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# **Cherished land lost in the South**

**By Franz Strasser** BBC News, Charleston, South Carolina



*Fred Lincoln explains how his ancestors reclaimed the land on which they were slaves*

Following the US Civil War, many slaves who gained their freedom acquired land which their family had worked for generations. Over the years these holdings have been whittled away - through population movement, legal disputes, by developers - but a growing number of descendants of former slaves are now returning to seek new lives on these properties.

Fred Lincoln stands on 250-acres of land on Daniel Island, a peninsula on the outskirts of Charleston. His ancestors acquired this land in the vicinity of the old plantation in the 1860s after slavery, and to this day only family members have inhabited this property and used it as their economic base.

"They could buy a second-hand mobile home in cash, live in that for a few years, save all their money and eventually build a house," says Lincoln. "Everything starts here."



Clements Ferry Road on Daniel Island features many sale signs these days.

In the peak year of 1910, African Americans owned 15 million acres of farmland in the US, according to US Agriculture Census data. By 1997, that number had dropped to 2.4 million acres, and is less than 2 million today, according to experts.

Industrialization and a large percentage of the black population moving north are reasons for this dramatic decline, but the US Department of Agriculture noted that many minority farmers had to sell their land involuntarily.

## 'Legalized stealing'

For generations, poor minority land owners died without a will and passed the land down to an increasing number of heirs to create what is commonly called "heirs' property".

### **Heirs' Property**

Land that has been passed down generations without a will. The property is automatically divided among the owner's heirs after the owner's death. It does not matter which heirs live on the property or pay the taxes. All of the heirs have their own shares of ownership.

- **[Mississippi Center for Justice pamphlet \(PDF\)](#)**

Some of the heirs hold only a tiny interest in the land, might live far away from it, or do not even know about their ownership in the first place.

Over the decades, the former swamp lands turned into prime waterfront real estate on the Southern coast line, ideal for golf courses and gated communities, and have become the target for many developers.

Outside parties only need to buy the interest of one individual to force a partition sale of the entire property and it can happen without the consent of the other interest holders. The fractured and rarely wealthy group of original heirs often does not stand a chance to hold on to their land.

"The whole coast of South Carolina was built on stealing from poor black people," says Charleston-based attorney Thomas Goldstein who represented clients trying to hold onto their land. "It's legalized stealing."

## **Coming home**

Recent census data showed that a large number of African Americans have been moving back to the South, reversing a long-standing trend of blacks leaving the South to seek better opportunities in Northern industrial cities.

"They are seeking a better quality of life and they're coming home," says Herb Frazier, author of 'Behind God's Back - Gullah Memories'.

"They're coming home to take care of relatives, to bring their children back to the community and just to retire on land that's been in their families for generations."

Fred Lincoln came back from New York to raise his children here, but he is worried that future generations might not have the safety net that this land has offered to so many family members in the past.

"It's not like most communities that go to bed at night hoping that their property escalates in value. In most cases we're hoping that our property depreciates so the taxes won't be as high."

An erected highway bridge in the Southern part of the peninsula has brought the community a lot closer to Charleston, and into the spotlight of interested developers.

Near the Interstate-526 bridge, about 80 percent of ancestral land was lost because of escalating land value and heirs property issues that forced many family members to sell, explains Lincoln.

## **Educating process**

Many experts agree that educating heirs property owners is the fastest way to deal with the issues of involuntary land loss.

The Center for Heirs Property Preservation is a non-profit organization in South Carolina and started in 2002 to hold education seminars for communities, provide direct legal services for clients who meet the poverty guidelines, and assist in drafting wills on-site.



The Carolina coastline with its many inlets has turned into prime real estate.

"You do have people up North who have no clue about their ownership," says the centre's executive director Jenny Stephens. "It's the people who are not as attached to the land who increase the likelihood of a sale."

Across the region, the Federation of Southern Cooperatives helps land owners to form cooperatives in which heirs are shareholders with equal votes.



"The greater challenge is policy," says Ms Stephens. "If you change the laws heirs property is not an issue, but it's real estate and affects other forms of ownership. It's a larger group who doesn't want to get anything done."

## **New legislation**

In order to get something accomplished on the legal front, economists, lawyers and politicians first had to be convinced that there was an actual reason for reform.

"Although it's not fair, it's the natural condition for poor minorities to lose their property. They will find a way to steal it anyway," says Thomas Mitchell who drafted the Partition of Heirs Property Act, which was approved by the Uniform Law Commission last summer, and endorsed by the American Bar Association this spring.

### **Partition of Heirs Property Act**

- Court appoints a real estate appraiser to assess the fair market value of the property
- Provides all of the co-tenants who did not request a sale with a right to buy out all of the interests of those who have done so
- Partition by sale must be open-market unless a sale by sealed bid or an auction would be of greater economic benefit to the group

- If no offer at or above the determined value is received the court can order to continue the property to be offered for some additional time
- **Which states have introduced the bill?**

Among others it gives current owners the first right to buy their property in a partition sale, and places additional steps in the sales process, including a real-estate broker and an appraisal of the land.

Land owners living in poverty, and large, unorganized groups of heirs are just as unlikely to outbid an interested developer, but the added mechanisms drive the price much higher than before.

"If one heir is intending to force a sale, then the end result will be a more equitable ending. At least there will be more money in the pocket of these heirs," says Joshua Walden, an attorney with the Center for Heirs Property Preservation.

For Fred Lincoln it never was, and it never will about the money, which is why his community is struggling to survive in a capitalist society.

"We want to protect the historical, the emotional back of our community and would like to see our community reflecting some of what our ancestors have left us." says Lincoln.

"Appreciation of property value is not the dominant theme in our community, the dominant theme is to have a community."

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