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ACKNOWLEDGMENTS

The authors would like to thank NCLC Senior Attorney John Rao, NCLC Co-Director of Advocacy Sarah Bolling Mancini, and NCLC Deputy Director Carolyn Carter for editing this report. Thank you to NCLC Intern Myron Minn-Thu-Aye for footnote editing and review. And thank you to Ella Halpine for layout and design.

This research was funded by the Jacksonville, Florida office of Local Initiatives Support Corporation – www.lisc.org – and by RRF Foundation for Aging – www.rrf.org/. The views expressed in this report are solely those of NCLC and the authors.

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for Aging

PROPERTY TAX FORECLOSURES ON HEIRS PROPERTY

THE DEVASTATING CONSEQUENCES AND RECOMMENDATIONS FOR PREVENTION

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1. INTRODUCTION

While millions of homeowners fell behind on mortgage payments and were at risk of losing their homes to mortgage foreclosures during the COVID-19 pandemic, many others were facing another foreclosure crisis- the loss of their homes due to property tax lien foreclosures. This strict and often rapid tax lien foreclosure process has created a lesser-known plight faced by homeowners who have fallen behind on their property taxes. The

If the names of the heirs of the deceased owner are not on the deed, they are not record owners of the property. This is commonly known as heirs property or "tangled title."

impact of property tax liens are especially harsh for heirs who inherit property without a will or who have not yet gone through probate. The heirs of the deceased owner may now own the home, but if their names are not on the deed, they are not the record owners of the property. This creates what is known as heirs property, or a "tangled title" situation.

Heirs property owners may be unable to obtain loans or grants for home repairs, get homeowner's insurance, or access utility or property tax assistance programs because they are not record owners. It is not uncommon for years to pass after the death of the original owner of the home without the property taxes being paid. Heirs may not receive notice of amounts

due for property taxes because they are not the record owners of the property. By the time heirs realize the amounts due for property taxes, it is often soon before a tax sale, or after the sale has happened, and options are limited. The amounts owed are usually too high to pay in one lump sum to stop the sale or redeem the property. If one heir is able to pay the amounts due, they may not want to take on the burden alone without other heirs contributing. Selling the property before a tax sale for a reasonable amount to cover the tax debt might be difficult if there is not clear title or if there are heirs who do not agree on selling. The upcoming tax sale is also usually advertised in public records, and investors may try to take advantage of family members by offering to purchase a partial interest in the property quickly for less than fair market value.

While most states offer tax exemption and relief programs, they are usually limited to the record owner of the property. Heirs who inherit a home intestate will face difficulty accessing these programs because their names are not on the deed. By requiring this, many states exclude legal heirs from property tax relief options that could lower their tax burden and help them save the home. Further, establishing formal ownership of the home is difficult, costly, and time consuming and often requires the retention of an attorney.

This report will discuss the process used to place a lien on a home when a homeowner falls behind on property taxes and eventually foreclose on that property if the homeowner cannot pay the amounts in a certain period of time. We then discuss the unique issues heirs face when the record title owner passes away and leaves an overdue property tax bill. We review five sample states—Florida, Mississippi, Michigan, Texas, and Pennsylvania—and the policies they have, or do not have, to assist heirs with property tax bills, focusing on homestead exemptions. The report concludes with recommendations for protections states can implement to prevent property tax foreclosures and preserve homeownership.

2. THE TAX LIEN PROCESS

All states have laws that allow local governments to place a lien on a homeowner's property for failure to pay property taxes. Many also impose liens for other municipal charges, such as a water bill or unpaid fines for property code violations.¹ If the lien is not paid within a certain period of time, the city or town can auction off the lien or the property, typically for the amount of the taxes and fees owed. The procedures involved with tax lien foreclosures are complicated and are rarely updated to ensure that the process provides sufficient protections to prevent the unnecessary loss of homes.

While each state has unique laws regarding unpaid property taxes, most states first provide a homeowner with some type of notice of delinquency regarding tax amounts. If the taxes are not paid within a certain period of time, a tax lien is placed on the property. This generally occurs by operation of a state statute. Tax liens almost always have priority over all other liens, including mortgages, regardless of when the tax lien is placed on the property. If the tax lien remains unpaid, the tax deed or tax lien certificate is sold or assigned to a third party, or the property is taken by the local municipality.

Tax Deed Sale

In jurisdictions where the property itself is sold at the auction, the purchaser receives a tax deed, providing full title in the property, subject to any redemption period. This is a tax deed sale. The tax deed is sold at auction to the highest bidder, and the proceeds are used to pay off the tax debt along with all fees, interest, penalties, and costs owed to the municipality. There is generally never a surplus because the bidding process at auction is not competitive.

Unlike at a traditional home auction, purchasers typically bid on the amount of taxes owed, not on the value of the property.² The tax deed purchaser can then sell the property at fair market value if the owner does not redeem by paying the taxes plus interest, fees, costs,

and penalties within a certain period of time. Any surplus from the sale is usually kept by the purchaser. Examples of states with tax deed sales include Alaska, California, Delaware, Georgia and Hawaii.³

Tax Lien Certificate Sale

In other jurisdictions, a tax certificate is sold to a third party who pays the tax debt and receives the right to collect on the tax debt with interest, costs, penalties, and fees. Examples of states with a tax lien certificate method of tax sale include Illinois, Maryland, the District of Columbia, Florida, and Indiana.⁴ If the tax debt is not paid within a certain period of time, the purchaser can then initiate a court action or administrative process to obtain full title to the property, stripping the homeowner of all interest in the home. Investors are particularly interested in tax lien certificates because they make a profit by charging high interest rates on the outstanding amounts due or selling the property for fair market value after only paying the amount of the tax debt.

