



Addressing Heirs' Property Issues

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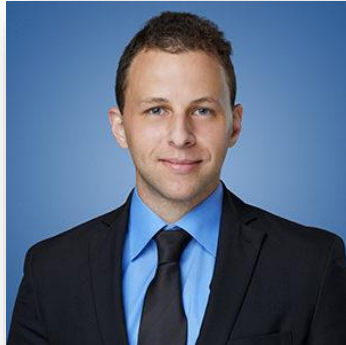


About the Florida Housing Coalition

- Statewide nonprofit organization that is primarily a training and technical assistance provider to local governments and nonprofits on all things affordable housing
- Our work covers:
 - Compliance with local, state, and federal affordable housing programs
 - Affordable housing program design
 - Capacity building for nonprofit housing providers
 - Land use planning for affordable housing
 - Research & data gathering
- We can provide free training & technical assistance to you under the Catalyst Program



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Guest Presenters



Kristopher Smith,
Community Development Program Officer
LISC Jacksonville



Rachel Rall,
Managing Attorney – Jacksonville Office
Three Rivers Legal Services



Topics covered

- What is heirs' property?
- Policy framework for addressing heirs' title issues
- **Local spotlight.** LISC Jacksonville
- **Local spotlight.** Three Rivers Legal Services
- Mapping tools to identify heirs' properties

Disclaimer: This webinar is not primarily focused on the legal process and legal strategies for addressing heirs' title issues. This webinar is focused on how the housing ecosystem as a whole can address heirs' property issues from various entry points.

