment.” NVPC, *supra* note 26, at 11.

71. See Kermit J. Lind, *Perspectives on Abandoned Houses in a Time of Dystopia*, 24 J. AFFORDABLE HOUS. & CMTY. DEV. L. 121, 121–25 (2015) (explaining myriad obstacles faced by families and communities related to vacant properties during economic downturns).

72. See generally THEODORE EISENBERG & JAMES M. LAWNICZAK, 3 DEBTOR-CREDITOR LAW APP. § 30 (Matthew Bender ed., 2020), LexisNexis (includes examples of debtor-creditor statutes across the country).

73. For a broader history of writs of execution and property attachment in the realm of civil procedure, see FED. R. CIV. P. 69.

74. See Lind, *supra* note 71, at 122 (defining titles when property becomes worth less than taxes-owed or debt attached to such property as “zombie titles”). In terms of Medicaid debt, though, a Medicaid program can attach an estate claim of a decedent's outstanding bills to a family home, forcing the surviving family to sell the property “and give all proceeds to the state.” *Medicaid Estate Claims: Perpetuating Poverty & Inequality for a Minimal Return*, JUST. AGING 3 (Apr. 2021), <https://justiceinaging.org/wp-content/uploads/2021/04/Medicaid-Estate-Claims.pdf?eType=EmailBlastContent&eId=49402a41-1e4f-4346-90d5-84fca6d8c236> [<https://perma.cc/DM95-T9PH>] [hereinafter *Medicaid Estate*].

75. See Lind, *supra* note 71, at 122. At this point in the financial deterioration of a property, both the creditor and the debtor are harmed because neither party is able to recoup value owed or gained by owning the property at issue. Seeing the futility of this debt cycle, some states have begun to push back against certain creditors attaching judgments and liens to low-income families' property. See *Medicaid Estate*, *supra* note 74, at 3 (West Virginia attempted to sue the federal government for its Medicaid estate repayment mandate, though federal court ruled the mandate was not unconstitutional). Further financial advocacy and reforms would also likely prevent abandonment and vacancy in low-income neighborhoods; however, a full discussion of those reforms is beyond the scope of this Note.

76. See Lind, *supra* note 71, at 122. The formal abandonment procedure may require nothing more than a quitclaim deed, which is a one-page document stating the owner passes her interest in the property to another named individual; however, informal abandonment follows no procedure, and the creditor may retain a property interest in the deteriorating property while it sits vacant. *Id.*

abandoned property through a foreclosure process—a process that does not always completely clear the title of liens.⁷⁷ The quality of title for the property is the quintessential requirement for any current owner to acquire title insurance, apply for building permits, or convey the property to future heirs.⁷⁸ Creditor-debtor law allows remote financial actors to siphon communities of the value and stability of their housing stock by foreclosing and transferring title⁷⁹ of otherwise habitable residences to bad-actor speculators or buyers.⁸⁰ Ultimately, these opportunistic purchases and transfers can lead to an unwanted cycle of abandoned homes begetting more property abandonment as speculators do nothing with the purchased property and communities lose hope.⁸¹

C. Intestate Succession

The financial quagmire of intestate succession also significantly contributes to vacancy.⁸² Coupled with a dearth of financial estate planning tools for underserved communities,⁸³ intestate succession laws fracture title and contribute to the loss of intergenerational wealth, especially among

77. *Id.* at 123–24. The title of a property is the linear passage of ownership from one party to the next. Title insurance companies research property records to make sure no debt is owed nor liens assessed against the property, insuring the quality of the title for buyers.

78. *See* Way, *supra* note 25, at 118–20. When multiple individuals or unknown heirs jointly own a property (which is common in a situation where a property is conveyed as heirs property), it is nearly impossible to consolidate title and improve the home, which creates a cycle of downgraded housing stock. *See infra* Section III.C; Way, *supra* note 25, at 153–54.

79. Foreclosure is the legal intervention for a mortgagee-owner to recover the value of a property owed through a mortgage; generally, the home is sold through public sale for the mortgagee to collect after the mortgagor has received foreclosure notice. *See* Way, *supra* note 25, at 123–24.

80. Speculators without any meaningful attachment to the community can purchase foreclosed property far below market value and take out deeds of trusts on the property as a loan to themselves, all without any obligation to maintain the property. *See id.* at 169. *See generally* Aditi Sen, *Do Hedge Funds Make Good Neighbors?*, CTR. FOR POPULAR DEMOCRACY 1 (June 2015), <https://populardemocracy.org/sites/default/files/Housing%20Report%20June%202015.pdf> [<https://perma.cc/7UPB-KQY7>].

81. *See* Lind, *supra* note 71, at 123–24.

82. A full definition of intestate succession as laid out by the Third Restatement on Property:

(a) A decedent who dies without a valid will dies intestate. A decedent who dies with a valid will that does not dispose of all of the decedent's net probate estate dies partially intestate; (b) The decedent's intestate estate, consisting of that part of the decedent's net probate estate that is not disposed of by a valid will, passes at the decedent's death to the decedent's heirs as provided by statute.

RESTATEMENT (THIRD) OF PROPERTY (WILLS & DONATIVE TRANSFERS) § 2.1 (AM. L. INST. 1999).