Taking Without Sale - Strict Foreclosure

In some states, there is no sale at all, or it may not occur until after the property is transferred. The taxing authority or local municipality simply executes on its lien by taking the property. This is similar to the process no longer permitted in most states that is referred to as “strict foreclosure” of mortgages. After the owner is given notice of the tax lien and a period to redeem, the local municipality takes the property free and clear of all liens if the owner does not redeem. Once the property is taken, state law generally provides a procedure for final disposition of the property. In Michigan, for example, the property is initially forfeited to the county treasurer for unpaid taxes and fees and then sold at public auction to the highest bidder.⁵ In Minnesota, the property is initially forfeited to the state for unpaid taxes and fees and then sold at public auction to the highest bidder for not less than the appraised value.⁶ However, the Supreme Court recently struck down the Minnesota tax foreclosure process as unconstitutional. Any state with a strict foreclosure process faces a likelihood of having that statute struck down.⁷ As a result, many states are rewriting their tax foreclosure laws now.

Redemption Periods

Regardless of the jurisdiction's property tax foreclosure process, before the final stages of a tax foreclosure, many jurisdictions give a homeowner a redemption period to either cure the outstanding amounts owed before a foreclosure or reclaim the home by paying off the amounts owed after the foreclosure. Particularly in jurisdictions that allow tax lien certificate

sales, the right to redeem can be so onerous as to be illusory. Some of these jurisdictions allow the tax lien certificate purchaser to charge excessive interest rates on the taxes owed that can be as high as 50 percent, depending on the jurisdiction, in addition to penalties, costs, and fees. This makes it extremely difficult for many lower-income homeowners to pay the amount owed within the prescribed time. If the homeowner does not pay the inflated amounts, the tax lien purchaser can then sell the home and usually keeps all of the proceeds of the sale, even when the tax amount owed is a fraction of the value of the home. The homeowner faces a devastating loss of home equity as compared with other auction sales such as a home mortgage foreclosure auction that requires that the homeowner receive any excess funds after the liens, fees, and costs are paid.

Deborah Foss, a retired grandmother, and her wife and sister in Bedford, Massachusetts, were evicted and removed from their home in the middle of winter as she was suffering from COVID. She had nowhere to go and ended up living in her car. She had lost everything. Tallage, the investor that bought her tax lien, paid \$9,516 for the lien and later sold the home for \$242,000.⁸

The equity in the property could represent a homeowner's entire net worth and sole savings and security for retirement, as it did for Deborah Foss. Losing the home means the loss of a safe place to live and any meaningful opportunity to build wealth and financial security.

Disproportionate Impact on Communities of Color

Property tax foreclosure sales are often concentrated in low-income communities with large populations of Black and Latino residents. Residents of these communities are more likely to have suffered from economic shocks that made it harder to pay property taxes, but did not access or qualify for property tax relief.⁹ High rates of tax delinquency and foreclosure have been linked to vacant and abandoned properties, disinvestment and lower property values in affected communities, and adverse effects on the health of residents.¹⁰

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Black and Latino property owners also pay higher taxes than similarly situated white property owners due to inequities in the tax assessment and appeals process. Assessed values are significantly higher for properties located in neighborhoods with lower valued homes and a high proportion of households of color.¹¹ One study found that for Black and Latino residents in aggregate, the assessment gap was 9.8 percent.¹² Nationally, Black residents had a nearly 13 percent higher property tax burden than white households in the same jurisdiction.¹³ The higher effective tax rate for homeowners of color translated into an extra \$300- \$390 more per year in taxes. Similar patterns of over-assessment have been noted in news articles or research on Chicago, New Orleans, Detroit, New York, and other cities.¹⁴

The unequal property tax burden means Black and Latino households cannot build home wealth at the same rate as white households and face a greater risk of tax foreclosure.

These findings build on a history of intentionally discriminatory tax assessment practices against Black property owners in the Jim Crow Era. Black property owners, especially those who played key roles in the Civil Rights Movement, were often taxed at higher effective rates than similarly situated white property owners while simultaneously being denied access to the resources and institutions supported by their tax dollars.¹⁵ Discriminatory assessments and other practices forced Black owners of valuable property into delinquency and foreclosure and contributed to the loss of land and homes, especially in the South.¹⁶

The unequal property tax burden means Black and Latino households cannot build home wealth at the same rate as white households and face a greater risk of tax foreclosure. Property taxes also add significantly to the cost of owning a home. Nearly a quarter of the disparity in homeownership costs for Black households as compared to white households is due to local property tax assessments.¹⁷ For families living on the financial edge, higher property taxes combined with other property-related fees and costs increase the risk of foreclosure, displacement, and loss of generational wealth.

Tax foreclosure sales also affect the larger community. The purchase of tax liens and properties by institutional investors in gentrifying communities, for example, often transforms a portion of the housing stock into high-end properties crowding out lower-income residents and the elderly from once-affordable neighborhoods.¹⁸ Homeowners who remain may see their tax bills increase significantly with the rise in property values. In other communities with lower valued homes, large-scale property tax foreclosures further depress property values and increase blight.

