

THESIS

THE IMPACT OF HEIR PROPERTY ON
POST-KATRINA HOUSING RECOVERY IN NEW ORLEANS

Submitted by

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ABSTRACT

THE IMPACT OF HEIR PROPERTY ON POST-KATRINA HOUSING RECOVERY IN NEW ORLEANS

This thesis examines the impact of heir property on post-Katrina housing recovery in New Orleans. Heir property is a form of collective ownership of immovable property that is the result of intestate succession prevalent in poor and minority communities. For decades, vulnerabilities associated with heir property have been a leading cause of land loss for rural African Americans. After Hurricane Katrina, urban heir property owners in New Orleans struggled to collect insurance money or access federal recovery grants due to issues of unclear title. This research draws on 15 in-depth interviews with institutional actors working on heir property issues in New Orleans and heir property owners in and around the Lower Ninth Ward, a neighborhood devastated by flooding and with high levels of heir property. Specific mechanisms that contributed to lower levels of recovery for heir property owners are identified and recommendations made to protect vulnerable homeowners in future housing recovery programs.

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The Impact of Heir Property on Post-Katrina Housing Recovery in New Orleans

When the levees protecting New Orleans failed after Hurricane Katrina, 70 percent of all occupied housing units were damaged and over 1,000,000 people displaced in the worst residential disaster in modern U.S. history (GNOCDC 2009). As New Orleans' residents returned to rebuild their homes and restore their communities, an unexpected roadblock to recovery appeared. Approximately 15 percent of all applications for federal rebuilding grants through the Road Home Program were denied, delayed, or deterred due to issues of 'unclear title' (Meyer 2008). Owing to the widespread practice of not opening estates, the name listed on the property title was that of the original property owner, often long-deceased. Homeowners were required to complete complex judicial procedures to formalize their ownership rights to their inherited property and secure the signed consent of all eligible heirs before receiving federal recovery dollars or insurance monies to rebuild or relocate. These requirements resulted in as many as 20,000 homes (Baab 2008) being left to molder and decay, as co-owners of heir property waded through paperwork, bureaucratic procedure, and complex family dynamics in pursuit of recovery.

While the majority of research on heir property focuses on rural areas in the Southeast United States, (Deaton 2009, Dyer 2007, Mitchell 2005, Strand 2010), recent studies, sparked in part by the rehabilitation crisis in New Orleans, have included a discussion of urban heir property and its connection to uneven recovery rates (Bates & Green 2009) and blight (Alexander 2007). The prevalence of unclear title in low-income urban neighborhoods is attributed in part to the lack of pressures and incentives posed by new construction or mortgage financing, which typically serve as triggers for re-examining title (Weiss 2006). Neglecting probate proceedings

also offers heir property owners some protection from debt collectors and distant family members, who as co-owners, may be prompted to try and sell the home and get a share of the proceeds (Meyer 2008). Heir property's prevalence in urban neighborhoods and rural farmland is also rooted in cultural and economic factors that stem from distrust of the legal system, the costs associated with clearing title and the complexity in aligning the interests of a large pool of eligible heirs that expands with each generation (Rivers 2007).

While there have been reports in the popular press covering stories of heir property in New Orleans (Cohen 2008; DeBerry 2008; Hammer 2008; Siegel 2008), a case study focusing on the scope of heir property and the direct experiences of owners, and individuals working on heir property issues during the recovery process, has not been conducted. In doing that, this research contributes to the literature on heir property and provides a concrete example of the effects of cumulative vulnerability in post-disaster recovery processes related to race and socioeconomic status. This research also highlights mechanisms by which social stratification is intensified after a disaster through social processes and structures involved in mediating post-disaster housing recovery. Studying the dynamics and outcomes of these processes can provide insights into the social stratification that exists in the legal, cultural, and economic dimensions of everyday life. This research shows how the post-disaster recovery process exacerbated a significant source of vulnerability in heir property ownership, and provides recommendations for how to protect these homeowners and their communities in the future.