83. Fifty-one percent of white Americans have wills, but only twenty-eight percent of nonwhite Americans are likely to have wills. *See* Astrid Andre, *Can Estate Planning Be Used to Help Preserve Economic Assets in Low-Income Communities?*, SHELTERFORCE (Mar. 1, 2019), <https://shelterforce.org/2019/03/01/can-estate-planning-preserve-economic-assets-in-low-income-communities/> [<https://perma.cc/3YS4-MJSH>]. This contrast can be ascribed to wealth differences and an informational gap. *Id.* People often assume only wealthy individuals need wills and that estates can divest clearly without documentation. *Id.*

minority households.⁸⁴ When an individual dies without a will, or a legal instrument to distribute parts of her estate, the person is said to die in intestacy.⁸⁵ As “a legal regime of default,” this means property is not passed along to the appointed beneficiaries of the deceased but rather through a familial, bloodline order as designated by the state legislature.⁸⁶ This arbitrary tool of property conveyance may require families to enter years of probate court proceedings, or it may lead to property being conveyed to a disinterested family member who allows the property to waste away.⁸⁷

Intestate succession is problematic because it leads to heirs property concerns. Heirs property results from multiple heirs to a decedent receiving separate ownership interests in the shared property as cotenants, usually with title concerns and complicated family dynamics.⁸⁸ Particularly, low-income heirs are vulnerable to other cotenants devaluing their interest through third-party sales, and they are unable to access the economic advantages of improving or developing the property without agreement among all the cotenants.⁸⁹ These two significant issues lead many cotenants with heirs property interests to walk away from the inheritance,⁹⁰ which causes property decay or a tax foreclosure.⁹¹

III. CURRENT POLICY INTERVENTIONS: USEFUL YET LIMITED RESPONSES TO VACANT PROPERTY

The national and localized trends of vacancy and wealth disparity, as well as evidence of the personal and communal impacts of vacancy, have caught the attention of political and financial stakeholders.⁹² This section highlights two policy intervention tools used by state and local governments

84. See Palma Joy Strand, *Inheriting Inequality: Wealth, Race, and the Laws of Succession*, 89 OR. L. REV. 453, 456 (2010). Starting from slavery and continuing through modern trends of discriminatory lending, Professor Strand argues that American inheritance law is built on a racially-skewed origin, which continues to “perpetuate deep racial wealth inequality.” *Id.*

85. Judith Daar, *Multi-Party Parenting in Genetics and Law: A View from Succession*, 49 FAM. L.Q. 71, 78 (2015).

86. *Id.* at 78–79, 86–87.

87. *Id.* at 86–87. For example, a man dies without a will, so his wife and his sister receive a half-interest in the home he previously owned. Unfortunately, the sister and wife cannot agree on whether to fix, sell, or demolish the property, and so it sits vacant and unused.

88. Jesse J. Richardson, *Receivership: Another Option for Partition of Heirs Property*, 120 W. VA. L. REV. 917, 918 (2018). Heirs property can involve any form of co-tenancy, but usually it refers to tenancy-in-common as heirs inherit a property jointly through intestate succession. *Id.*

89. See *id.* at 920–21. As demonstrated by the racial wealth gap in estate planning, current research on heirs property estimates that around fifty percent of Black-owned property in the country is owned as heirs property. See Planet Money, *How Jacob Loud’s Land Was Lost*, NAT’L PUB. RADIO (Apr. 7, 2021, 5:25 PM), <https://www.npr.org/transcripts/983897990> [<https://perma.cc/HMA5-A6D8>].

90. See Strand, *supra* note 84, at 492–95.

91. See Lind, *supra* note 71, at 124. Also see Daar, *supra* note 85, at 78, for a real-life example of fractionalized title causing improper property maintenance and potentially desertion.

92. See NVPC, *supra* note 26, at 4; Krewson, *supra* note 28.

to abate vacancy: land banks, or institutional authorities that assume title to tax delinquent property and sell the properties at extremely discounted rates to interested purchasers,⁹³ and receivership statutes, which can either force a sale or transfer possession of certain distressed property to third-party receivers for purposes of rehabilitation, ultimately resulting in a transfer of title.⁹⁴ While these tools can be useful remedies, their effects can be muted if prevention strategies are not also being deployed. As a policy proposal, government officials should consider further modifying the UPHPA to better address low-value heirs property⁹⁵ and should promote and fund estate-planning services through legal clinics and pro bono work. These preventive tools, if adequately funded, can help reduce the need for the following abatement tools so heavily relied upon today.

A. Land Bank

The earliest and still most conventional tool for abating vacant property is land banking. The first land bank entity was established in St. Louis in 1971 as a local government regulatory body that had the power to acquire and resell tax-foreclosed homes in the City.⁹⁶ According to the Center for Community Progress, a land bank should include foreclosure and tax procedures, a process based on land authority interests in urban planning, an honest and accountable transaction, engagement with residents and stakeholders, and cooperation with other community authorities.⁹⁷ To use Missouri as an example, section 141.700 of the Missouri Revised Statutes enables a land bank authority to dispense with any property purchased during a foreclosure through sale.⁹⁸

The growth of land banks demonstrates the extent of vacant property across the country.⁹⁹ The Kansas City Land Bank owns over 2,700 parcels,¹⁰⁰ and the Land Reutilization Authority in St. Louis owns 10,238 parcels.¹⁰¹ Nationally, there are over two hundred land banking authorities

93. See Yelena Bosovik, *Land Banks in Missouri: A Comparative Analysis of Statutory Schemes in Kansas City and St. Louis*, 1 BUS. ENTREPRENEURSHIP & TAX L. REV. 1, 1 (2017).