3. TAX LIENS AND HEIRS PROPERTY

The consequences of tax foreclosure sales are especially dire for heirs who inherit the property without a will. Homeownership is an important way to build wealth, particularly across multiple generations. In areas with increasing property values, the home can capture years of appreciated value. For many multi-generational households, a majority of the family's wealth is tied up in the home. Until a tangled title is resolved, access to that wealth is restricted, and residents cannot take full advantage of the home's value or protect that value for future generations. Without a deed, they cannot sell the home nor can they create an estate plan to pass it on to other generations.

Complications with Heirs Property

Heirs can live in the home for years after the death of the original owner without realizing they must go through the probate process to establish record ownership of the property. They often realize this predicament when they face issues with setting up utilities and negotiating past due utility bills; obtaining homeowner's insurance; qualifying for financial assistance to fund repairs; negotiating with a mortgage company; or accessing available property tax relief assistance. Many times, heirs learn of the tangled title issue when they are at their most desperate point financially and cannot access financial assistance due to the lack of record ownership. Heirs who face challenges in paying for maintenance of the property and property taxes find it difficult to access payment relief programs because they are not on the deed. Heirs who are not on the deed also cannot access the equity in the home to pay these expenses because they cannot borrow against the home without clear title.

For many multi-generational households, a majority of the family's wealth is tied up in the home. Until a tangled title is resolved, access to that wealth is restricted, and residents cannot take full advantage of the home's value or protect that value for future generations.

When a homeowner dies intestate and there are several surviving heirs, there is also a risk that one of the heirs will seek to partition the property. A partition action is a court-ordered process where one property owner forces a sale or division of the property. In an urban context, division of the property is usually not feasible, so partition involves a sale. This allows people who own real estate together to take their share of the equity and go their separate ways. However, this may not always be desirable for all heirs, especially if the

heirs living in the home want to retain the home. This situation is also ripe for investors who will offer to buy out the interest of one of the heirs in the property for a small price and then force the sale of the home to collect their share of the equity. In states which have passed it, the Uniform Partition of Heirs Property Act (UPHPA) gives heirs who do not want to sell the home the opportunity to buy out the other interests in the property for fair market value, preserving their ownership of the property.¹⁹ If the heirs who want to keep the property cannot buy out the remaining heirs, a court can order an in-kind partition; a physical division of the property amongst the heirs, where practicable. While this can help some heirs who do not want the property sold, it can be a timely, costly, and emotional process. Further, the UPHPA has only been enacted in 22 states.

Even if there are no apparent disputes over the property, some heirs may be difficult to locate or they may not know of their ownership interest in the property, making it challenging for the other heirs to move forward. Lenders will not provide loans for fractional interests in a property and title insurance companies require clear title before a loan can be finalized. If one heir wants to buy out the other heirs, they will have to qualify for a mortgage loan, which can be very difficult for low-income heirs.

It is easy to see how heirs property owners can lose their homes to property tax foreclosures. Particularly in a tax lien certificate sale jurisdiction, when the taxes are not paid, a lien is placed on the property which can then be sold to a lien purchaser. The lien purchaser then demands the lien amount plus high interest, fees, and costs, which are extremely difficult for many heirs to pay. Tax lien purchasers typically do not offer repayment plans or other foreclosure avoidance tools as some local governments do. If it is not paid, then the lien purchaser can seek to foreclose on and sell the property, stripping the heirs of all the equity that had accumulated. In all jurisdictions, before a lien is placed on the property or a sale occurs, if there are multiple heirs who own the property, a single heir can sell their fractional interest to an investor, who can then petition the court for a partition sale of the property. Each of these outcomes causes heirs to lose their family home and strips families of accumulated intergenerational wealth, putting them back at the starting line financially.

Probating the Estate

Most property that only has a deceased homeowner's name on the title must go through the probate process. Proof of ownership of a home or any other property cannot be obtained before probate is complete.²⁰ The probate process can be complicated, time consuming, and expensive, particularly when there is no will governing the conveyance of the home. There are a number of fees involved, and an heir will most likely have to retain an attorney to navigate the process. For example, in Philadelphia the cost of remedying a tangled title

is about \$9,200 for a home valued at the median of \$88,800.²¹ After probate is complete, a new deed is drafted and must be recorded on the local registry of deeds. The entire process can take a year or more to complete. In the meantime, the heirs occupying the property have limited access to relief programs to help with utilities, mortgage payments, and property tax payments available only to record owners of the home.

The Scope of the Problem

The Pew Charitable Trusts released a report²² in August 2021 about the prevalence of tangled title in Philadelphia and the harsh consequences to heirs who inherit a home without will. The study found that more than 10,000 of the city's residential properties, collectively worth over \$1 billion, were affected by tangled title and that the neighborhoods most affected tend to be those with relatively low housing values, low incomes, and high poverty rates. Many heirs do not realize that there is an issue and do not realize the importance of filing probate after the death of their family member.

A 10-county study in Georgia using Computer Assisted Mass Appraisal (CAMA) data found an average of between 14-19 percent of all parcels were potential heirs property, totaling approximately \$2.1 billion in assessed value.²³ The study found that higher levels of heirs property were found in communities of color and communities with lower educational levels and higher poverty levels. Dougherty County, with a 71 percent Black or African American population,²⁴ had the highest percentage of heirs property at 24.8 percent, representing potential property values totaling \$648,643,199. The staggering amount of wealth tied up in heirs properties cannot be utilized to produce intergenerational wealth “because owners cannot leverage these assets to access capital or qualify for government funding assistance”²⁵ due to the lack of record title to the land.