Chapter 2: Literature Review

Heir Property: An Overview

When a landowner or titleholder dies without a formally probated will, their property rights pass to their heirs in accordance with state probate laws. These laws provide a distribution scheme, or will substitute, in which land is inherited by multiple family members and owned collectively as an undivided unit, an arrangement known as heir property (Craig-Taylor 2000). In this ownership arrangement all descendants in the immediate and subsequent generations are legally defined as ‘tenants in common,’ who share undivided interests in the property while owning fractional shares of the whole parcel of land (Rivers 2007). The limited bundle of available property rights associated with heir property ownership, when embedded within the prevailing economic system, disadvantages landowners in ways that are theoretically intriguing and practically important given its high prevalence within vulnerable populations. Lower income property owners and groups historically excluded from the legal system are less likely to have a will, making heir property more prevalent among poor and minority communities (Deaton 2007; Rivers 2007). Some researchers estimate that between one-quarter to one-half of all African-American owned farmland owned in the United States is heir property (Gilbert 2002; Graber 1978; Rivers 2006).

The consequences for owning heir property have been increasingly discussed in the academic literature. In an oft cited study on the transition of property from “Marx to the Market” Heller (1997) describes how heir property is an example of the ‘tragedy of the anti-commons,’ a situation where unclear rights leads to ‘non-use’ of potentially productive assets, at least economically speaking. This dynamic is described in a study of heir property owners in

Appalachia where the absence of an individual owner to sign a contract prevents landowners from contracting with a company to harvest lumber on their property (Deaton 2007). This 'non-use', due to the provision of all co-owners full right to use but not exclude, sequesters the property's economic value. Similarly without clear title, a property's exchange value is inaccessible to be drawn upon in emergency or used as collateral for loans. Given that the value of ones' home is often the primary form of equity used in establishing small businesses, entrepreneurial success and upward mobility can be thwarted by heir property (Meyer 2008). The disjuncture between heir property and the formal property markets has an immediate effect in times of emergency and an ongoing impact as an asset is excluded from the process of capital accumulation. But greater threats exist beyond nonuse. Heir property is vulnerable to tax sales, property liens, foreclosures, and partition sales (Rivers 2006). Partition sales may be initiated from within the circle of ownership by a single heir looking to cash in their share or by a third-party, often a land developer or speculator, who has acquired an heir's interest (Dyer 2007; Mitchell 2005; Rivers 2006). As Rivers notes,

For heirs' property owners, the bundle of rights of property ownership is half empty, as heirs must allocate the right to possess, use, and exclude property with other cotenants, while every heir has a determinative right to transfer their interest - and to force the sale of other cotenant interests through partition actions in equity court. (2007:1)

When a partition sale is initiated, the land can be bought at a discounted price by the highest bidder and heir property owners often lack the sufficient upfront cash to maintain ownership (Pearce 1973). The law states that where fair and impartial partition of the land is deemed impractical or inexpedient, sale is preferable. In practice, for land that is held by multiple heirs, partition is rarely seen as expedient and liquidation of the entire parcel is strongly favored. Craig-Taylor details how the application of economic valuations in determining partition

proceedings pays no heed to the painful break imposed by losing property historically held by family, especially for those whose family legacy includes the brutality of slavery and the dehumanizing injustices of 'Jim and Jane Crow America.' Poignantly she writes,

Perhaps no Americans can better understand the meaning of owning property than those who had been considered a 'species of property' themselves." For African Americans, the viewpoint of land as "sacred" is directly tied to a people's movement from slavery to freedom. In judicial partition cases where the retention or divestment of land title is determined, a valuation framework which only employs an economic model does violence to the historical significance land has played in the lives of African Americans. Land for many African Americans may be the most important symbol of achieving some level of equality in American society (2000:773-774).

Herein reside two vital components in understanding the complexities associated with heir property. First, the value of land, or one's home, extends beyond its simple economic valuation; family land often holds social and emotional value that cannot be quantified in economic terms. Second, heir property cannot be understood accurately outside of the socioeconomic and historical realities in which it is situated. For ex-slaves, or individuals oppressed by racially discriminatory laws, owning land and passing it on to their descendants was a powerful affirmation of their value as sovereign human beings. As generations passed, one's identity was linked to a particular physical locus in the family property, maintained by kin who shared the same fractional ownership rights and full possessor's rights unique to heir property.

Furthermore, heir property is not simply the result of co-owners being unwilling or unaware of their legal responsibilities to complete the formal probate procedures required when a landowner dies. Slavery was legal for generations, and the courts acted to support this gross inequity. Other forms of discrimination were encountered in the legal system during

reconstruction, and beyond, and the reticence to engage with the formal systems governing land ownership by black landowners must also be understood through the lens of self-preservation.