94. See Melanie B. Lacey, *A National Perspective on Vacant Property Receivership*, 25 J. AFFORDABLE HOUS. & CMTY. DEV. L. 133, 135 (2016).

95. See UPHPA, *supra* note 47, at 8.

96. Bosovik, *supra* note 93, at 2–3.

97. See *id.* at 25.

98. MO. REV. STAT. § 141.700 (2016). In Missouri, there are two land banking authorities operating under very different regulatory schemes based on the land-use needs of the city, but both essentially act as brokers in a real estate transaction. See Bosovik, *supra* note 93, at 13–14.

99. Bosovik, *supra* note 93, at 2–5.

100. *Vacant Lots & Land*, LAND BANK KANSAS CITY, MO, <http://www.kcmolandbank.org/vacant-lots-and-land.htm> [https://perma.cc/W8ES-Q8Z8].

101. See *Statistics for St. Louis Vacant Properties*, *supra* note 31.

in the United States, with no official total number of owned parcels.¹⁰² Land banks serve as a straightforward tool for local governments to acquire vacant and abandoned property, to clear title, and to reposition those properties towards the market.¹⁰³

Land banks are also often overwhelmed by the sheer volume of tax foreclosed property, and cities can struggle to sell property faster than it enters the land bank system,¹⁰⁴ given limiting statutory and bureaucratic rules¹⁰⁵ and harsh urban housing markets.¹⁰⁶ Additionally, depending on the tax foreclosure proceeding of the state,¹⁰⁷ some owners may not even realize they have an interest in a tax-delinquent property until the property is auctioned to a new purchaser.¹⁰⁸ In sum, though land banks can be an effective tool for repurposing vacant property, the high quantity of properties can overwhelm the system. An increased emphasis on prevention tools can help ensure that land banks are not overwhelmed to the point where it limits their functionality.¹⁰⁹

B. Receivership Statutes

State lawmakers have begun to identify new ways to intervene and take temporary possession of vacant, dangerous properties. Receivership statutes have been enacted across the country as statutory frameworks to allow local governments or third-party nonprofit actors to initiate a litigation procedure to intervene and take temporary possession of vacant properties.¹¹⁰

102. *Frequently Asked Questions on Land Banking*, CTR. FOR CMTY. PROGRESS, <https://www.communityprogress.net/land-banking-faq-pages-449.php> [https://perma.cc/3BJH-WEGU].

103. Bosovik, *supra* note 93, at 1. New titles are a significant tool for overcoming vacant property conundrums because it assures recent purchasers that a title insurance company can guarantee no lingering property interests or outstanding taxes will devalue the new, current ownership. *Id.* at 17–18.

104. See generally Walker Moskop & Steve Giegerich, *Properties Pile Up at St. Louis County Tax Sales*, ST. LOUIS POST-DISPATCH (Feb. 1, 2016), http://www.stltoday.com/news/local/govt-and-politics/properties-pile-up-at-st-louis-county-tax-sales/article_8d87e7aa-6f91-563f-82d7-30caa3c806b3.html [https://perma.cc/M68Y-PEMV]; Sarah Alvarez & Leah Samuel, *Real Estate Is Hot in Detroit. But Its Top Owner, the City, Isn't Selling*, BRIDGE MICH. (Aug. 21, 2018), <https://www.bridgemi.com/urban-affairs/real-estate-hot-detroit-its-top-owner-city-isnt-selling> [https://perma.cc/Q8GF-DWU2] (detailing the city ownership of nearly 95,000 properties but selling only 150 parcels per month).

105. See Bosovik, *supra* note 93, at 24 (contrasting timing, minimum bid requirements, and governance authorities for Kansas City Land Bank and St. Louis Land Reutilization Authority).

106. See Alvarez & Samuel, *supra* note 104, for an explanation of the land bank's slow sale of properties based on the shifting demands of the Detroit housing market.

107. See, e.g., Bosovik, *supra* note 93, at 17–24.

108. See *supra* Section III.C.

109. E.g., Moskop & Giegerich, *supra* note 104; Alvarez & Samuel, *supra* note 104; see Bosovik, *supra* note 93, at 33–39.

110. See Richardson, *supra* note 88, at 918.

Currently, there are nineteen states with some form of receivership statute.¹¹¹

A party may use the receivership intervention to petition the court, requesting the court to compel a sale or appoint a receiver that will abate the dangerous or health-threatening nuisance conditions of the property.¹¹² After providing notice and evidence of the nuisance condition violations,¹¹³ the court approves an appointed receiver to conduct a court-approved rehabilitation plan.¹¹⁴ This receiver is requested by the party bringing the action.¹¹⁵ Upon execution of the rehabilitation plan, the court may allow for a transfer of title to the receiver.¹¹⁶ Receivership programs can be both municipally driven or supported by pro bono counsel.¹¹⁷

Effective statutory schemes that allow for non-governmental entities to abate nuisance conditions help build community engagement by allowing communities to be more engaged in the process of development.¹¹⁸ When receivership is community-driven, it can further the community goal of “promoting housing development and conservation.”¹¹⁹ Receivership statutes that grant nonprofit groups standing empower neighborhoods to abate nuisance property on their own terms.¹²⁰

But although municipal and nonprofit receivership statutes can be effective strategic interventions, they are difficult to scale. Nonprofits often lack the resources for legal support,¹²¹ and municipal receiverships face challenges in recruiting receivers in the most distressed housing markets. In some of these distressed markets, it is difficult to identify absent owners or

111. Lacey, *supra* note 94, at 135.

112. MO. REV. STAT. § 441.510 (2016).

113. *Id.*

114. *See* Lacey, *supra* note 94, at 150–53.