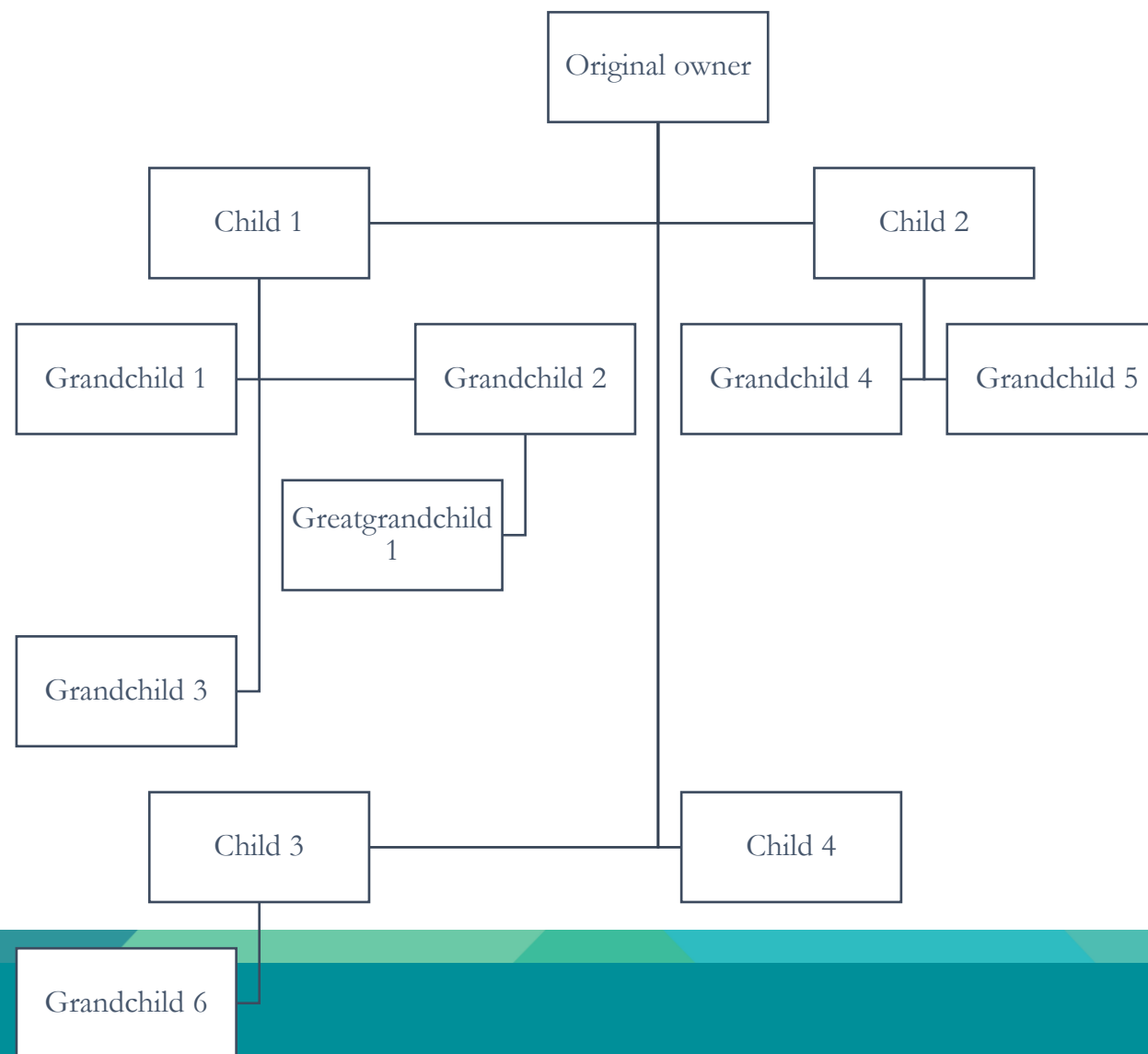


What is heirs' property?

- "Heirs' property" refers to property that is passed via inheritance from an owner(s) to next of kin without clear ownership
- Heirs' property is most common when an owner dies without proper estate planning and thus property is transferred via **intestate succession**
- Without proper estate planning, the property may be owned by all inheritors as "tenants in common", typically without clear documentation of who the owners are



Heirs' property can get messy... (and this chart is simple for heirs' issues)



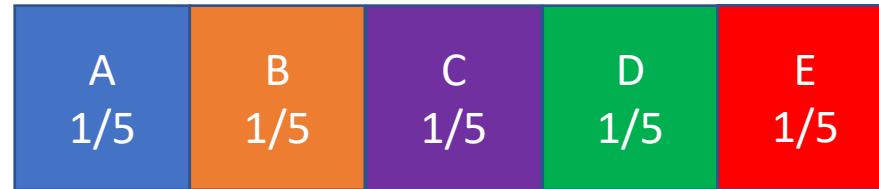
Why is heirs' property a problem?

- For a property with “heirs’ title” issues, it can be difficult to prove ownership of property
- Without clear ownership, it is difficult to sell, finance, repair, or improve the property - heirs’ property is considered “dead capital”
- Ex) owners of heirs’ property may be unable to obtain mortgage financing or business loans due to lack of clear title
- It is difficult/impossible for heirs’ owners to receive aid from certain government assistance programs
- Affects community vitality – may lead to property abandonment
- Can lead to involuntary land loss through partition actions



Tenancies in common (TIC)

- In a TIC, each co-tenant holds an undivided interest with unrestricted rights to possess the whole property.
- Each co-tenant can sell, mortgage, devise, or otherwise transfer their interest **without consent** from the other co-tenants
- Each co-tenant can only sell, mortgage, devise, or transfer **their own respective interest** in the property



The kicker: What if you don't have clear records of who each of these owners are?



Why is heirs' property worth addressing?

- Addressing title issues is a **wealth-building issue** and a **housing preservation** issue, similar to fixing a broken roof – addressing both keeps the property in living condition and allows the property to be **resilient**
- Keeps people in their homes
- Community sustainability
- Revitalize local government tax base



Data on heirs' property

Challenge – one of the characteristics of heirs' property is lack of clear ownership so it is difficult to assess the exact number of properties that have heirs' title issues

Federal Reserve of Atlanta

- 2022 Report - "Heirs' Property in an Urban Context"
- Identified 29,289 likely heirs' properties in Duval County
- 9.2% of all owner-occupied properties in the county

USDA

- 2017 Report – "Identifying Potential Heirs Properties in the Southeastern United States"
- Looked at 10 counties in GA
- Counties likely had between 11-25% of parcels as heirs' properties



Data on heirs' property

Emergency Land Fund

- 1984 Report – “The Impact of Heir Property on Black Rural Land Tenure in the Southeastern Region of the United States”
 - Estimated about 27% of black-owned parcels in 10 Southeast counties were heirs' property

Connor Bailey, et al.

