

## **BLACK FARMERS AND RURAL HEIR PROPERTY OWNERS: PUBLIC POLICY RESPONSE**

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Public awareness is increasing regarding the unique characteristics and problems facing the black farmer, and the devastating and alarming rate of black farmland loss.

In 1971 the Emergency Land Fund (ELF) organized its efforts to address the crisis facing black farmers and the loss of their land. At that time, the issue of black land ownership had a very low priority among researchers, teachers, policy makers, the press, and, most important, the vast USDA system and its affiliates.

In the past two years, from ELF's point of view, there has been more concentrated attention from various segments of the public, than the previous ten years combined. Many would agree, and I agree in part, that the attention being paid to blacks in agriculture is really a coattail concern. That is, the problems of black farmers are part of the public's growing concern with the general farm crisis in America: public land controversies; foreign ownership of land; corporate concentration of farmland and profits; environmental and land-use issues; soil erosion and water depletion; and a growing concern that the quality of life itself is eroding in urban America, thus the dream of the good life in rural America.

Conceding to the possible coattail effect, the issue of black farmers, the problems they have, and the land they are losing is now covered by both the print and electronic media. *The New York Times*, *Wall Street Journal*, *Chicago Sun-Times*, *Detroit Free Press*, *Atlanta Constitution*, *The Washington Post* and several regional newspapers have carried major stories about black farmers and land loss within the past two years. CBS, NBC, ABC, and local affiliates have covered this issue and CBS recently had a network program on the issue. Approximately 50 of the more than 100 black weekly newspapers have covered the black farmer crisis.

The mention of the growing public awareness resulting from increased media coverage is not to suggest at all that there is sufficient concern and attention being paid to the issue. In fact, there needs to

be an accelerated program of community education that will translate into policy and action on behalf of the black farm community.

Signs that there may be some hope for the black farmer is evidenced in the February 1982 U.S. Civil Rights Commission Report entitled, "The Decline of Black Farming in America." The commission report documented the many problems blacks have with obtaining credit and capital from Farmers Home Administration (FmHA) and suggested reforms for that agency. In response to that report, and at the urging of the commission's chairperson, Clarence Pendleton, Secretary of Agriculture John Block appointed a blue ribbon USDA-wide Task Force in April. The purpose of the Task Force is to recommend to the Secretary revised programs, administrative changes, and new program needs that would positively impact upon black farmers who at present, according to the commission's report, are losing two and a half times more farmland than their white counterparts.

In June ELF provided its recommendations to the Secretary's Task Force. The Task Force had promised to publish its recommendations by July 1983. It is our hope that the delay in releasing the recommendations is a reflection of the seriousness that the Task Force attaches to its job, and that this is the opportunity to initiate substantive changes within USDA and its affiliates that will improve the chances of blacks remaining in agriculture.

The reason for citing the above is intended to provide, from the Emergency Land Fund's point of view, some sense of the context of concern and action directed at the black farmer. Public policy education specialists, like yourselves, can build upon these factors in your various land grant universities.

The current public awareness and concern has principally focused upon the black farmer, about whom data is derived from an inadequate agricultural census taken every five years. In 1978 members of this group, which includes part-time farmers, numbered approximately 57,000 with access to or ownership of 4.7 million acres.

For the remainder of this paper, I would like to share with you, to stimulate your concern as public policy education specialists, an area of black rural landownership that receives little or no policy attention — heir property.

### **Heir Property Study**

November 1980 marked the completion of a 500-page study, a project which is certainly the most rigorous and multi-dimensional practical research effort ELF has ever undertaken. The study's title is "The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States," and resulted from the interest of the United States Senate's subcommittee on housing and the FmHA. The central concern of the Senate subcommittee and the FmHA focused on economic development loans secured by heir property or real

estate with the possibility of subjecting the federal government to liabilities brought on by recalcitrant heirs who might have knowingly or unknowingly been excluded from any mortgaging instrument securing a government loan.

“Heir property”, in its simplest form, is real property or land acquired through inheritance from a relative who died without making a will. The failure of a decedent to dispose of his property by a valid will results, in effect, in a will being made for him by the state legislature through its statutes of intestate succession. Those who receive property in such a manner are said to be owners of heir property.

The “tradition” of heir property among blacks is a difficult one to change, especially since there has been no general information available that adequately shows how much black-owned land is heir property and how much potentially productive land lies idle because it is heir property.

The ELF study shed some light on these as well as other areas associated with heir property and other problems of minority land tenure. It contains a collection of laws, practices, case studies, and findings from literature and field research on matters related to heir property. The study covers ten southeastern states: Alabama, Mississippi, Louisiana, Tennessee, Arkansas, Florida, Georgia, North Carolina, South Carolina, and Virginia. The primary focus is minority-owned heir property, but the importance of the findings are far-reaching and, to some degree, impact every rural heir property owner in the southeastern region of the United States.