115. Dana Malkus, Sean Spencer, Peter Hoffman & Carrick Reddin, *A Guide to Understanding and Addressing Vacant Property in the City of St. Louis*, RISE CMTY. DEV. 27 (2018), https://www.greencitycoalition.org/uploads/8/7/1/3/87139164/vacantlandstrategyguid_draftfinal_singlesheets_.pdf [<https://perma.cc/33EU-ASJT>].

116. *See* Lacey, *supra* note 94, at 155.

117. *See* Samuel King, *Missouri Lawmakers Want to Let Neighbors Clean Up Outside the Abandoned House Next Door*, KCUR (June 12, 2019, 3:49 AM), <https://www.kcur.org/government/2019-06-12/missouri-lawmakers-want-to-let-neighbors-clean-up-outside-the-abandoned-house-next-door> [<https://perma.cc/F85F-94HX>].

118. Jesse Bogan, *Resident of ‘Forgotten Neighborhood’ in St. Louis Organizes in Hopes of Having More Clout*, ST. LOUIS POST-DISPATCH (Sept. 2, 2020), https://www.stltoday.com/news/local/govt-and-politics/resident-of-forgotten-neighborhood-in-st-louis-organizes-in-hopes-of-having-more-clout/article_38ea8091-3fd8-54c4-8fd1-e0aa1590b2af.html [<https://perma.cc/2YLD-A8T5>].

119. Malkus et al., *supra* note 115, at 27.

120. *See* Lacey, *supra* note 94, at 155.

121. This is especially true when neighborhood associations are being represented by legal aid services, which rely on public funding and private donations. *Cf.* King, *supra* note 117.

lien holders to provide notice,¹²² and some properties may still be condemned because the vacancy damage goes beyond an affordable cost of rehabilitation for a receiver.¹²³ Receivership statutes can only salvage some vacant properties. Like land banking, these statutes could be relied upon less frequently if more interventions were funded to help prevent property abandonment in the first place.

C. A Promising Vacancy Prevention Tool: The UHPHA

Historically, many states had separate legislative schemes determining how heirs property should be fairly divided.¹²⁴ The Uniform Partition of Heirs Property Act,¹²⁵ commonly known as the UHPHA, is a relatively new set of laws that creates and details a separate partition process for heirs property.¹²⁶ The partition process is a court remedy that resolves shared interests in a property by either forcing the sale of the whole property and dividing the proceeds amongst separate owners or partitioning the property in kind to give each separate owner his or her own portion of the original property.¹²⁷ The National Conference of Commissioners on Uniform State Laws (ULC)¹²⁸ approved and recommended the enactment of the UHPHA after its annual conference in Chicago, Illinois, in July of 2010.¹²⁹

1. Specific Provisions of the UHPHA

The UHPHA was created “to ameliorate, to the extent feasible, the adverse consequences of a partition action” and to acknowledge “the

122. See MO. REV. STAT. §§ 441.510–20 (2016). The prevalence of heirs property ownership (and the complexity of unknown heirs) in communities with the highest rates of vacancy may mean that a legal team will have to track down and provide notice to tens or even hundreds of heirs, if the property has been passed down through generations. See Way, *supra* note 25, at 182.

123. See Malkus et al., *supra* note 115. Additionally, courts are loathe to pass along property rights without convincing evidence that the current owners are truly problematic or apathetic. *Id.* at 23.

124. See 3 MICHAEL ALLAN WOLF, POWELL ON REAL PROPERTY § 21.05 (2009).

125. See UHPHA, *supra* note 47.

126. Richardson, *supra* note 88, at 919. The UHPHA was created in large part by a Black legal reformer, Professor Thomas Mitchell, after he investigated the phenomenon of how many Black families were losing a large amount of valuable land by property developers and speculators manipulating a divided heirs property interest. See Planet Money, *supra* note 89. Mitchell designed the partition process in direct response to this common practice. *Id.*

127. See WOLF, *supra* note 124. Partition processes can be problematic for property owners with shared interests because without careful consideration from the court, a property could be split into too many interests in a way that makes the ongoing maintenance or eventual sale of the property untenable.

128. This historic organization, commonly known as the Uniform Law Commission, was established in 1892, and as a membership of predominantly lawyers, it prides itself on providing uniformity in state law that is “desirable and practical” while respecting states’ unique perspectives. About Us, UNIF. L. COMM’N, <https://www.uniformlaws.org/aboutulc/overview> [https://perma.cc/T3JL-QRQX].