Craig-Taylor continues,

African Americans with property issues often did not choose going to court as a viable option in many instances. Limited resources and a legitimate distrust of the legal system provided the rationale for many families to allow the intergenerational transfer of property to proceed through intestate succession. Many African Americans “came to perceive the law and its enforcers as an outside alien force.” Without recourse to the courts for probate, the passing of their property interests as “heir property” was a safer alternative and would in effect keep the property in the family. This system of transfer created its own set of practical and legal problems. As property passed down to each generation through intestate succession, the ownership interests tended to multiply and disperse over time. Instead of protecting the property, the multiplication of interests created potential vulnerabilities (Craig-Taylor, 2000:776).

The processes that led to the proliferation of heir property were adopted and perpetuated in order to protect an asset but ultimately left co-owners more vulnerable to losing their land. An important lesson for the post-disaster context is delineated here; practices that promote resiliency under certain sets of conditions can increase vulnerability when those conditions change.

Despite all its complexities and vulnerabilities, land owned as heir property has served a critical role in facilitating social mobility, civic participation, and economic security for co-owners (Gilbert 2002; Zabawa 1990). In a study of tenant farmers and landowners under the New Deal Resettlement program, 42% of the landowners’ children became white-collar workers versus 25% of tenant farmers (Salamon 1979). As a social and cultural resource, heir property serves many purposes. It is a home, a connection with one’s family and heritage and a safety net assuring that one always has a place to come home to (Dyer 2007). The tension between heir

property's vulnerabilities and values, its risks and resilience, is well presented in a study on Alabama heir property owners,

Many observers view heir property as a problem that needs to be addressed or even eliminated. The legal and economic ramifications of property held in this form are clear—lawyers, housing services coordinators, community program directors, and even heir property owners themselves testify to this. However, heir property residents—those who live on the land and share a common space with their loved ones—demonstrate how heir property is a form of communal property that is supportive of cultural values held by some of the South's poorest citizens. This communal property system meets the needs of a sub-set of the rural population in ways that formal, individualist-centered property regimes cannot (Dyer 2008:335).

It is clear that heir property, as a communal form of home ownership, meets the needs of co-owners in a way that individual ownership cannot. Therefore, solutions to heir property issues cannot consist of strategies to consolidate individual ownership alone but must also focus on ways to reduce vulnerabilities associated with heir property and educate homeowners about their options for protecting a valuable cultural and economic asset.

Post-Disaster Housing Recovery

Reestablishing permanent housing is a crucial component in the recovery process after a disaster. Houses are physical structures that meet the fundamental human need for shelter while also defining a large part of people's lives and senses of self. For many, homes also serve as the primary source of wealth and financial security and an asset that can secure the intergenerational transfer of these advantages (Bullard 2005). Housing recovery restores critical services for a population, facilitates the economic redevelopment of an area, and re-anchors individuals and families by reestablishing social and kin networks that may have been disrupted by displacement (Peacock et al. 2008). A survey utilizing a socio-ecological model was used to measure

individual recovery in post-Katrina New Orleans and demonstrated that stable housing was positively correlated with psychological recovery for individuals, functioning indirectly via increased social support (Abramson et al. 2010). Rebuilding existing housing stock and enabling residents to return to their communities serves to facilitate communal and cognitive dimensions of well-being, which are cued by familiar surroundings and helps to restore wholeness after a disaster (Fullilove 1996, Wallace 1957).

Housing recovery in the United States follows a market-based approach with private insurance providing the primary source of capital with which to rebuild and government programs and public assistance filling in the gap where private insurance is unwilling, as in the case of insuring floodplains, or unable due to the scope of devastation. This market-based approach yields similarly stratifying consequences for recovery as are encountered in everyday life. Peacock et al. (1997) have demonstrated that after Hurricane Andrew the quality of insurance products available in racially segregated areas were less effective in promoting recovery. In predominantly black neighborhoods, rebuilding and repair happened more slowly, with the disparity increasing over time. Higher abandonment rates observed in predominantly black neighborhoods after a disaster, contrast to higher sales observed in predominantly white neighborhoods (Zhang and Peacock 2010). Similarly, residential recovery assistance programs, such as those employed after the Northridge earthquake, failed to connect with the most vulnerable sections of the population, particularly those who were non-English speakers (Kamel and Loukaitou-Sideris 2004). In these studies, the stratified recovery rates correspond closely with the existing structures and conditions that disadvantage minorities and poorer individuals before disaster strikes. Bolin and Stanford surmise “vulnerability in the United States relates most closely to people’s capacities to either avoid or cope with hazard losses, capacities

influenced by access to recovery assistance and other social protections related to class privilege” (1998:125). As Smith has noted, “At all phases, up to and including reconstruction, disasters don’t simply flatten landscapes, washing them smooth. Rather they deepen and erode the ruts of social difference they encounter” (2006:2).