Three major findings emerged from the study:

1. A collection of analyses of laws and practices which impact the creation, utilization, marketability, and retention of heir property.
2. A determination of the total amount of minority-owned heir property in the Southeast and the characteristics of the land and its owners.
3. A determination of the amount of minority-owned heir property in the Southeast and the characteristics of the owners and the land.

The study was divided into five segments, each of which addresses the problems of title, utilization, and retention from a different perspective:

- a. Perspective of the legal system, demonstrated in the analyses of pertinent laws from 10 southeastern states and accompanying responses of the legal and quasi-legal communities to questionnaires.
- b. Perspective of private title insurance companies and lending institutions - facilitated by the responses to mailed questionnaires.

c. Perspective of rural landowners - ascertained through interviews and supporting courthouse records.

d. Perspective of the FmHA and its targeted constituency, gleaned from the county supervisor and landowner's surveys and from detailed research of FmHA Programs which require marketable title before loans can be made.

e. The composite perspective of the legal community, legislators, and the ELF, which underlines the fashioning and presentation of solutions.

## **Methodology of the Study**

The ten southeastern states were divided into five relatively homogeneous strata based on the number of parcels of black-owned rural land, and one sample state was randomly selected from each of the five strata to produce an overall sample of five states.

The counties within each state were ranked according to black-owned acreage as a percentage of all rural acreage, and to blacks as a percentage of the total population, producing indexes of quality of access to land ownership. The counties were then divided into two homogeneous strata and one representative county was randomly selected from each strata within each state.

From the tax rolls in the various states and with the assistance of local officials and county residents identification was made and verified as to the ethnicity of virtually all owners of parcels of rural land in the counties selected for inclusion in the sample.

Each of the identified parcels in each of the sampled counties was numbered. Employing a table of random numbers, black-owned parcels of rural land were randomly drawn from the population of parcels in each of the selected counties until the sampling proportion was filled. (Each of the selected states was assigned a quota of parcels based on the proportion of black-owned parcels in the state to the total of black-owned parcels in the five selected states).

The data on which the report was based was primarily gathered through personal interviews with the black owners of the sample selected rural parcels of land. More than 1,700 persons were interviewed.

Further complementary data were gathered through the use of surveys of selected groups of individuals who have direct contact with the owners of rural land as well as the land itself. The surveys involved mailed questionnaires to selective samples of the following in the southeastern states:

1. Attorneys practicing in rural areas;
2. FmHA county supervisors;
3. State legislators;
4. Title insurance companies;

5. Tax collectors;
6. Tax assessors;
7. Judges presiding in rural areas;
8. Lending institutions;
9. Legal services organizations.

## PRINCIPAL RESEARCH FINDINGS

- A. It was determined that there are an estimated 9,257,311 acres of black-owned rural land (hereinafter referred to as rural land) in the southeastern states under study.
- B. The average-size parcel of black-owned rural land consists of 26 acres. There are an estimated 376,427 parcels of black-owned rural land.
- C. Generally, the majority of black landowners have never owned more than one parcel of land. When several parcels were owned, one of the parcels was usually acquired through inheritance.
- D. Forty-one percent of the estimated acreage is estimated to be heir property and 27 percent of the parcels are estimated to be heir parcels. Comparatively, 59 percent of the property is non-heir and 73 percent of the parcels are owned in the same manner.
- E. The average size of an heir parcel is 39 acres compared to 19 acres for a non-heir parcel.
- F. The majority of the owners of rural land acquired their interests by inheritance. If the acquisition of parcels is the focal point, however, the majority of rural parcels were acquired by purchase.
- G. It was established that the average number of people who jointly owned a parcel of heir property is eight, with five out of eight living outside the southeast.

From the study's sample, we now have data on the demographic characteristics of heir and non-heir black rural property owners. The categories of data includes: sex of owners; age; martial status; education; principal sources of income; total annual income; land utilization and the lack thereof; cost of housing; cost of general improvements; and the relationship between the type of use and time of ownership.

A very small percentage of persons surveyed had attempted to secure loans from FmHA using the land as security. The respective figures were 15 percent for non-heir and 10 percent for heir property owners. These figures may speak more to the type of use of the land than is apparent on its face.

Only 3 percent of the non-heir owners had ever applied for FmHA secured loan from someone other than FmHA, whereas, 85 percent of

the heir owners had never applied for any type of secured loan from other sources.

Other important findings of the study relating to retention and land use were:

1. There appears to be a significant relationship between the length of ownership and the utilization of the land. The longer one has had the property, the more substantial the use tends to be. For example, only 9.7 percent of non-heir respondents owning their land for five years or less were commercially farming the land. On the other hand, 45.7 percent of those landowners having their property from 21 to 40 years were commercially farming it.

2. The relationship between length of ownership and use reverses itself after the 40 year mark, with less being used for both commercial and non-commercial farming. This is probably predictable because of the corresponding age factor. After owning property for 40 years or more, most people have reached retirement age.