129. UHPHA, *supra* note 47.

legitimate rights of each cotenant to secure his, her, or its relative share of the current market value of the property and to seek to consolidate ownership of the property.”¹³⁰ The specific areas of improvement it codified were:

1. An explicit definition of heirs property is “real property held in tenancy in common which satisfies all of the following requirements”: no binding agreement for the partition of the property, one or more cotenants received title from a relative, and a numerical constraint that twenty percent of the interests in the property or the total cotenants owning the property are relatives;¹³¹
2. A cotenant buyout option, which can only be invoked by the non-petitioning cotenants, meaning only cotenants that did not petition the court for a partition;¹³²
3. A new default standard for partition in kind with a list of considerations;¹³³
4. A preferential process for open-market sale, if need be;¹³⁴ and
5. A clear process for determining fair market value of heirs property.¹³⁵

The UPHPA has been enacted in nineteen states and introduced in seven other state legislatures.¹³⁶ In Missouri, the legislature passed its form of the UPHPA in July 2019, and the legislature called the bill the “Save the Family

130. *Id.* at 8.

131. *Id.* at 9–10. This definition is meant to only govern partition interests for familial heirs property.

132. *Id.* at 15–18. In practice, a cotenant buyout allows one person with a shared interest in the property to purchase the other cotenants’ interests in the property as a way to consolidate title, but the cotenant that petitions the court for partition cannot attempt to buyout the interests. *Id.*

133. *Id.* at 25–26. The factors include: 1) whether the property can physically be divided amongst the cotenants; 2) whether partition in kind would harm the value of the property as a whole; 3) the length of ownership for one or multiple cotenants; 4) a sentimental attachment; 5) the current use of the property; 6) the costs incurred by each cotenant to maintain the taxes and physical quality of the property; and 7) any other factor the court may deem relevant. *Id.*

134. *Id.* at 27–29.

135. *Id.* at 13–14.

136. *Uniform Partition of Heirs Property Act*, UNIF. L. COMM’N, <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d> [https://perma.cc/47ZP-FN2V]. The language is the same for each enactment, except for section 5 of the UPHPA, where the Commission left fill-in-the-blank bracketing for each state to insert the label for third-party sellers of the property, such as commissioners, referees, partitioners, or even masters. *See* UPHPA, *supra* note 47, at 13.

Farm Act.”¹³⁷ The bill was introduced and passed within seven months,¹³⁸ and the Missouri enactment followed the model language provided by the ULC in the UPHPA.¹³⁹ The new Missouri law will only apply to property interests where the primary owner has passed away without a will, which leads to intestate succession¹⁴⁰ and arbitrary divisions of fractional interests in the property.¹⁴¹ According to the partition process dictated by the new statute, cotenants may neither sell their interests in the property nor purchase other cotenants’ interest in the property without sufficient notice,¹⁴² fair judicial determinations relating to market value,¹⁴³ and proof that one cotenant will not suffer a great prejudicial effect through a forced sale.¹⁴⁴

2. *Analysis of the UPHPA*

The UPHPA is a revolutionary and simple statutory scheme that recognizes and strengthens the right to contract and provides an easy, non-probate judicial remedy for sorting through heirs property issues.¹⁴⁵ The statutory framework is confined to the problematic area of familial tenancy-in-common ownership,¹⁴⁶ and it ensures basic due process protections to all cotenants.¹⁴⁷

There are two areas where the UPHPA should be slightly modified to help solve issues relating to vacancy and property abandonment. First, the cotenant buyout option presents challenges when there are financial constraints upon cotenants attempting to purchase other cotenants’ interests. Second, this option does not contain a remedy when heirs refuse to sell their interests.¹⁴⁸ As a result, the cotenant buyout option may go unutilized—when one cotenant can hold out and refuse to negotiate with other cotenants, that cotenant could ultimately force a sale and divest another cotenant of a family home.¹⁴⁹

137. Madison McVan, *Law Would Give Protection to Family Farm Inheritances*, COLUMBIA MISSOURIAN (Feb. 26, 2019), https://www.columbiamissourian.com/news/state_news/law-would-give-protection-to-family-farm-inheritances/article_dfc75a2e-393d-11e9-b3e3-3f0c123d3238.html [<https://perma.cc/8RA7-CC9K>].

138. See S.B. 83, 100th Gen. Assemb., Reg. Sess. (Mo. 2019).

139. See Save the Family Farm Act, MO. REV. STAT. §§ 528.700–750 (2019).

140. See Richardson, *supra* note 88.

141. See McVan, *supra* note 137.

142. See UPHPA, *supra* note 47, at 15–18.

143. See *id.* at 13–14.

144. See *id.* at 25–26.

145. See *id.*

146. See *id.* at 13.

147. See *id.* at 16–17.

148. Jesse J. Richardson, Jr., *The Uniform Partition of Heirs Property Act: Treating the Symptoms and Not the Cause?*, 45 REAL EST. L.J. 507, 544–48 (2017).

149. See *id.* at 538–40 (describing the opportunistic heir, demanding unreasonable portions of the heirs property and nearly forcing the other cotenants to sell entire family property to a third-party buyer).

To better understand the challenge, consider the hypothetical example of the Franklin family. The matriarch of the Franklin family passed away without a will, and so her six children each own a one-sixth interest in the family townhome. To complicate matters, four of the six children are all in agreement that the property should stay in the family, but the other two children are estranged from the family and would rather turn a profit. One of the estranged siblings, Sibling A, lives in the upstairs unit of the townhome, and one of the other siblings, Sibling B, lives in the downstairs unit. At this point, the fictional city authority has sent three notices to the Franklin family townhome addressed to the deceased Franklin matriarch,¹⁵⁰ citing multiple code violations and fining the deceased matriarch over \$1000 in fees.