- 2017 Report – “Heirs' Property and Persistent Poverty in African Americans in the Southeastern United States”
 - Looked at 12 counties in Southeast US – estimated \$668 million value of heirs' properties (“dead capital”)



Three-part framework for addressing heirs' title issues

1. Prevention

- It is essential to **prevent** heirs' title issues from occurring through proper estate planning, education, and community engagement for lower-income and minority property holders.

2. Remediation

- For properties that have already fallen into heirs' title, strategies can help **remediate** heirs' property issues to remedy the lack of clear title.

3. Alleviation

- For heirs' property owners that cannot prevent or remediate their title issues, policies can help **alleviate** the negative consequences posed by heirs' title.



Four target areas for addressing heirs' title issues

1. Funding for heirs' title work
2. Role of the local property appraiser
3. Education & community engagement
4. Lenders and financial institutions



Key themes for addressing heirs' title issues

1. Incorporate estate planning and title clearing education at as many entry points as possible
2. There are many entry points in the housing ecosystem to address heirs' property issues
3. Support legal aid attorneys!
4. Focus on all properties inherited as tenants in common, not just properties passed through intestate succession
5. Revisit onerous proof of ownership requirements
6. The local property appraiser can play a vital role in prevention and remediation



Local Spotlight



Kristopher Smith,
Community Development Program Officer
LISC Jacksonville

-
- The heirs' property work of LISC Jacksonville – why they got involved and what they do
 - Identifying heirs' property and community impacts
 - Solutions
 - Local funding to boost capacity
 - Role of property appraiser
 - Helping heirs' property owners access government assistance





Funding for Heirs' Title Work



Legal aid attorneys are your best friend!

- Partnering with legal services providers is key to addressing heirs' title issues
- Housing counselors that incorporate estate planning education in their curriculum are also foundational



Potential sources of funding

1. Federal, state, and local government-funded housing programs
2. Traditional legal aid funding sources & court fees
3. Financial institutions and philanthropy



Federal, state, and locally-funded housing programs – Pair homebuyer subsidies w/estate planning

- Homebuyer subsidies should be paired with estate planning services or, at minimum, a pamphlet or attestation that the applicant understands the risks of heirs' property
- Just like homebuyers typically must attend a homebuyer counseling course to keep their property maintained, recipients of homebuyer subsidies should also receive an estate planning consultation or education on how to keep their title maintained
- Alternatively, the subsidy approval process should include an educational one-pager or pamphlet on the risks of owning property w/o proper estate planning



Estate planning and title clearing on its own are generally limited by federal or state program set-asides

- SHIP can be used to address heirs' title issues within statutory set-aside limits
- Florida's SHIP program requires grantee local governments to spend 75% of their funds on construction-related activities with 10% dedicated towards admin costs
- For SHIP, local governments are generally limited to using 15% of its allocation plus program income towards other housing-related activities, which includes estate planning and title clearing services
- Exception: if title clearing is necessary to conduct a rehab activity, title clearing can count toward the 75% construction set-aside
- Similar restraints exist in CDBG program (15% public service cap)



Local government funds provide more flexibility to address heirs' title issues

- Local funds should supplement federal and state housing funding sources (and to avoid set-aside requirements)
- A locally funded program can serve estate planning and title clearing efforts
- **Gainesville Community Redevelopment Agency** (CRA) created the “Heirs’ Property Assistance Program” in 2021, seeded w/\$250,000 of locally sourced funds
 - This program offers free legal assistance to help heirs’ property owners clear title if homeowner at or below 120% AMI



Eligibility criteria should follow FEMA's Individual Assistance (IA) model for heirs' properties