4. PROPERTY TAX RELIEF OPTIONS IN CERTAIN STATES AND ACCESSIBILITY TO HEIRS

Property Tax Exemptions and Abatements

Every state has enacted property tax exemptions or abatements for some homeowners who live in the home that help relieve at least a portion of their property tax by virtue of age, disability, income level, or personal status. These exemptions can provide significant relief for homeowners. For example, in Alaska, the principal residence of a resident who is (a) 65 or older, (b) a disabled person, or (c) a resident at least 60 years old who is the widow or widower of either is exempt from local property taxes on the first \$150,000 of the assessed value of the real property.²⁶ In Idaho, up to \$175,000 of a primary residence in which the

owner resides or intends to reside is exempt from taxation.²⁷ In Florida, an owner who resides in a primary residence can receive a tax exemption of up to \$50,000 of the value of the property.²⁸

The benefits, however, are not automatic. Most programs require the homeowner to apply for and submit proof of eligibility for an abatement or an exemption usually within a short period after the issuance of the tax bill. If an application is not timely made, the right to the relief will be lost. Often homeowners who stand to benefit most are not even aware of these programs and end up paying more than necessary or not being able to pay the property tax bill. This is particularly true for heirs who inherit the property intestate. State and local property tax relief programs for homeowners routinely exclude homeowners who have tangled titles. Most programs require record proof of ownership: the heir's name on a recorded deed to the property. If the original owner was approved for an exemption, this exemption does not automatically apply to the heirs. Heirs of the property must apply anew for the exemption. If they do not, and continue to pay the exempt amount assessed to the original owner, they could face significant costs and penalties. This exclusion from certain property tax exemptions and abatements increases the likelihood of a tax foreclosure and perpetuates housing instability and loss of generational wealth.

The application of the homestead property tax exemption laws in Florida by some county appraisers highlights these dire consequences by imposing an egregious penalty on an heir who does not immediately provide notice of the owner's death to the county appraiser and file a new exemption application. The next section will examine the law in Florida, particularly how it is being wrongfully applied to heirs, and compare it with four other states that provide a penalty for the willful and wrongful claim to a property tax exemption but do not impose such a penalty on a surviving heir.

Florida



The Florida Constitution provides homestead property tax exemption benefits to the owner-occupant of real property if the property is their primary residence. A homeowner must submit an application for a homestead exemption with the county property appraiser, which in most counties is automatically renewed annually. Once the application is approved, the homeowner is exempt from property taxes on \$25,000 of the value of the property plus an additional \$25,000 exemption

for property valued greater than \$50,000.²⁹ In addition, under the Save Our Homes (SOH) Amendment, after the first year that a home receives a homestead exemption and the property appraiser assesses it at just value, the increase in annual assessment on the property shall not exceed the lower of either 3 percent of the assessment for the prior year or the percentage of change to the Consumer Price Index.³⁰ If the property protected under the SOH cap changes ownership, the property will lose the SOH benefit and will be subject to assessment at just value on the following January 1.³¹

Under the SOH law, a change of ownership is defined as any sale, foreclosure, or transfer of legal title or beneficial title in equity to any person.³² When a change of ownership occurs, the homestead exemption terminates and the property is reassessed at the current market value.

A “change of ownership” occurs upon the death of an owner except in limited circumstances including but not limited to when there is a surviving spouse, minor child or children, or a permanent resident who is legally or naturally dependent upon the owner.³³ Heirs who do not fall into one of the exceptions, which may include adult children, grandchildren, and parents living in their child’s home, are required to file a new homestead application together with a deed showing they are the record owner of the property upon the death of the original owner. If they do not, and continue paying at the homestead rate in place through the deceased owner, they not only will be responsible for the difference between the old homestead tax amount and the current tax amount, but also some taxing authorities incorrectly interpret the statute to include the imposition of egregious penalties on the heir of 15 percent interest per annum and a penalty of 50 percent of the taxes exempted.³⁴ Also, for this same group, when the property is reassessed, the value undoubtedly will increase, causing the property taxes to increase even if a new homestead exemption is put in place. We explain below how this penalty is calculated, followed by an explanation of why the homestead penalty should not be assessed against heirs in this situation.

In a simplified example, assume that a homeowner who has a tax bill of \$1,000 per year based on an assessment of the home originally done many years earlier dies intestate, and her adult son remains in the home. The son continues to live in the home but does not file a new homestead application because he does not know he should. He continues to pay the \$1,000 per year in taxes. When the county appraiser realizes this three years later, a new appraisal is done and the taxes rise to \$3,000 per year. If the local appraiser imposes the homestead penalty lien, the son will face a lien for:

Total penalty and taxes:

\$2,000 (difference in the taxes owed vs. taxes paid) x 3 years = **\$ 6,000**

plus 15% interest each year = $\$300 \times 3 =$ **\$ 900**

plus 50% of the \$6,000 difference = **\$ 3,000**

for a total of: \$ 9,900

In addition, he must continue to pay the \$3,000 bill each year.³⁵ The son can apply for the homestead exemption going forward to limit his tax increase each year and to receive an exemption of taxes on up to \$50,000 of the home's value, but this will only affect future tax bills, and he risks losing the home if he cannot pay the existing \$9,900 tax bill.