Unfortunately, the residential Franklin siblings are in disagreement: the first-floor Sibling B wants to consolidate title for the townhome to apply for a homeowner's loan, fix the property to avoid future code violations, and ensure the habitability of the family home.¹⁵¹ Sibling A also wants to consolidate title to fix up the property but only as a means to sell the entire townhome and move away. These two siblings, though neighbors, are no longer on speaking terms, and the other four siblings have tried and failed to negotiate with one another. Finally, Sibling B contacted a lawyer and learned about the UHPA opportunity to consolidate title through the cotenant buyout provision; however, this sibling is at a loss. If Sibling B petitions for the partition of the townhome, either forcing the sale of the whole property or the division of a first-floor and second-floor townhome, Sibling B is statutorily prohibited from purchasing the interests. This could put the Franklin family townhome on the market, and the family would lose their home.

Despite these problems, the UHPA can be a fantastic tool to prevent property abandonment, specifically for low-value homes. The UHPA puts the decision-making onus on the individual property owners, allowing the cotenants to attempt to negotiate amongst themselves before looking for judicial remedies.¹⁵² Unlike the UHPA, tax foreclosures¹⁵³ and receivership¹⁵⁴ are external processes, neither of which reinforce the original ownership right. The UHPA also avoids future litigation.¹⁵⁵ The buyout

150. This is not an uncommon bureaucratic mistake, as the same issue occurred in the similar scenario with the introductory property of 900 N. Payson in Baltimore. Prudente, *supra* note 2.

151. For a discussion on the importance of consolidated title, see Way, *supra* note 25, at 118–20.

152. See UHPA, *supra* note 47, at 15–18.

153. See Bosovik, *supra* note 93, at 1.

154. See Lacey, *supra* note 94, at 135.

155. Drafters of the UHPA specifically envisioned the cotenant buyout option as “a model which cotenants can use . . . to structure their own, private deals to value and sell interests in land among

allows cotenants the opportunity to negotiate a property sale¹⁵⁶ rather than default or abandon a property. Most importantly, however, the UHPHA can be strengthened by state-level legislative revisions and investment in estate planning tools.

IV. PROPOSAL: REVISIONS TO THE UHPHA AND INCREASING ESTATE PLANNING TOOLS

Almost half of United States jurisdictions have either passed or introduced a version of the UHPHA, but there are still gaps in vulnerability and wealth access that must be addressed by the legal community. The existing UHPHA legislative framework effectively prevents third-party purchase and forced sales of heirs property; however, the complicated familial and title issues that accumulate on a deteriorating property can lead to waste and abandonment in cities where the properties lack sale value on the market.¹⁵⁷ To prevent potential future vacancy, the UHPHA should be modified to more effectively prevent property abandonment by eliminating the prohibition against the petitioner's ability to buy out cotenants. States should also universally adopt some form of transfer-on-death or beneficiary deed instrument as a prevention tool to avoid many of the problems associated with heirs property.

A. UHPHA Revision: The Cotenant Buyout

Instead of enacting the UHPHA language verbatim, state legislatures should target heirs property transfers in a way that will also prevent property abandonment. Property abandonment is more likely to occur when a low-value property is overburdened by debt or when owners cannot access resources to maintain property habitability due to title issues, and abandoned properties contribute to the issue of vacancy. The UHPHA amendment that could most efficiently consolidate title and ownership for heirs would be to eliminate the cotenant buyout prohibition against the petitioner.¹⁵⁸

An amended buyout provision is the most necessary change to the existing UHPHA language.¹⁵⁹ The drafters of the UHPHA fully intended for this mechanism to serve as a "streamlined" alternative to litigation.¹⁶⁰

themselves without court involvement or as a supplement to judicial process." UHPHA, *supra* note 47, at 20.

156. *See id.* at 15–18.

157. *See Way, supra* note 25, at 182.

158. *See UHPHA, supra* note 47, at 15–18.

159. *See id.* and *supra* note 132 for the summary of the cotenant buyout mechanism.

160. *See UHPHA, supra* note 47, at 19, 23.

However, its specificity has created unexpected consequences for cotenants with fewer financial resources facing a holdout situation. The language limits settlements through means other than sale by prohibiting petitioners from electing to buy out cotenant interests.¹⁶¹ The drafters enacted this limitation because the act of petitioning the court would seem to indicate an interest to sell,¹⁶² but the drafters may not have considered that the petitioner may file out of desperation—a way to force a resolution of the dispute by a mechanism other than a sale.¹⁶³ In practice, an opportunistic cotenant may refuse to sell or negotiate. This would force another cotenant to petition the court for partition, and as is, the language requires the petitioning cotenant to forfeit his or her purchasing rights of the opportunistic cotenant's share. Recalling the Franklin family townhome example, Sibling B is likely to be the most invested in paying to retain the property because it is his or her residence; however, the current language of the buyout mechanism strictly prohibits this act of self-interest and self-preservation. If the other three siblings cannot afford to buy out Sibling A, the court will have to force the sale of the Franklin townhome.