3. The really interesting aspect about the use/length of ownership relationship is that with respect to residential use, the reversal comes after 20 years rather than 40 years. That is, land that has been held for 20 years is less likely to be used for residential purposes than that held from six to 20 years. The peak commercial and non-commercial use comes during the 21- to 40-year ownership period.

4. Currently owned heir parcels have held heir property status for an average of 21 years. However, these parcels were non-heir property for an average of 27 years before they passed as intestate realty. The heir parcels, therefore, have been in the respondents' families for a total average of 48 years. The overall retention span of a parcel of heir property is greater than the retention span of non-heir property.

5. On the basis of the study, it can be strongly inferred that the retention level of heir property is higher than that of non-heir property. The relatively brief ownership of non-heir parcels indicates that a significant percentage of these parcels may be sold or otherwise lost before the death of the landowner.

A 20-year title search of 100 randomly selected parcels from the 1959 Tax Rolls in five of the sampled counties revealed the following supportive data on the retention issue:

1. A third of the 1959 selected landowners retained their parcels intact in 1979.
2. Seventeen percent of the 1959 owners retained a part of the original parcel.
3. The majority of the missing acreage was conveyed to another black, believed in many instances to be a family member.

4. Parcels sold to whites were of a much greater size than parcels sold or given to other blacks.
5. The trend of blacks selling to whites was established, but there was no evident information indicating that whites made any significant sales to blacks during this period.

## Summary and Conclusion

The study identified several possible solutions to the various problems associated with heir property. They were sub-categorized into existing and proposed solutions and further divided into state and federal remedies. In reviewing the laws of the southeast states several innovative laws were discovered that could be duplicated in other states. For instance, Alabama recently amended its partition sale law to allow heirs who do not want the land auctioned, to buy out the interest of the heir who is seeking the partition sale.

An Heir Land Bank could be established to acquire and hold heir property for rural housing purposes. Another recommendation is the creation of a Remote Claims Private Insurance Program. This program would require title insurance companies that insure title in government loan transactions to issue a special policy insuring against the claims of heirs in Section 502 loans.

Three other very important federal remedies involve the land grant system institutions, Legal Services Corporation, and a public information campaign. Land grant institutions should be encouraged to research and maintain information about heir property, to disseminate it, and to include heir property as part of its outreach services. These institutions are in a unique position to help educate people about land-related matters and to perform a much needed service to their local communities.

The Remote Claims study also suggested the establishment of a Rural Land Impact Division of the Legal Services Corporation. Its function would be to develop programs that would lessen the impact of land-related problems. Since the study concluded that ignorance of legal protection and responsibilities are significant factors in the creation and loss of heir property, the agency that is designed to provide legal assistance to the poor should be expected to offer assistance in these areas.

The study enabled ELF to identify several other projects that deserve further consideration, however, spatial limitation does not permit their inclusion in detail. The following list will highlight their potential:

1. Publication of additional primers on partition sales and mortgage foreclosures;
2. Permitting FmHA limited resources farm ownership loans to be used to buy land auctioned at a public sale;

3. Tax incentives and/or rebates to encourage individuals to draft wills and to generate income from idle land;
4. Priority allocation of resources (USDA, HUD) to states enacting laws to assist in the utilization of heir property;
5. Heir Emergency Loan Program to finance acquisition of heir property interests of persons who already have interest in the land.

The magnitude of heir property problems will inevitably expand during the next decade. From the indicators emanating from the rural landowners surveyed, it is apparent that the amount of heir property in the rural southeast will experience a surge in the 80s. Given the ages of the respondents, their incomes and levels of education, it is probable that they will die leaving their property to be disposed of under state laws of descent and distribution.

A significant portion of the surveyed landowners will sell or lose their property prior to their demise. The new owners of the land will inherit old problems. Many will abandon the land; many already have. Some will return. Few of those who cling to the land will be able to use it productively and most will not be able to use it at all to increase the utilization and retention of minority-owned land in the southeast.

Although not confirmed by this research effort, it is strongly believed that many low-income whites, as well as minority landowners, are not reaping the full benefits of their rural acreage. A significant percentage of these landowners are also menaced by heir title problems.

ELF has, over its 12 years of operation, devoted considerable resources and assigned high priority to legal and educational efforts directed to the retention of black owned rural land. Throughout the years, the question of partition suits and sales resulting from heirs property and the loss of black farmland has had our undivided attention. ELF has saved thousands of acres owned by blacks involving heir property, and has devised a number of working model solutions to remedy the problem when it began to conduct the U. S. Senate FmHA-sponsored study. Accordingly, we attempted, in the construction of the study's methodology, to address as many related questions as possible.

Our investigation, we feel, not only provides the U. S. Senate and FmHA with hard data concerning the scope and impact of possible remote claims along with recommended remedies, but also provides data and insight for a much larger audience concerned with land use issues and planning, the conversion of agricultural land, and public policy issues of importance to local, state, and federal officials.