The creation of an astronomical penalty

In 1979, when Darnell Simon was 9 years old, he moved to his mother's modest three-bedroom home in Jacksonville, Florida, with his mother and brother. His mother worked as a custodian to pay the mortgage; she wanted the boys to have a safe place to call their own. Darnell moved out when he was 18 but moved back in to take care of his mother in 2010 when she was diagnosed with cancer. Darnell's two daughters also lived with him at times as did his paternal aunt. His mother passed away in 2013. In 2014 Darnell suffered kidney failure, and he has been on dialysis ever since. When his mother died, Darnell believed his maternal aunt was organizing the estate and paying the property taxes. It was not until he received a notice of tax sale in 2019 that he realized the taxes had not been paid. He also did not know that he should apply for a property tax homestead exemption. From 2013 to 2017, the taxable value of the property was \$25,000 on an assessed value of around \$60,000, resulting in annual property taxes owed of about \$750. By 2018, the exemption had been removed, and the assessed and taxable values jumped to \$84,000, with the resulting annual property taxes totaling around \$1,750. In addition, the city added homestead penalties for 2014 through 2017 totaling over \$10,000. Darnell borrowed money to pay some of the past due taxes and was provided a grant to pay through 2022, but he is terrified that he will not be able to pay the \$10,000 in penalties on his fixed disability income. His paternal aunt lives with him and is also on a fixed disability income because of her COPD and reliance on oxygen therapy. If the city forecloses on the home, Darnell says they will have nowhere to go. This home is his mother's legacy, and he hopes to be able to preserve it for his daughters and grandchildren.

Timing and Process for Heirs Accessing the Florida Homestead Property Tax Exemption

There are questions regarding whether an heir can apply for the homestead exemption in their own right before having a final probate deed in their name. The statute states that before an exemption may be granted, “the deed or instrument shall be recorded in the official records of the county in which the property is located.”³⁶ However, the statute also provides that a person who, on January 1, “has the legal title or beneficial title in equity” to the real property and makes the home his or her permanent residence is entitled to the exemption. It is arguable that the “deed or instrument” required to be recorded could include an affidavit of descent or heirship as allowed in other states discussed below, in order to give meaning to the first sentence, allowing the owner of the beneficial or equitable interest to apply for the exemption. The statute seems to contemplate this by permitting the property appraiser to “request the applicant to provide additional ownership documents to establish title.”

The question of whether an heir can apply for the exemption without a final probate court deed is important because there is no specific grace period in the statute between when a family member dies and when an heir would be required to apply for the exemption in their own name. Completing the probate of an estate in order to obtain a probate deed can take nine months or more in Duval County. Except in limited circumstances, a property must go through the probate process before a new deed is drafted and recorded. A property tax exemption application must be filed by March 1, with a late deadline of September 18, for anyone who has title to the property as of January 1. After September 18 of that year, no homestead tax exemption applications are allowed for that year. This does not provide much time to probate an estate, have a new deed drafted and recorded, and file for the exemption. Thus, if a deed were required, many heirs would incur a penalty (or at a minimum, lose the homestead exemption for a period of time) even if they started the probate process right away. During this time, penalties may accrue and property taxes can increase, creating difficult financial repercussions for low-income heirs.

The Florida statute that imposes homestead penalties when a homestead exemption remains in place beyond the applicant's tenure should not be interpreted to apply to an heir like Darnell Simon who remains residing in the home after the death of a relative. The statute reads:

The owner of any property granted an exemption who is not required to file an annual application or statement **shall notify the property appraiser promptly whenever the use of the property or the status or condition of the owner changes** so as to change the exempt status of the property. **If any property owner fails to so notify the property appraiser and the property appraiser** determines that for any year within the prior 10 years the owner was not entitled to receive such exemption, **the owner of the property is subject to the taxes exempted** as a result of such failure plus 15 percent interest per annum and a penalty of 50 percent of the taxes exempted. Except for homestead exemptions controlled by s. 196.161, the property appraiser making such determination shall record in the public records of the county **a notice of tax lien against any property owned by that person** or entity in the county, and such property must be identified in the notice of tax lien. **Such property is subject to the payment of all taxes and penalties.** Such lien when filed **shall attach to any property**, identified in the notice of tax lien, **owned by the person who illegally or improperly received the exemption.** (*emphasis added*)

This penalty is clearly meant to apply to the property owner who applied for and obtained the homestead exemption. The first time the owner is mentioned, it says the "owner of any property granted an exemption." That property owner, who was granted the exemption, has a duty to inform the appraiser if there is a change in the exempt status. It is this affirmative notice obligation that determines whether or not the owner incurs a penalty. If the owner fails to provide the notice, that same owner - "the owner of the property"- is subject to the penalty and a tax lien is placed on "any property owned by that person" - not on "the property" in question.

The interest and penalties imposed by section 196.011(9)(a) of the statute cannot reasonably be applied to an heir of a deceased owner.

1. "Owner" refers to "the owner of any property granted an exemption."
2. The provision places an affirmative obligation on "the owner" to notify the appraiser promptly if the "use of the property or the status or condition of the owner changes so as to change the exempt status of the property." This notification obligation is on the owner who was granted the exemption, not the heir of a deceased owner.