There are several revisions that may ensure the Franklin siblings keep their familial townhome. First, rather than restricting a petitioner outright from purchasing a shared interest, the legislation should allow the court to rely on majoritarian or mediation principles in determining the disposition of the property.¹⁶⁴ Once the cotenants have been identified and provided proper notice, the court should hold a hearing to assess whether a majority of the cotenants share a collective goal for a single cotenant to own the property before forcing the sale. At this point, the judge may instruct all cotenants to participate in an alternative dispute resolution device, such as a mandatory mediation session, to try to reach agreement about the disposition of the property. If mediation is not possible, the court may rule that any cotenant who failed to attend the judicial hearing, and consequently cannot present evidence that the particular cotenant has supported the maintenance of the low-value heirs property in question, will forfeit his or her ownership interest related to the disposition of the co-owned property. In the Franklin family, the four siblings would represent the majority will to retain the property; the court could then force the sale of the two remaining siblings' interests based on a fair market value assessment.

161. *Id.* at 23.

162. *Id.*

163. The drafters acknowledge the difficulty of family bargaining, as they point out in the preface to the UHPA that “families often value their family real property for its ancestral and even historical significance” rather than computable economic values. *Id.* at 6.

164. See Richardson, *supra* note 148, at 544.

Second, the judge should be able to rule whether the petitioning cotenant may purchase the other cotenants' interests or any other equitable disposition of the property (i.e., donate it to a family charity, place a restrictive covenant on the title so the land may not be sold for another decade, etc.). This could be accomplished through mediation or a judicial hearing with all available cotenants, and it could include testimony, evidence, and private assessments. With this equitable judicial procedure in place, the court could protect both the ownership interests and the due process rights of cotenants without rewarding the opportunistic behavior of a bad actor trying to force a sale and make a quick buck.

Third, and in conjunction with an evidentiary hearing on cotenant interests, the court should expressly prioritize the interest of a cotenant who is the homeowner-occupant of the property.¹⁶⁵ By adding a specific protection for homeowner-occupants, the revised statute would justly allow the homeowner-occupant (i.e., the person paying the bills, improving the habitability, and perhaps increasing the value of the property) the first right to consolidate title.¹⁶⁶ No matter how many people may share an interest and live in a property of nominal value, the homeowner-occupant cannot apply for financial resources to improve the property unless the title is consolidated. Giving the homeowner-occupant priority would not only expedite the consolidation of title for heirs property, but it would also prevent future vacancy by granting occupants a clear title that can be easily conveyed upon death.

A quick pathway to consolidation of title will allow any individuals that live in the home to apply for loans, secure the premises, and maintain the property to comply with health and safety regulations. Even if multiple cotenants are homeowner-occupants that disagree about the final disposition of the property, the disputing homeowner-occupants would have a better chance of resolving their argument during the previously described judicial hearing.¹⁶⁷ For example, for the feuding Franklin family, an equitable hearing would establish the first-floor sibling interest to maintain a residence and the second-floor sibling interest to sell and move away.

If states adopt these reforms, the UHPA can better prevent property abandonment through a vehicle other than a sale, and better preserve the original ownership interests of a family. Ultimately, the nineteen states that have already enacted the UHPA form language should revise the statute to

165. See Way, *supra* note 25, at 176; *cf.* Richardson, *supra* note 148, at 544 (suggesting a consideration of the length of residency when determining the partition of heirs property). The owner-occupant can be described as a person who both owns an interest in a property and lives in that particular property.

166. See Way, *supra* note 25, at 182, for a description of a similar Texas statute that grants a private right of partition to an owner-occupant that inherits the property against absentee heirs.

167. See *supra* pp. 19–21.

follow the revisions suggested above.¹⁶⁸ The seven states where the UHPHA language has been introduced, and the remaining twenty-four states that may consider introducing and passing some form of the UHPHA can follow the UHPHA revisions, as well.¹⁶⁹

B. Wealth Investment: An Increase in Estate Planning Tools

While the UHPHA may consolidate title for heirs property, it does not prevent the inevitable deterioration of homes and systemic fractionalization of intergenerational wealth that is innate to heirs property. Racial and ethnic minority members are most likely to inherit heirs property,¹⁷⁰ and these are also the communities most impacted by vacancy across the country.¹⁷¹ Unfortunately, the UHPHA does not address these underlying economic and racial inequities as they relate to inheriting wealth, or conversely, inheriting poverty.

To buttress the vacancy prevention abilities of the UHPHA, states should universally adopt transfer-on-death deeds (beneficiary deeds) and other simple estate-planning instruments by allocating educational and monetary resources towards their use. This is especially critical because the minority communities most in need of more comprehensive estate-planning resources have historically been financially out of reach, leading to the intergenerational gap in wealth and mobility.¹⁷² The best-case scenario for vacancy prevention and wealth creation is caring for a property for future generations ahead, not applying a partition process when negotiations break down. As families consider how their property may be passed through generations, they would greatly benefit from expert advice on legal strategies to retain optimal wealth.¹⁷³

168. See *supra* note 136.

169. *Id.*

170. See Way, *supra* note 25, at 152 (noting heirs property in lower socioeconomic communities, on Native American reservations, and Black-owned land); Richardson, *supra* note 88, at 918 (demonstrating that heirs property is a common form of ownership in Black, Native American, and Appalachian communities); Planet Money, *supra* note 89 (noting that nearly one-half of all Black-owned property in the United States is heirs property).