- Proving ownership is one of the biggest barriers for heirs' property owners to receive housing assistance or any other type of benefit gained from owning property
- FEMA changed its IA program in 2021 to allow owners with heirs' title issues to demonstrate eligibility through a "Will or Affidavit of Heirship naming the applicant heir to the property and a death certificate"
- **Solution:** Self-declaration of ownership (under penalty of perjury) can be last resort for owners of heirs' properties to meet eligibility requirements



Structuring an Heirs' Property Assistance Program

- **Defining heirs' property.**
- **Setting priorities.**
- **Types of activities.** Estate planning, title clearing, co-tenant buy-out, etc.
- **Income levels served.**
- **Term of assistance.** Structure as a grant unless paired with a home rehab or down-payment assistance forgivable, no-interest loan.
- **Maximum assistance.** Consult with local legal aid provider on a set rate for estate planning services. Title clearing maximums are much trickier depending on complexity of the case.



Structuring an Heirs' Property Assistance Program

- **Selecting legal providers.**
- **Co-tenant buy-out.** Follow Uniform Partition of Heirs' Property Act (UPHPA) for how much to spend on tenant buy-out.
- **Community engagement.**



Traditional Legal Aid Funding Sources & Court Fees

- Legal aid funding sources that can support heirs' title work include:

Court filing fees &
fine revenues

Interest on
Lawyer's Trust
Accounts (IOLTA)

State/local
legislative
appropriations

Legal Service
Corporation (LSC)
Funds

Financial
institutions &
regulators

Foundation grants
& philanthropy

Residuals from
class action
settlements via the
Cy Pres Doctrine

Revenue from
attorney licensing
fees & bar dues



City of Jacksonville – SHIP funded heirs' property work



- First local government to use SHIP to fund heirs' property work
- RFP open on May 3, 2023, for \$400,000 to:
 - Provide probate legal assistance to eligible heirs to clear title including:
 - Filing petition for probate
 - Assisting with quit claim deeds
 - Estate planning and related services
 - Work with legal entities to provide greater community knowledge of estate planning and the probate process



City of Riviera Beach & Federal Home Loan Bank

- City to partner with **Legal Aid Society of Palm Beach County**
- City received \$90,000 from FHLB
- Legal Aid of PBC to:
 - Participate in planning, development, and implementation meetings with the City, residents, and community stakeholders
 - Provide training to residents, community stakeholders on Real Property issues related to Heirs' Property, Probate, Deeds, and related issues
 - Provide legal services on Probate, Title issues, Homestead Exemption, and Real Property Law



Local Spotlight



Rachel Rall,
Managing Attorney – Jacksonville Office
Three Rivers Legal Services

- Experience working on HP cases
- Process for clearing title
- Funding for heirs' property work





Education & Community Outreach



Breadth of Community-Based Organizations

Churches, synagogues, mosques, and other religious institutions	Schools and universities
Chambers of Commerce, particular Minority Chambers of Commerce	Urban Leagues
NAACP Local Chapters	Historically black high school and college alumni associations
Legal services and pro bono attorneys	Funeral homes
Housing departments	Property appraisers
Community leaders and elected officials	Realtors
Major employers and job training centers	Neighborhood associations, civic associations, and neighborhood watch organizations
Issues-based nonprofit organizations	CRA boards
Community Development Corporations	Activity and rec centers



Bringing the Tools to the People

- Accessing the legal system can be intimidating.
- Community groups can bring the estate planning and title clearing tools to where people are at
- “**Wills on Wheels**” – type of outreach tool that brings legal aid and pro bono attorneys to community events and to people’s homes



Teaching how to lower legal costs of heirs' title work

- The two most costly endeavors for fixing heirs' title are 1) investigating who and where all the co-owners are and 2) agreeing on what to do with the property
- If heirs had these things figured out before consulting an attorney, legal costs would come way down
- Community workshops can focus on family tree building, investigating heirs, and how to agree on what to do with jointly owned property



Religious institutions

- Religious institutions, particularly Black churches, are vital in addressing heirs' title issues
- These institutions can help stem mistrust of the legal system and be an entry point to connecting lower-income homeowners with resources and education
- Attorneys within the congregation can be utilized to host estate planning events
- Religious leaders can provide credibility to outside legal experts that may be brought in to provide assistance