3. If the same owner fails to provide this notification to the appraiser and the appraiser determines the owner was not entitled to the exemption for a period of time yet continues to claim it, that owner is “subject to the taxes exempted as a result of such failure” plus interest and a penalty.
4. **The interest and penalty are directly tied to the failure of the owner who originally received the exemption to provide the required notification to the property appraiser.** As such, the interest and penalty are imposed on the owner who received the exemption in the first place, and only based on wrongful conduct up until that owner's death.³⁷

The purpose of that section of the statute is to penalize living homeowners who were granted an exemption and who abuse the homestead exemption scheme by failing to notify the tax assessor if they later move out of the home, for example to use it as an investment property or vacation home. Penalty statutes should be narrowly construed where there is any ambiguity.³⁸ They should not be applied harshly against innocent residents.³⁹

In *Vega v. Robbins*, even though the Court did not apply the exemption retroactively, it did not impose a penalty on an adult son who filed for the homestead tax exemption over a year after his mother's death.⁴⁰ In *Kelly v. Spain*, the court held that “[n]o matter the form, the goal of homestead has remained stable: to protect the family.”⁴¹ The penalty language in the statute in 9(a) was not intended to apply to heirs who remain in the home and, but for having to complete probate and file their own application, were in fact entitled to the homestead exemption. The penalty should only be imposed on a person who requests and receives an exemption and then intentionally or willfully does not notify the appraiser of a change in use of the property for their own financial gain. Florida county assessors should adjust their collection practices and stop imposing this penalty against heirs.

Mississippi



In Mississippi, under the Homestead Exemption Law of 1946, all homeowners are entitled to an exemption from all ad valorem taxes on their homestead up to a maximum of the first \$7,500 of the property's assessed value, limited to \$300 of actual exempted tax dollars.⁴² For seniors, though, the dollar amount is not capped. In addition, veterans with a service-connected total disability and who have been honorably discharged (and their unremarried surviving spouses) are exempt from all ad valorem taxes on the assessed value of the homestead.⁴³

An eligible heir can qualify for the same homestead exemption of up to a maximum of the first \$7,500 of the property's assessed value through an "affidavit, court record, or such other evidence as may be required by the [Tax] [C]ommission."⁴⁴ The Affidavit of heirship is a sworn statement provided by one or more family members and at least two unrelated parties that identifies the decedent's legal heirs. The affidavit establishes an heir's interest in the property and also, after a certain number of years have passed, provides an insurable title for sale of the property. When there are multiple heirs, the heirs of an undivided estate can elect to file for one homestead exemption on the entire undivided estate. The requirements for homestead exemption eligibility must be met. All the heirs must sign an affidavit authorizing the filing of the one homestead exemption.⁴⁵ Otherwise, if an heir files for the homestead exemption individually, they are entitled to the exemption only on their inherited portion of the property.⁴⁶ This requirement is especially burdensome for heirs who have inherited the property over multiple generations and do not know the names or contact information for all of the heirs.

Eligible residents must apply for the homestead exemption. Once it is granted, the resident does not need to file again unless there has been a change in the property description, ownership, or occupancy.⁴⁷ A person who willfully fails to notify the tax assessor of changes in the status of the homestead when required to do so can be found guilty of a felony and, upon conviction, may be punished by a fine of not more than \$5,000 or by imprisonment, or both. As in the Florida statute, the penalty is assessed against the person who claimed the homestead exemption and then willfully failed to notify the taxing authority of a change in ownership, not an heir who inherited and occupied the property.

Michigan



In Michigan, homestead exemptions are provided for residents meeting certain income guidelines.⁴⁸ A homestead is eligible for exemption from taxation in whole or in part, based on guidelines developed by the local assessing unit.⁴⁹ Local guidelines may not set income limitations below the federal poverty line.⁵⁰ Certain seniors, disabled residents, and veterans and their surviving spouses who meet the income guidelines are provided additional exemptions.

A property owner must file a Principal Residence Exemption Affidavit form with the tax assessor to obtain the exemptions. With the form, the owner certifies under penalty of perjury that "I own and occupy as a principal residence on the date stated [] and that I have

not claimed a substantially similar exemption/deduction/credit in property in another state, and that the information contained on this document is true and correct to the best of my knowledge.” Michigan considers an “owner” for purposes of the tax exemption to be “[a] person who owns property as a result of being a beneficiary of a will or trust or as a result of intestate succession.”⁵¹ An heir is therefore considered an owner of the property upon the death of the original owner and can apply immediately for the exemption.

A homeowner has 90 days after exempted property is no longer used as a principal residence by the owner claiming an exemption to file a notice of rescission of the exemption with the local tax authority. A penalty of up to \$200 is imposed on an owner who fails to file the notice of rescission.⁵² In addition, a person who fails to rescind the exemption with the intent to wrongfully obtain an exemption is guilty of a misdemeanor and may be punished by a fine of up to \$5,000 or public service.⁵³ If a person claims an exemption in Michigan and a substantially similar exemption in another state, that person is subject to a penalty of \$500.⁵⁴ As with the Florida and Mississippi statutes, the penalty is placed on the owner who intentionally failed to notify the taxing authority of the change in status of the property.