Social vulnerability is often defined as a measure of the socioeconomic characteristics that influence a community’s ability to prepare, respond, cope, and recover from a hazardous event (Cutter et al. 2003; Laska and Morrow 2006). Fothergill and Peek (2004), in a review of sociological findings regarding vulnerability in disaster, demonstrate the differential experiences and impacts of disaster for individuals stratified along axes of race, class, gender, and age. In a study on single mothers displaced after Katrina, relative levels of social capital corresponded with recovery in the post-disaster recovery process (Underhill 2008). While homeownership is generally considered an indicator of lowered vulnerability its positive correlation with recovery is often stratified by race and by class (Masozera et al. 2007). Multiple processes contribute to this disparity including the requirements and availability of quality insurance, as well as the tier lender that services an area. Neighborhood housing values are used in the calculations of awards for both insurance and federal recovery grants, and homes in neighborhoods that have a higher relative percentage of minority homeowners are consistently undervalued in the United States (Wilson 1987). Other processes that contribute to disparity in recovery trajectories include the requirements and availability of different federal and state recovery programs, knowledge of these programs and the ability to navigate the bureaucratic systems that govern them. To understand the specific ways this occurred it would be necessary to interview heir property owners and the individuals who had worked with them in the post-disaster recovery period.

Methodology

Previous qualitative and mixed method studies of rural heir property ownership (Deaton 2009; Dyer 2007; Mitchell 2005) have provided rich, detailed accounts of the values, processes and difficulties associated with heir property ownership. I determined that the single instrumental case study approach (Stinchcombe 2005:74) would be well suited to studying the impact of heir property on post-Katrina housing recovery in New Orleans and was confident that the data collected would provide holistic descriptions (Weiss 1994) of how the events and practices were interpreted, navigated and experienced. In the summer of 2010 I travelled to New Orleans and conducted seven in-depth unstructured interviews with heir property owners and eight interviews with legal professionals working on heir property issues. The main focus of these interviews was their experiences in the post-disaster recovery period and what had contributed to their successes and challenges.

During my field research I also observed legal services provided at an heir property clinic and a number of other community meetings. I wrote descriptive field notes detailing the setting and my experiences in the field and took photographs that proved useful in keying memories in the analysis phase. Sitting in homes, community centers and offices I had read about, walking through neighborhoods in various states of disrepair, visiting the spots where the levees had breached and simply being in New Orleans, greatly impacted my own awareness and appreciation of the trauma of Hurricane Katrina and the events that followed as political actors and everyday people jostled for the right to return and rebuild this irrepressible city.

Marshall and Rossman (2006) recommend the use of pilot interviews to uncover interesting research questions and patterns in the design phase of a study once the topic and setting have been determined. As heir property owners are often hidden from formal records and difficult to

locate as an outsider I focused on setting up initial interviews with individuals in organizations working on heir property issues. Institutional actors are generally more accessible due to their public positions (Lofland et al. 2006), and would have had direct contact with my primary research population. In the spring of 2010, I conducted three preliminary phone interviews with legal professionals working on heir property issues in New Orleans. In an interview with a staff member at Common Ground Relief, a progressive community advocacy and action group in the Lower Ninth Ward, I was told that heir property issues were hindering recovery in the neighborhood. Cassie Pierson, a legal advocate at the Anita Roddick Legal Center contacted heir property owners she knew and asked their permission to share their contact details with me.