Role of Housing Counseling Agencies & Homeowner Education Courses

- Homebuyer counseling agencies can incorporate estate planning and heirs' property-related issues into their homebuyer education curriculum
- Estate planning & title clearing training can be included in HUD's Counselor Certification Test



Local Property Appraiser - Providing Community Education

- **Role as event facilitator**

- Alachua County Property Appraiser's Office hosted a Probate and Estate Planning Summit to bring community awareness to the probate office
- Alachua County's office invited speakers from local legal aid, the City Commission, Clerk of Court, Tax Collector

- **Role as community supporter**

- Property appraiser offices can support heirs' property campaigns by being active providers of data, education on the title clearing process, and speaking at community events.

- **Role as notifier**

- Offices could reach out to properties identified at being at risk of heirs' properties and connect homeowners to resources





Lenders, Realtors, &
Financial Institutions



The Closing Process

- A document could be added to the closing package that provides education on heirs' property issues
- Homebuyers can be asked to sign a form attesting they have read a provided pamphlet on heirs' property and estate planning-related issues
- Buyer agents can also provide education to homebuyers on the risks of owning property without a will



Removing barriers to financing

- Main challenge with financing and insuring heirs' property arises when not all heirs can be identified and consent to the transaction
- To hedge against this risk, there could be special loan products that encourage the financing of heirs' properties
 - Program idea: government-backed loan if at least 75% of co-owners consent to the loan terms
 - A pilot program could unlock lending to heirs' properties which could help study the delinquency and foreclosure rates of these loans – could lower risk perception
- Could also use FEMA's IA model of self-attestation





Mapping heirs' properties





Heirs Property in the Spotlight

- FHC Initiative CRE with Fannie Mae
 - Applied methodology to Alachua, Duval, and Gulf Counties
 - Develop tools, data, and maps to support the identification of clusters of properties
 - Policy recommendations for local governments for identifying incidence and providing assistance



Methodology

- Literature review to identify key markers of heirs' property
- Visually check with pre-identified heirs' properties to make sure the markers from the literature review are correct
- Weight each factor based on correlation with pre-identified heirs' properties
- Map final scores to identify individual properties and neighborhoods that stand out

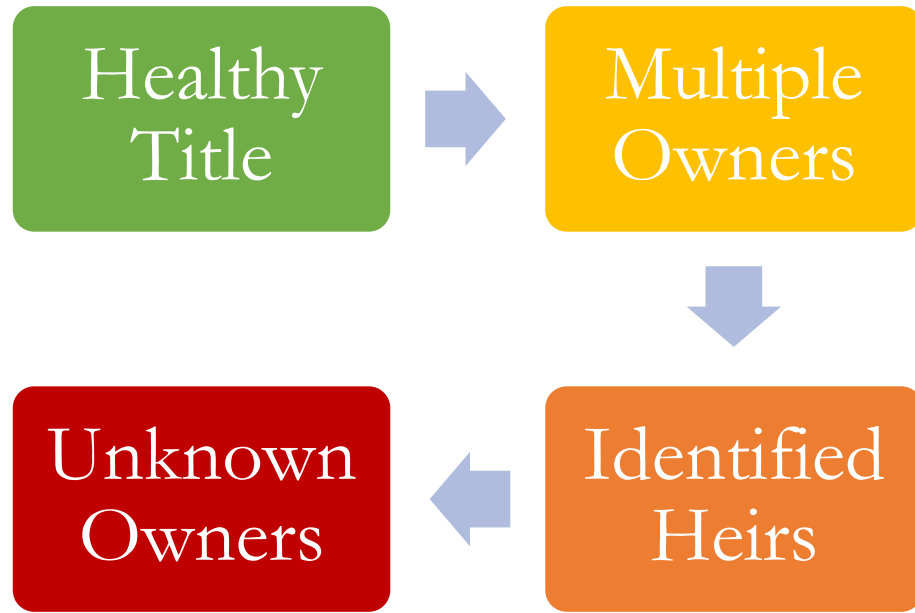


Data Sources

- Florida Department of Revenue, Via the Shimberg Center for Housing Studies
 - Name, Address, Legal Parcel Files
 - Sales Data Files
- Vulnerability Mapping and Analysis Platform (VMAP)
 - Social Vulnerability Index (SoVI)
- All variables reviewed via “percent of total” histograms



Identifying Heirs' Property in The Property Records



Heirs

- “Heirs”
- “Heirs of”
- “Estate”

Multiple Owners

- “Et al”

Institutional or Businesses

- “State”
- “LLC”
- Etc.