Texas



Texas does not impose any penalty for a delay in filing a homestead exemption application and also allows a look-back period for the new exemption once obtained. In Texas, a family or individual is entitled to a tax exemption of \$3,000 of the assessed value of their primary residence or \$40,000 in a school district.⁵⁵ An additional \$10,000 exemption is provided for an adult who is 65 years or older or disabled. Local tax authorities can offer an optional additional exemption of up to 20 percent of the value of the property and no less than \$5,000. The resident must apply with the local appraisal office. Most exemptions, once allowed, do not require subsequent applications.⁵⁶ The exemption applies to the property until ownership changes or the person's qualification for the exemption changes, at which time the original owner must notify the appraiser's office of such change.

If the appraiser discovers that an exemption has been erroneously allowed within the preceding five years, the taxing authority is entitled to impose taxes on the value that escaped taxation.⁵⁷ There is no other penalty imposed on the owner.

An application for a residence homestead exemption may be filed after the deadline for filing has passed if filed no later than two years after the delinquency date,⁵⁸ which is usually February 1 because property taxes are due January 31. A resident will receive a deduction on taxes owed if not yet paid or a refund on taxes paid.

Heirs who inherit property intestate in Texas have options to obtain the homestead exemption without having to produce a deed with their name. As of 2019, Texas allows an heir to submit an affidavit of heirship to establish ownership of the home for purposes of the homestead exemption application. The heir must provide an affidavit establishing their property ownership interest, a copy of the death certificate of the prior owner, a recent utility bill, and citation to any court record relating to the heir's ownership of the property. A recorded instrument is not required, however. Each heir with an interest in the property who occupies the property as the owner's principal residence, other than the applicant, must provide an affidavit that authorizes the submission of the application.⁵⁹ The applicant heir is entitled to 100 percent of the homestead exemption.⁶⁰

This procedure allows an affidavit of heirship to be used when a decedent leaves behind real property without a will or other legal documents transferring title. The affidavit can also be used within four years of the deceased's death if there was a will but it was not probated.

Pennsylvania



In Pennsylvania, the Taxpayer Relief Act provides for property tax reduction allocations to be distributed by the State to each school district. Property tax reduction is provided through a homestead or farmstead exemption. Most owner-occupied primary residence homes and farms are eligible for property tax reduction.

Local governments can provide a tax exemption of a fixed dollar amount of the assessed value of each homestead property that is not in excess of one-half of the median assessed value of homestead property in the area.⁶¹ The owner of real property must apply for the homestead exemption and generally will not have to reapply each year. The application form requires the applicant to assert that they are the owner of the property and they can face penalties and criminal prosecution for knowingly providing false information.⁶² If there are multiple owners, not all need to apply.

If there is a change of use of the property, the owner must notify the assessor within 45 days of the change. Failure to notify the assessor results in penalties to the owner who failed to provide the notice. The penalties consist of payment of the taxes which would have been

due but for the false application plus interest, a penalty of 10 percent of the unpaid taxes, and if convicted of a misdemeanor, a payment of up to \$2,500.⁶³ Again, the penalty is on the original owner who knowingly failed to notify the assessor.

Philadelphia has enacted additional protections for homeowners and allows a homestead exemption of \$80,000 (in 2023) of the assessed value of the property for residents who own and live in the property. Philadelphia allows heirs who inherit a property intestate to qualify for a conditional homestead exemption for three years. If the heir does not record a deed in their name within three years, the exemption is revoked going forward, not retroactively.⁶⁴ To apply for a conditional homestead exemption, an heir must submit an application, which includes a Homestead Affidavit certifying ownership of and primary residency at the property. The city also has a “Tangled Title Fund” through its Division of Housing and Community Development “to help preserve affordable housing, prevent homelessness, and strengthen communities.”⁶⁵ Grants are provided to help heirs probate the estate and clear legal title to the property.

Homestead Property Tax Exemptions	Owner of property must notify assessor upon change of ownership or entitlement to the exemption	If no notification, owner who obtained the exemption is penalized, not a successive owner or heir	An heir can submit an affidavit as proof of ownership instead of a deed	Exemption is allowed retroactively for a period of time
Florida	✓	✗ In some jurisdictions, statute is misinterpreted to impose severe penalty on heirs	✗ Statute has been misinterpreted as requiring deed	✗
Mississippi	✓	✓	✓	✗
Michigan	✓	✓	✓	✓ Pending Bill would make poverty exemption retroactive
Texas	✓	✓ No penalty imposed	✓	✓
Philadelphia	✓	✓	✓	✓

5. RECOMMENDATIONS

Owners of heirs property face a substantial risk of an excessive property tax burden, lack of information about relief programs, and property tax foreclosure. Our initial recommendations to remediate these risks are as follows:

- Recognize that heirs are the owners of an inherited property immediately upon death of the decedent and should be eligible for the property tax homestead exemption and other homeowner relief options. Allow heirs to apply for the homestead exemption upon the filing of an affidavit of heirship certifying their ownership of the property.
- Make it clear that penalties for failure to report a change regarding the property cannot be imposed on heirs who inherit a property intestate, or by will that is not yet probated, and intend to make the property their primary residence, and otherwise are eligible for the homestead exemption.
- Provide the homestead exemption retroactively for a certain period of time if the heir can attest to living in the property and otherwise qualifying for the exemption during that time period.
- Require that, upon the death of any homeowner as determined through death records, the tax authority shall provide notification to the heirs of the necessity to notify the tax assessor and the process by which they can and should apply for the homestead tax exemption.