Through these introductions I set up five interviews with heir property owners in advance of my field research in New Orleans. I had hoped to have these initial respondents refer me on to other heir property owners in a typical chain referral but locating other respondents once there was difficult. Being in the milieu and self-identifying as a social researcher interested in heir property issues presented some opportunities. For example, I gave my card to a local council member's aide at a Katrina Memorial March Planning Meeting and received a call the next day from one of his constituents who was looking for help on an ongoing heir property issue. This interview highlighted bureaucratic rigidity and the difficulties it posed for heir property owners. Conversely, what appeared to be rock-steady interview opportunities turned into dead-ends. An interview I had lined up weeks in advance, with regular calls and reminders disappeared when I arrived in New Orleans. In another incident, a young woman walked into the Anita Roddick Legal Center while I was manning the phones, and described some of her difficulties trying to rebuild her family home. We set up a time and place the next day for a full interview but I never saw or heard from her again.

At other times social research serendipity was evident, like meeting a fellow researcher investigating community health centers and giving him a tour of a newly built model home I had just explored having found the door unlocked. Human companionship was surprisingly important in the research setting. Even amongst a busy interview schedule, at times I felt lonely, especially at night when the adrenaline of the day wore off. I was glad to have people to talk too and laugh with while staying at the volunteer housing at Common Ground Relief. Acts of kindness made lasting impressions, such as the tall, blonde, dread-headed Common Ground volunteer from southern California who seeing me shivering on my bare cot in the highly air-conditioned male dormitory covered me with a spare blanket. Kind words and simple acts of compassion meant a lot to me and I tried to reciprocate to all, local and foreign alike.

My initial sampling objective was to use a stratified purposive sample (Marshall and Rossman 2006) of heir property owners; an even split of ten owners who were able to effectively clear title and ten owners who were unable or unwilling to negotiate the succession process necessary to access Road Home funds. My hope was to distinguish characteristics or criteria for why some homeowners were able to successfully negotiate the title clearing process and secure individual tenure while others were not. In practice this proved impossible, as individual tenure was further than most heir property owners I interviewed reached – most were trying to get a formal judgment of possession, or affidavit of support, and the consent of eligible heirs to receive rebuilding funds. All of the heir property owners I interviewed were still in the process of trying to obtain funds from the Road Home program. Due to my inability to track down enough heir property owners who had secured individual title or given up on the process, I shifted my sampling strategy to a homogenous sampling frame (Stinchcombe 2005) and interviewed any heir property owner involved in the Road Home Program I could find. The resulting narratives,

along with those from institutional actors who worked on related issues, provide rich descriptions of people's experiences with heir property in the post-disaster recovery period in New Orleans.

I prepared for my field research by studying neighborhood maps which detailed the number of homes on each block currently receiving mail as well as the number of homes rebuilt using Road Home funds (GNOCDC 2009). 1,284 out of 8,698 Road Home applications were identified as having judgment of possession issues in the 70117 ZIP code encompassing my projected research site and 1,936 of the approved applications went to homeowners electing to stay and rebuild (GNOCDC 2009). While useful in orienting myself to the neighborhood layout, this early research did not prepare me as much as I had hoped. Many of the homes that indicated occupancy, in reality, sat vacant and abandoned. Often only one or two houses per block in the Lower Ninth Ward showed signs of human habitation. Another issue was my working title, "Tenancy In Common: The Impact of Heir Property in Post-Katrina New Orleans" which turned out to be an oxy-moron as common law, the prevailing legal system in 49 out of America's 50 states, didn't apply in New Orleans. As the legal system in Louisiana is based on civil law, stemming from its history as a French and Spanish colony before being purchased by the United States in 1803, heir property owners were not tenants in common, but co-owners. The legal professional that pointed this out to me had a good laugh about it – which helped to establish rapport but did little for my credibility.

For some populations there are cultural challenges to informed consent (Marshall and Rossman 2006). As my intended research population evidenced some of these traits I submitted a request for a waiver of this requirement to the Institutional Review Board (IRB). I didn't want to unsettle my interviewees by having them sign official consent forms while they were in the process of trying to navigate the Road Home program and complex family dynamics. Instead,

with IRB approval, I was able to give heir property owners a cover sheet explaining my research and the purpose of the interview while guarantying their confidentiality. For institutional actors I used a traditional consent form with a checkbox indicating whether I could use their real names and the names of their organizations, as these were relevant to understanding the roles of various entities in the post-disaster recovery period.