171. See *supra* Section III.A.

172. See Andre, *supra* note 83.

173. Daniel Cobb, *2021 Wills and Estate Planning Study*, CARING.COM, <https://www.caring.com/caregivers/estate-planning/wills-survey#the-prevalence-of-estate-planning> [<https://perma.cc/Y2Q4-C2YS>]. See also Hardy & Logan, *supra* note 69, at 162 (“[P]olicy solutions that provide greater liquidity and wealth to [B]lack Americans have the potential to greatly improve intergenerational economic mobility.”).

A beneficiary deed, for instance, requires no more than a page or two of writing and a single notarization.¹⁷⁴ With more funding and outreach, legal aid organizations, law schools, and even nonprofit organizations around the country could expand their estate-planning services to meet this essential need.¹⁷⁵ Beneficiary deeds should be adopted as a real estate tool nationwide, and more recorder offices should hold open hours or other community outreach initiatives to promote this tool. Completing a beneficiary deed could also become part of the closing process when a realtor sells a home, making future homeownership and conveyance a streamlined and standard part of the real estate transaction. Providing individuals with a basic conveyance tool for their property interests upon their death is cheaper than having to alleviate abandonment or vacancy problems downstream. For example, a beneficiary deed clinic¹⁷⁶ that partners with neighborhood associations could prevent future vacancy through short-term client-attorney relationships and one-time meetings.

Consider a beautiful, historic four-bedroom home owned by a single woman who is the mother of two adult children. With minimum research and legal drafting, this woman can notarize a beneficiary deed directly conveying this property to her children upon her death rather than leaving it to a court as heirs property. When the woman interviews with pro bono attorneys at the clinic, describing the property and listing her proposed beneficiaries, the only cost with this legal process would be the recording fee of twenty-five dollars.¹⁷⁷ This style of estate planning does not serve families that do not own property, but it is a start to ensure current owners are able to build intergenerational wealth and protect their property interest for posterity.

174. See Admin, *Using a Missouri Beneficiary Deed to Avoid Probate*, JONES ELDER LAW (July 24, 2020), <http://joneselderlaw.com/using-a-missouri-beneficiary-deed-to-avoid-probate/> [<https://perma.cc/Y83F-RN3R>]; *Affidavit Request*, MISSOURI BENEFICIARY DEED, <https://www.missouribeneficiarydeed.com/affidavit-request/> [<https://perma.cc/9HAW-NRAQ>]. Taken together, these two documents on behalf of the deceased automatically vest title in the appointed beneficiaries upon death. See *id.*

175. See Richardson, *supra* note 88, at 927.

176. See Presentation, Peter Hoffman, Staff Attorney, Legal Services of Eastern Missouri, Presentation on Neighborhood Vacancy Initiative: The First Ten Months by the Numbers, <https://slaco-mo.org/wp-content/uploads/2019/04/vacancy.pdf> [<https://perma.cc/F38C-Y4DF>]. These clinics are staffed by Legal Service of Eastern Missouri (LSEM) employees that regularly work in the neighborhoods. Building clinics into preexisting client-attorney relationship enables LSEM to deliver same-day service of notarized and recorded beneficiary deeds.

177. *But see* Legacy L. Ctr., *Beneficiary Deeds in Missouri Are an Affordable Way to Avoid Probate*, LEGACY L. MO. (Nov. 24, 2014), <https://www.legacylawmissouri.com/beneficiary-deeds-missouri-affordable-way-avoid-probate/> [<https://perma.cc/MKZ2-DVSZ>] (private firm charges \$175).

CONCLUSION

Vacancy prevention strategies can be expanded through modest reforms to the UPHPA and the universal adoption of beneficiary deeds. These strategies deserve as much, if not more, attention than policy responses to abandoned property after the fact. Estate planning through beneficiary deeds will protect homeownership and enable wealth accumulation. Enhanced cotenant buyout options under the UPHPA will increase homeowners' abilities to maintain desirable urban housing stock and to consolidate the title on their property,¹⁷⁸ which can increase affordable housing. This will add property value in historically underserved areas of urban communities. By developing clear ownership mechanisms to rehabilitate personal residences, cities and states will reduce spending on absentee owners and dangerous housing conditions that result from vacant property.¹⁷⁹ Ownership with consolidated title can be easily conveyed to direct beneficiaries upon death,¹⁸⁰ and this conveyance can be simply achieved with basic access to estate planning tools.¹⁸¹ Creating a retention plan for a property through beneficiary deeds will protect homeownership and enables wealth accumulation.

In sum, the UPHPA can be reasonably modified to better prevent property abandonment and allow the clear transfer of property by honoring/granting cotenants' prerogative to purchase property interests from family. These preferences can be codified and retained for future familial generations through additional wills, trusts, and estates. A revised UPHPA and nationwide adoption of easily accessed beneficiary deeds will minimize the public burdens of responding to vacancy through expensive post-abandonment strategies, such as land banking and receivership. These proposals are upstream solutions that encourage and empower families to protect and maintain their property interests before the structures can become uninhabitable and ultimately abandoned or vacant. Rather than waiting for vacancy turmoil to collapse upon more American cities, a revised UPHPA supplemented with universal access to simple transfer-on-death conveyance mechanisms will provide families with the tools to build a stronger sense of home and wealth, for now and the future.

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178. *See supra* Section V.A.

179. *See supra* pp. 3–5.

180. *See supra* pp. 22–23.

181. *Id.*

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