Parcel-Level Variables

Variable	Reasoning
Land Use Type (Agricultural or Residential)	Almost all identified heirs' properties were agricultural or residential, a finding consistent with previous research
Effective Year Built	Older homes were dramatically more likely to be heirs
Low Just value	Low value properties are more likely to be owned by heirs because people are less likely to leave proper estate planning for them and heirs' are less likely to go through probate
No or Partial Homestead	Under Florida Law, heirs' living on the property can only claim the portion of the home they own as homestead
No Recent Sales	The longer it has been since something sold, the more likely it is to be heirs

Neighborhood Characteristics

Alachua County	Dominant Variables
Dependence and Age	Low % beneficiaries (QSSBEN)
	Low Median Age (MEDAGE)
	Low % Age Dependent Populations (QAGEDEP)
	Renters (QRENTER)
	High Housing Cost Burden (QHSEBURDEN)
Lack of Wealth	Low Per Capita Income (PERCAP)
	Low housing values (MDHSEVAL)
	Low rent (MDGRENT)
	Low % Wealthy (QRICH200K)
	Populations without Health Insurance (QUNINSURED)
	Unemployment (QCVLUN)
	Educational Attainment (QED12LES)
Race and Household Type	Race (Black) (QBLACK)
	Female Headed Households (QFHH)
	Low % Children in 2 parent families (QFAM)
Household Size and Dependence	Low Occupancy Housing (PPUNIT)
	Nursing Home Residents (QNRRES)
	Renters (QRENTER)
Gendered Employment and Gender	Gendered (Female) Employment (QFEMPLBR)
	Gender (Female) (QFEMALE)
	Low Occupancy Housing (PPUNIT)
Race and Access Barrier	Race (Native American) (QNATAM)
	English Language Proficiency (QESL)
	Nursing Home Residents (ONRRES)

Identified heirs' properties were
extremely auto-correlated



We rated the number of identified
heirs' properties per tract as the most
important single risk factor where that
data was available (Duval and Alachua)