Heirs property owners face an elevated risk of losing their home to property tax foreclosure or to investors who capitalize on property tax default situations. The problems highlighted in this report can be remedied through intentional actions by state and local governments to increase access to the homestead exemption and other tax relief policies. Given the prevalence of heirs property on communities of color, taking these steps is a crucial piece of an overall strategy to reduce the racial wealth gap by stopping the erosion of homeownership in these communities that has been taking place for decades. The time is now to enact meaningful changes to preserve intergenerational wealth.

ENDNOTES

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- 3 Alaska Stat. § 29.45.450; Cal. Rev. & Tax. Code §§ 3351 to 3972, 4101 to 4379, 4501 to 4505 (West); Del. Code Ann. tit. 9, §§ 8701 to 8779; Ga. Code Ann. §§ 48-3-2 to 48-3-28, 48-4-1 to 48-4-7; Haw. Rev. Stat. §§ 231-61 to 231-70.
- 4 35 Ill. Comp. Stat. §§ 200/21-5 to 200/21-445, 200/22-5 to 200/22-95; Md. Code Ann., Tax-Prop. §§ 14-808 to 14-854 (West); D.C. Code §§ 47-1330 to 47-1385; Fla. Stat. §§ 197.102 to 197.602; Ind. Code § 6-1.1-24-9.
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- 13 *Id.*
- 14 See generally Berry, *supra* note 3; Bernadette Atuahene, *Predatory Cities*, 108 *Calif. L. Rev.* 107 (2020); Jason Grotto, *Tribune Watchdog: The Tax Divide*, *Chi. Trib.* (June 10, 2017), <https://apps.chicagotribune.com/news/watchdog/cook-county-property-tax-divide/assessments.html> (property in working-class neighborhoods overassessed).
- 15 Andrew Kahrl, *The Power to Destroy: Discriminatory Property Assessments and the Struggle for Tax Justice in Mississippi*, 82 *J. S. Hist.* 579, 591-92 (2016). See also Connor Bailey et al., *Heirs' Property and Persistent Poverty Among African Americans in the Southeastern United States*, 2019 *Heirs' Property and Land Fractionation: Fostering Stable Ownership to Prevent Land Loss and Abandonment* 9, https://www.srs.fs.usda.gov/pubs/gtr/gtr_srs244.pdf.
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- 24 *QuickFacts Dougherty County, Georgia*, United States Census Bureau (2022), <https://www.census.gov/quickfacts/doughertycountygeorgia>.
- 25 Jones & Pippin, *supra* note 12, at 4.
- 26 Alaska Stat. § 29.45.030(e).
- 27 Idaho Code §§ 55-1001, 55-1003.
- 28 Fla. Stat. § 196.031(1).
- 29 *Id.*
- 30 *Id.* § 193.155(1) (part of the Florida Save Our Home Act).
- 31 *Id.* § 193.155(3)(a).
- 32 *Id.*
- 33 *Id.*
- 34 *Id.* § 196.011.
- 35 This is a simple illustration. Keep in mind that, per Fla. Stat. Ann. § 193.1554(3), the reassessment of the property is subject to a 10% Assessment Limitation: any change resulting from such reassessment may not exceed 10 percent of the assessed value of the property for the prior year.
- 36 Fla. Stat. § 196.031.
- 37 See Fla. Stat. § 196.161
- 38 *Bittner v. United States*, 143 S. Ct. 713, 724 (2023) ("Under the rule of lenity, this Court has long held, statutes imposing penalties are to be 'construed strictly' against the government and in favor of individuals."); See, e.g., *State v. English*, No. 97-4104, 2002 WL 31455610, at *2 (R.I. Super. Oct. 15, 2002) ("[S]tatutes are to be 'strictly construed against the government or parties seeking to enforce statutory penalties and in favor of the persons on whom penalties are sought to be imposed.' Known as the rule

of lenity, this principle ‘rests on the fear that expansive judicial interpretations will create penalties not originally intended by the legislature.’”) (quoting 3 Norman J. Singer, *Statutes and Statutory Construction* §§ 59.3, 60:3 (6th ed., 2001)).

- 39 See Bittner, 143 S. Ct. at 723 n.7.
- 40 Vega v. Robbins, No. 03-23953, 2006 WL 779734, at *6 (Fla. Cir. Ct. Mar. 17, 2006) (holding that a son was not entitled to a retroactive benefit of homestead exemption when his mother died; she left property in trust with him as executor, and he transferred title to himself upon her death).
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- 42 Miss. Code Ann. § 27-33-3; 35-006 Miss. Code R. § 003.01.101 (LexisNexis).
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- 52 *Id.* § 211.7cc(5).
- 53 *Id.* § 211.120(2).
- 54 *Id.* § 211.7cc(3)(a).
- 55 Tex. Tax Code Ann. § 11.13 (West).
- 56 *Id.* § 11.43(c).
- 57 *Id.* § 11.43(i).
- 58 *Id.* § 11.431(a).
- 59 *Id.* § 11.43(o).
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- 61 53 Pa. Stat. and Cons. Stat. Ann. §§ 8581-8588 (West).
- 62 Property Tax Relief, Pa. Dep’t of Cmty. and Econ. Dev., https://dced.pa.gov/download/homestead-application-pdf/?wpdmdl=58451&refresh=643d9e2e433fa1681759790&ind=0&filename=Homestead_Application.pdf (last visited July 6, 2023).
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