Additionally, I asked interviewees if they would be comfortable with me audio recording the interviews. All agreed, apart from one heir property owner. The ‘Nay’ was in interesting circumstances – I showed up at 8 o’clock in the morning at his home, a shotgun style house with a covered front porch leading to a series of narrow, interconnected rooms. I had to knock on his door for some time before being let in. We sat down across from each other in his front room. His eyes still hazy with sleep he lit up a menthol cigarette, inhaled deeply and exhaled the smoke through his nostrils in a steady plume. Attempting to break the ice, I offered him and his teenage son an assortment of Hubigs fruit pies that I had bought at a gas station on the way in. I was under the impression from an early episode of HBO’s show *Treme*, that this was a popular snack food in the area. Their curt refusal and look of disdain conveyed the error of my assumption. I sheepishly put the snacks back in my backpack, and pulled out the digital recorder asking if I could record our conversation. He looked at me incredulously for the second time in as many minutes and asked me point blank, “How I thought I could record him, when he didn’t even know me”. It was a fumbled beginning, and while I scribbled down notes through out, I regret not having a verbatim transcript from what turned out to be a highly informative discussion. As a result I developed a concise pre-interview procedure to insure that I didn’t lose any more data.

All digitally recorded interviews were transcribed by a third party, Adler Enterprises, with funds generously provided from my advisor’s research grant. These transcripts have proven

invaluable, both in the accuracy of the transcription, which beautifully preserved my respondents speech cadences and terminology, and in the ability to upload the text to a qualitative analysis tool. Through multiple reads of these transcripts I mined layers of meaning impossible to detect in the natural flow of conversation. These transcripts and audio files are stored online in a password-protected account, without personal identifiers. Pseudonyms have been used throughout this paper for their property owners, as well as identifiable elements of their specific property locations.

The first pass of analysis occurred during my fieldwork as I listened to the day's interviews, made notes and adjusted the interview protocol to expand on emerging themes. I also wrote up field notes based on my experiences and noted the day's successes and challenges. The second round of analysis occurred in the months after the research was completed using a qualitative analysis tool, ATLAS.ti. Using open coding I highlighted pertinent points and relevant themes and in the process generated a large number of codes. I then read through these codes and collapsed like terms while identifying general themes. I recorded these codes in a codebook and then looked at their relative frequencies. Through a straightforward frequency count I was able to determine the most prevalent themes across and within interviews. Some of the frequently occurring codes included 'tenacity in pursuit of recovery', 'roadblocks to recovery', 'breaking of the social contract', 'consequences of delay' and 'dislocated social capital.' Reading through assortments of quotes coded in common also allowed for a comparison and contrast of the particulars of individuals' experiences. These themes are examined in detail in the results section along with the relevant quotations and supporting evidence from secondary data sources. In the analysis phase I also describe unique experiences, as it was important for me to detail the full range of their property issues in post-Katrina New Orleans. Additionally, I paid attention to the

social location and self-identified skillsets of my various respondents, in an effort to determine how specific characteristics may have contributed to their experiences in the post-disaster recovery period.

In the course of my interviews with heir property owners I deferred specific questions on legal issues, and instead provided contact details for professionals who could hopefully be of assistance. It was a disturbing experience to hear heartbreaking stories of loss, struggle and frustration, and know deep down that I was unable to affect the outcomes. Stallings (2002) has described the internal and external pressures to help solve the problems of disaster victims. Even prepared as I was for this reality – I still found myself straining to be of service in some way. At times I missed opportunities to probe deeper in to details of the events being described as I fumbled with encouraging platitudes or suggested individuals or agencies to contact for help. At times I lost sight of the point of my research, which was not to solve these issues but to accurately describe them. The human instinct to help got in the way of this and a more experienced researcher may have avoided this pitfall with clearer boundaries and more rigid adherence to the interview guide. I did tell respondents that I would share what I had found on heir property issues more broadly and that I hoped to uncover strategies that might help protect heir property owners in the future from some of the struggles they had encountered. As some consolation, most respondents appeared thankful for a willing ear and an interested individual tracing the arc of their personal journeys with them.

