HEIR'S PROPERTY 101

LAND SUCCESSION: PRESERVING FAMILY LAND ASSETS

Habitat For Humanity
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Black Land Ownership

Ownership

1865: Emancipation

1875: 3 million acres owned

1920: 14-19 million acres owned (14% of all U.S. farmland)

2021: 2 million acres owned

Land Loss

- 98% land loss from 1920 to 1921
- >2% U.S. land ownership
- Black families own 1 million fewer acres now (2021) than
- States most affected by heir property loss:
  1. Louisiana
  2. Mississippi
  3. Texas
  4. Alabama
  5. Georgia
  6. Florida
  7. South Carolina
  8. North Carolina
  9. Arkansas
  10. Virginia

The Inheritance Principle (Wills, Estate Plans, and Farm Transition)

Now therefore in the sight of all Israel the congregation of the LORD, and in the audience of our God, keep and seek for all the commandments of the LORD your God: that ye may possess this good land, and leave it for an inheritance for your children after you forever. 1 Chronicles 28:8

WHAT IS HEIR'S PROPERTY?

Heirs property refers to land that has been **passed down informally from generation-to-generation**. In most cases, it involves landowners who **died without a will or failed to probate a will** within the state's timeframe and the land is owned **"in common"** by all of the heirs, regardless of whether they live on the land, pay taxes, or have ever set foot on the land.

What is Tenancy-In-Common

All Owners have Rights to Use and Possess Property

All Owners are 100% Responsible for Taxes

All Owners May Transfer Property to another Heirs or Third Party

Any Owner Can Force a Sale of the Property (Partition)

All Owners Must Sign All Legal Documents Related to Property

Leading Causes of Heirs Property

1. Access to trusted and affordable legal services.

2. Continued partition of land.

3. Access to education.

4. Access to flexible and patient capital.

Will-Making: Race and Class Disparities

	Respondent has a will	Respondent has a will, by education level		
		No high school	High school	College and above
	-percent-			
All respondents	56.93	47.13	58.92	65.71
White	64.23	56.76	65.26	72.04
Black	23.68	20.15	22.89	32.34
Other	27.24	20.79	34.54	38.63
Non-Hispanic	60.66	54.26	61.06	68.09
Hispanic	19.38	14.57	28.30	31.67

Excerpt from presentation: HEIRS' PROPERTY & SUSTAINABLE FOREST MANAGEMENT WARNELL SCHOOL OF FORESTRY AND NATURAL RESOURCES, UNIVERSITY OF GEORGIA PANEL ON A PATH FORWARD FEBRUARY 8, 2021

Uniform Partition of Heirs Property Act (UPHPA)

- **<u>VIRGINIA PARTITION STATUTE</u>**

- Va. Code Ann. § 8.01-81 provides “Tenants in common, joint tenants, executors with the power to sell…shall be compellable to make partition and may compel partition…”

- **<u>THE UNIFORM PARTITION OF HEIRS PROPERTY ACT</u>**

- The Uniform Partition of Heirs Property Act (Model Act): On March 3, 2020, Virginia adopted major provisions of the Uniform Partition of Heirs Property Act (UPHPA) to help prevent involuntary loss of family land and the associated real estate wealth of that family land through a hierarchy of rights and remedies for tenant-in-common owners in a partition action.

Protections of UPHPA

1. The court must obtain an independent appraisal of the property with the value based on the full, undivided parcel.

2. Any one or more co-tenants, except the co-tenant who filed for partition, has a right of first refusal to purchase the share of the property owned by the filer for a proportional share of the court-determined value.

Protections of UPHPA

3. If no co-tenant exercises the right of first refusal, the court must order partition-in-kind unless the court determines that partition-in-kind will result in great prejudice to the co-tenants as a group.

4. The court must consider a set of statutory factors that includes a co-tenant's sentimental attachment to the property because of ancestral or other special value.

Protections of UPHPA

5. If the court determines partition-by-sale is appropriate, the property must be offered for sale on the open market at the court-determined value for a reasonable period of time. If the property does not sell at the offered price, the court retains its discretion to accept a lower offer or to order a sale by auction or sealed bids.