And the Most Important Characteristic:
Heirs by Tract



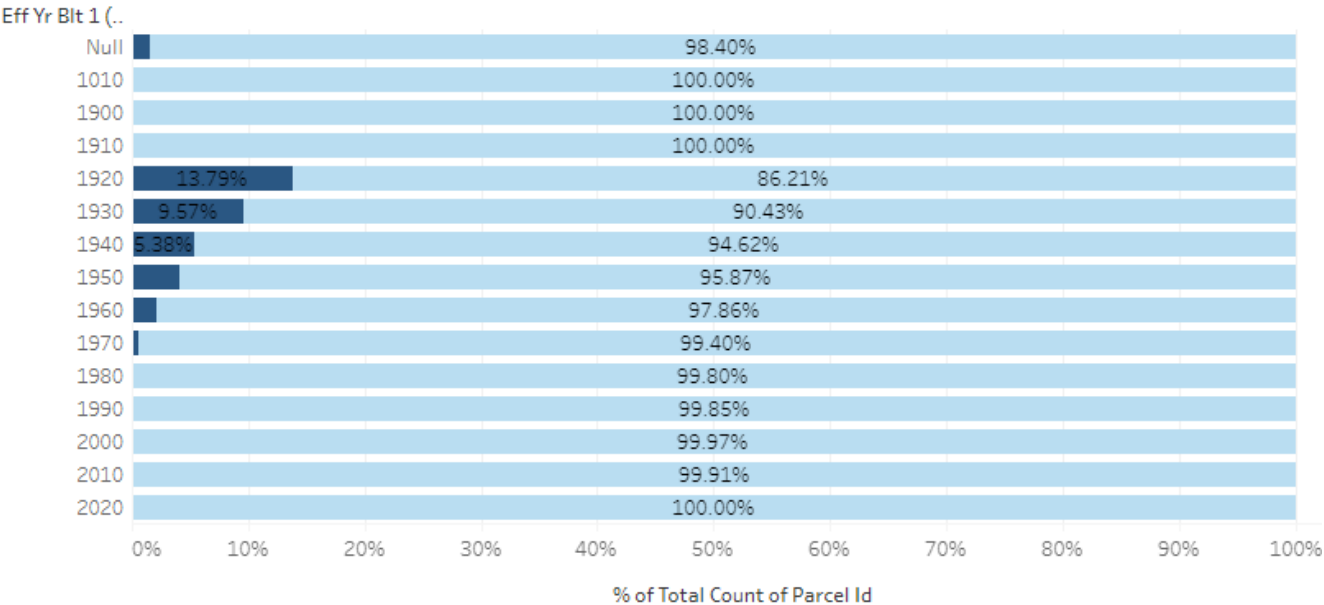


Example: Alachua County

- Conducted Analysis in Alachua, Duval, and Gulf
- Example from Alachua

All variables reviewed via “percent of total” histograms to determine if they would be used

Histogram of correlated factor, effective year, and number of heirs



ALACHUA COUNTY
NEIGHBORHOOD CHARACTERISTICS

Variables	Variance Explained	Used?
Dependence and Age	23.80%	Yes
Lack of Wealth	23.60%	Yes
Race and Household Type	8.80%	Yes
Household Size and Dependence	6.50%	No
Gendered Employment and Gender	6.00%	No
Race and Access Barriers	5.30%	No

Alachua Factors and Values

Parcel Level

Variables:

1. Land Use Type:
 - a. Agricultural or Residential=1 (94,819 out of 104,929)
 - b. All others = 0
2. Effective year:
 - a. 1959 or Before=1 (1,301)
 - b. 1960 or after 0
3. Just Value Residential (excluding no residential value)
 - a. <\$50,000 =1
 - b. >\$50,000 =0
4. Homestead
 - a. Homestead =0
 - b. Not Homestead =.5
 - c. Partial Homestead =1
5. No Recent Sales
 - a. Null =1
 - b. Recent Sale=0