My personal biography as a Zimbabwean interested in issues related to land tenure and the intersection of communal and individual property regimes formed the basis of my intellectual curiosity. Ethnographic methods and critical theory fueled the how and the why this research resonated with me. I was fascinated by the lived experiences of heir property owners excluded

form the formal systems of property recordation. These individuals, who had access to a small measure of economic protection through co-owning a home, were at the same time disconnected from the associated market mechanisms of buying and selling property as a means for capital accumulation. Property rights in the United States are almost sacred, yet in the case of heir property there are ambiguities that arise within the sphere of ownership for those who have neglected to complete the formal probate process. In a time of acute societal and personal crisis, these co-owners were thrust squarely into the realm of individual tenure and required to legitimate their ownership through the formal systems of property and probate in order to recover. My outsider status, both as a researcher from out-of-state and as a Zimbabwean with an out-of-country accent, provided some social distance to ask questions about people's experiences candidly. The 'stranger' as Simmel has noted (Levine 1971) can occupy a non-threatening position and act as a sounding board for ideas and experiences that people may be less inclined to share with members of their own group.

My strategy of advertising myself as an outsider and social researcher worked well in most cases, but a few unsuccessful attempts to gain entrée stand out. A young man, selling bootleg CD's in front of the single convenience store in the Lower Ninth Ward, was happy to discuss the trajectory of local rapper, Lil' Wayne's oeuvre with me. He found it amusing that I was a white brother from Zimbabwe interested in hip-hop, but the moment the word 'researcher' left my lips he shut down verbally and physically and made it clear that our conversation was over. He did accept \$5 for the hometown hero's latest release, which in my opinion, didn't live up to the hype. Similarly, a community leader in the Lower Ninth Ward promoting an innovative land redevelopment scheme wouldn't connect with me in person, insisting on a phone call after I had returned to Colorado. Our failure to connect in person wasn't to do with availability as her

assistant had indicated she had time available throughout the week I was there. Perhaps she was attempting to maintain some distance by sending me through a scheduling process or limiting unpredictable in-person interactions.

Although rare, I did experience other examples of ‘research fatigue.’ I asked a well-respected minister on the phone if I could come down to Plaquemines Parish and interview some of his congregants about their experiences as rural heir property owners affected by Hurricane Katrina. It would have been interesting to compare and contrast their experiences to those of urban heir property owners. He told me bluntly that if he “connected every individual looking for information to fuel their thesis, dissertation, or article this community wouldn’t have the time to recover!” Characteristically though, from what I’ve heard of him from others, at the end of our brief conversation he did say that if I made it down to his parish he’d “see who was around for me to talk to.” Far more frequently I heard from interviewees statements like “So what is it you need from me?” or “What are you needing for this paper of yours?” These questions were not asked confrontationally, but candidly, and even kindly. Interviewees really wanted to help me in what I was doing, as much as I really wanted to help them navigate their own difficulties. In retrospect, I received more from the exchange than they did. I was honored by their kindness, and hope that this research represents their voices, experiences, and perspectives in an accurate and empathetic way.

Accurately representing an actor’s point of view within social space requires an understanding of the objective conditions, as well as the corresponding systemic structures and schemes of perception and action that individuals and groups encounter and employ in everyday life (Bourdieu 1992). In my endeavor to achieve an accurate portrayal of these multiple levels I have included several units of analysis; the subjective experiences of individuals actors, the

processes and policies implemented by organizations and institutional actors, and the expressed and observed outcomes in the post-disaster recovery period for heir property owners. The level to which I have accomplished this goal is debatable. Analyzing the transcripts, at times I identified follow-up questions and prompts pitched to satisfy my own understanding of the situation rather than the natural flow of the conversation. On one occasion a respondent even prefaced his remarks with “Like you said.” While natural in conversation, this kind of steering is regrettable, and potentially limited the richness of the data.

One of the major limitations of this research was the short time I spent in New Orleans and the small size of my sample, eight days and fifteen in-depth interviews respectively. In particular the number of heir property owners I interviewed was less than I had hoped for. While certain themes across the interviews were unanimous, such as frustration with the Road Home program’s glacial pace of grant disbursement and the shifting policies and processes, it was difficult to corroborate other experiences or achieve an assurance of representativeness. With institutional actors I feel more confident in my sample. I was able to interview the most widely cited legal experts and practitioners at the heart of the institutional response to heir property issues in New Orleans. While all of these individuals provided information relevant for my analysis, there was significant overlap in their experiences. In the report I have bifurcated their roles along the axis of legal practitioner and policymaker and described in detail the experiences of the two individuals who best represented each role along with supporting evidence from other interviews.