Strategies to Prevent Heirs Property

- **Identify Heirs and Property Interests**

- **Estate Planning**
  - Single Grant Wills
  - Family Limited Liability Company
  - Family Land Trusts

Strategies to Prevent Heirs Property

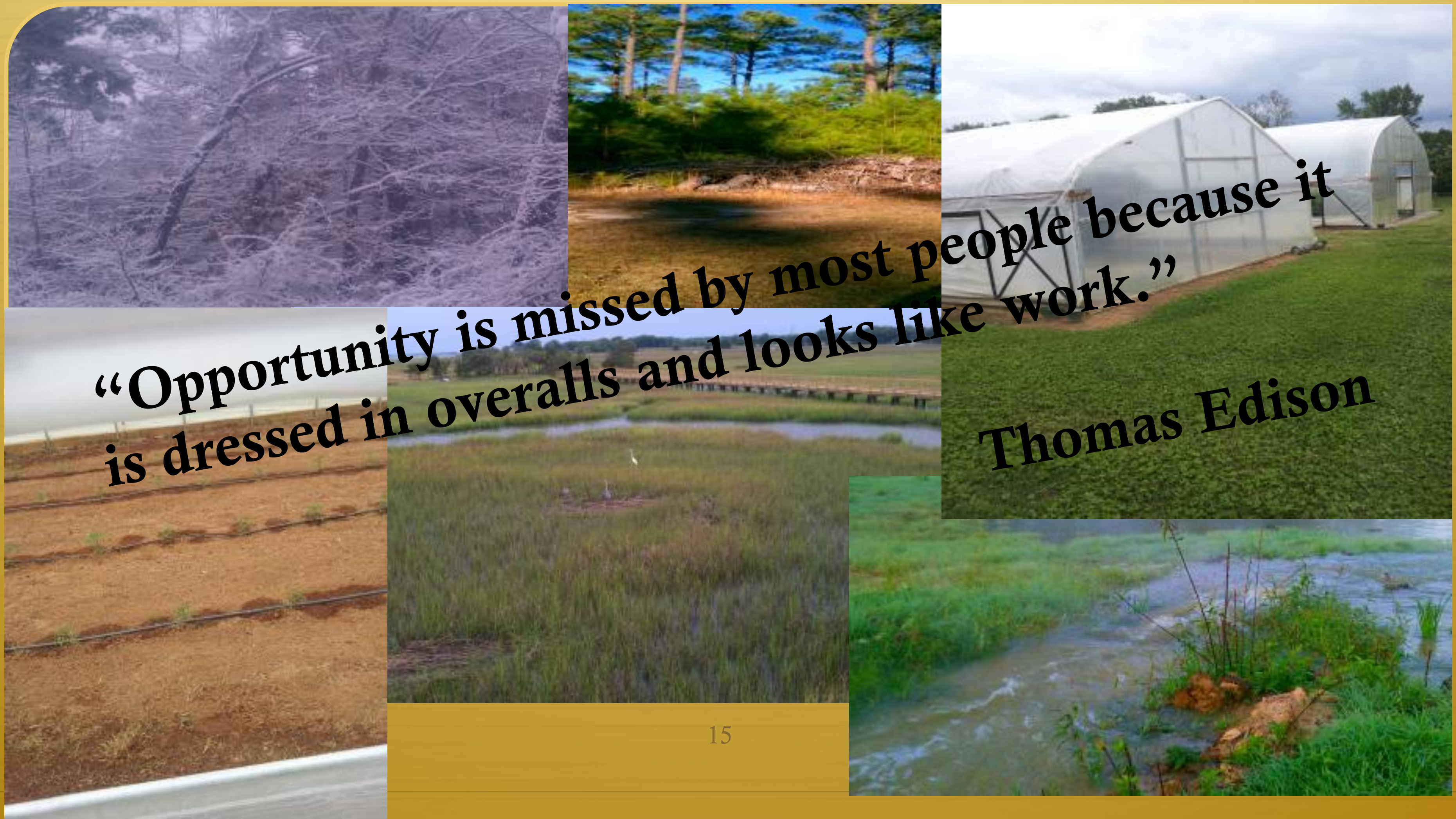
- **Title Consolidation**
  - ➢ Buy out heirs
  - ➢ Inter-family Donations
- **Quiet Title Actions (can’t identify heirs)**
- **Partition Suits**

Strategies to Prevent Heirs Property

- **Engage Third Party Assistance**
  - Black Family Land Trust, Inc. (BFLT)

- **Monetize Property** (subdivide, mortgage, lease, timber, farm, develop, operate an agricultural enterprise, mitigation/ development credits, conservation easements)

Don’t Loose Your Ancestry or Miss Your Opportunity for Success



“Opportunity is missed by most people because it is dressed in overalls and looks like work.”

Thomas Edison

"We have become ninety-nine percent money mad. The method of living at home modestly and within our income, laying a little by systematically for the proverbial rainy day which is due to come, can almost be listed among the lost arts.“

George Washington Carver

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ensuring, protecting, preserving

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Where do I start?

Who can help me??

THANK YOU!!!