Census Tract

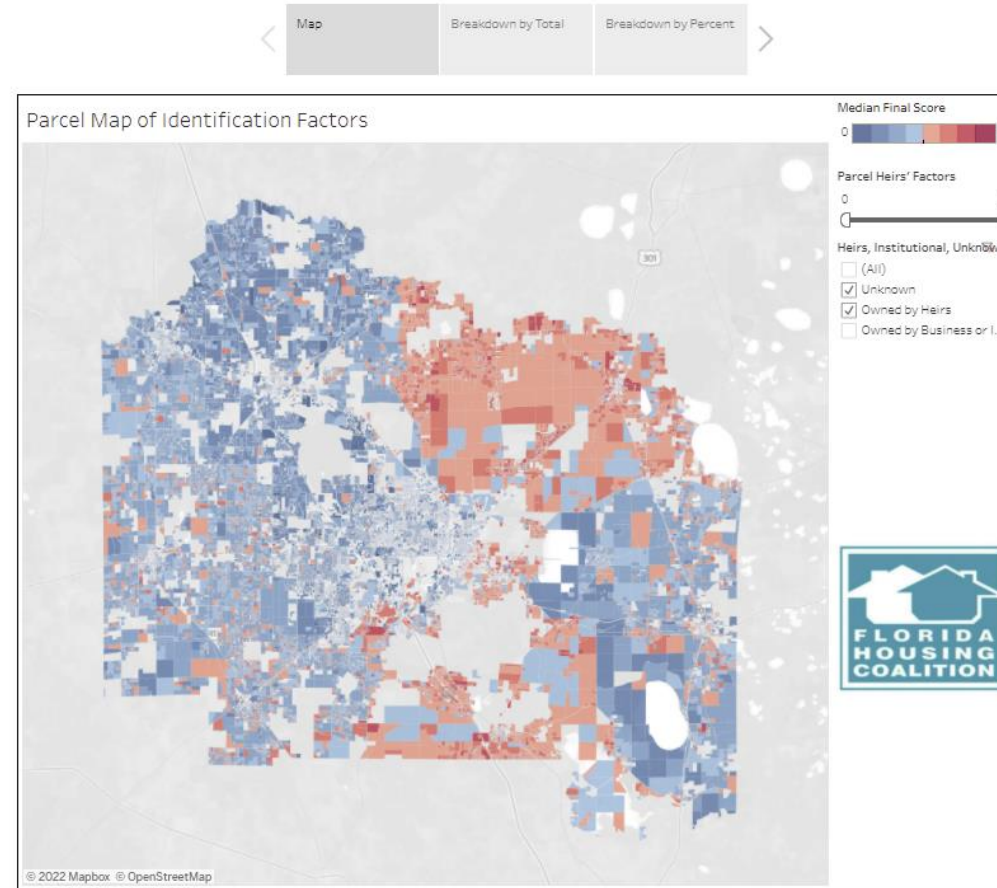
Variables

1. Confirmed Heirs per Tract
 - a. Above 3% =2
 - b. Above 2% = 1
 - c. Above 1% =.5
 - d. Below 1% =0
2. Dependence and Age
 - a. Below 0 =1
 - b. Above 0=0
3. Lack of Wealth
 - a. Above 0=1
 - b. Below 0 =0
4. Race and Household Type
 - a. Above 2 =1
 - b. Below 2 =0



Alachua County Map and Discussion

Alachua: Factor Identification of Heirs' Properties and Properties at Risk of Falling into Title Issues



https://public.tableau.com/views/AlachuaHeirsPropertyIdentificationwithAreaCharacteristics/AlachuaFactorIdentificationofHeirsPropertiesandPropertiesatRiskofFallingintoTitleIssues?:language=en-US&:display_count=n&:origin=viz_share_link



Truthing Alachua

Random Test, Properties Scoring 7 or Above		
	#	%
Heirs' Property	6	20.7%
Not Heirs'	7	24.1%
Older Adults	11	37.9%
Unclear	6	20.7%
Total	29	



Takeaways

- Multiple SoVI factors correlated with heirs' property
- Heirs' properties were concentrated on the east side, but the risk scores also picked up many other heirs' properties across the county.
- .57% in the total population 12.12% at a risk score of 8, 7.94% at 7.5, and 6.4% at 7
- 20% of the tested high scoring unknowns were heirs' property, far higher than the already high number of identified heirs' properties at these scores



How Can Other Communities Recreate This?

- Property appraiser data is already available
- Purchase VMAP, or use indicators identified here from data.census.gov
- Recognize that not all high-risk score properties have title issues, but that this is a good place to start





FLORIDA HOUSING COALITION PUBLICATIONS

Access these valuable resources and more under the Publications tab at Flhousing.org

Housing News Network Journal

Florida Home Matters Report

Accessory Dwelling Unit (ADU) Guidebook

Adaptive Reuse of Vacant Rentals

Affordable Housing Resource Guide

Affordable Housing Incentive Strategies

CLT (Community Land Trust) Primer

CLT Homebuyer Education – Teacher’s Guide

CLT Homebuyer Education – Buyer’s Guide

Community Allies Guide to Opportunity Zones

Community-Based Planning Guide

Creating a Local Housing Disaster Recovery

Creating Inclusive Communities in Florida

**Credit Underwriting Guide for Multi-Family
Affordable Housing in Florida**

**Developing & Operating Small Scale Rental
Properties**

**Disaster Management Guide for Housing
Landlord Collaboration Guidebook**

PSH Property Management Guidebook

Residential Rehabilitation Guide

SHIP Administrators Guidebook

Surplus Lands Guidebook

**Supporting Households Moving Out of
Homelessness**

Using SHIP For Rental Housing



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