Chapter 3: Results

In the following pages I present the results of my research in sections, beginning with a description of the research site and the proliferation of heir property there. I follow this with an examination of the cultural and legal dimensions of heir property in New Orleans. Next I provide an overview of the two primary routes to post-disaster housing recovery, insurance and federal grants, and detail how heir property issues arose along both of these avenues. Throughout these sections I draw on data from the interviews I conducted in New Orleans alongside secondary quantitative and qualitative data sources. After this, I present individual interviews with select institutional actors and heir property owners and explicate the common themes therein. I conclude the paper with a summary of the results of the research and provide recommendations for future housing recovery programs to be better prepared to deal with heir property issues.

Heir Property in a New Orleans' Neighborhood: The Lower Ninth Ward

The Lower Ninth Ward was the most heavily damaged and least recovered neighborhood in the Greater New Orleans Area (GNOCDC 2009). It was also the site of the highest rates of heir property uncovered in the post-Katrina recovery process (Bates and Green 2009; Peterson 2009). This neighborhood, like most neighborhoods in New Orleans is highly racially segregated. In the 2000 U.S. Census, 98 percent of the population reported being Black or African American. Historically, it had one of the highest levels of African American homeownership in the country. In the years that followed, heir property had proliferated throughout the Lower Ninth Ward and was a symptom of the declining fortunes of the neighborhood's residents.

In a series of pre-Katrina neighborhood snapshots on the Greater New Orleans Data Center's website, residents in the Lower Ninth Ward describe the shift from relative prosperity to urban decline,

This was one of the first subdivisions designated for African Americans. The idea was just so wonderful to be able to buy a lot for \$250, to build a house and be a homeowner. When my family first came here, we cut a street, a path really, to get back to this lot. In the Ninth Ward, you've got a group of people who have stayed because we wanted to - because we've got an investment in this community" (Mwendo and Plyer 2005).

In the subsequent decades, as deindustrialization hollowed out the working class and urban disinvestment progressed, due in part to the 'white flight' that followed Federal desegregation measures, economic capital was drawn out of many of New Orleans' neighborhoods. The following quote from a Lower Ninth Ward resident, describes details of this decline,

A lot of people now are just living off of their families. Just living off these properties. They don't keep them up. When they can, they sell them. You'll find more blighted properties here now than you used to. It's sad. The homeownership rate gives a false impression that people are more well off than they are. (Mwendo and Plyer 2005).

Homeownership benefits are both economic and social. They range from reduced tax obligation and protection from rising housing costs to increased social engagement. Through -out New Orleans thousands of homes served these economic and social purposes for families and neighborhoods, but their legal status as an asset to be used for buying, selling and refinancing were unclear due to them being inherited as heir property by a group of family co-owners.

Some of the homeowners here now, inherited these properties from their parents, but they don't have employment, or transportation, and they have little education. There are no jobs here. There's no money. So people can't keep up their properties. The houses are deteriorating. The incomes in the community have declined over the years, and those who could afford to, have moved out. (Mwendo and Plyer 2005).

One type of capital however, social capital, continued to flourish in these neighborhoods. Generations of families maintained strong associations with each other, connected through networks of trust and reciprocity that anchored neighborhood life. As Coleman (1988) has noted, groups with high levels of social capital are able to accomplish more than comparable groups without it. One study conducted four decades ago, details the resiliency of an extended black family of more than sixty members who lived within fifteen minutes walking distance of each other (Lenus, Jr. 1978). Four generations had occupied the family home and expanded their holdings across a half block of the neighborhood. Their ‘residential propinquity,’ facilitated intensive visitation, interaction, and exchange between family members. Close family and community ties provided social, emotional, and economic support in good times and bad.

But the basis of this resiliency, intricately interspersed with a particular place and the proximal arrangement of social relations, was radically disrupted by Hurricane Katrina as it displaced family members and destroyed their physical locus of interaction (Weber and Peek 2012). Place-based and socially mediated forms of community resiliency are disrupted by disaster recovery processes that favor economic and social arrangements based on a paradigm of the traditional nuclear family (Tobin-Gurley 2008) or individual forms of land tenure (Peterson 2009). Federal and state recovery programs can hinder local resiliency when policies and procedures are restrictive and thereby exclude sections of the groups they are attempting to assist.

Cultural and Legal Dimensions of Heir Property in New Orleans

In Louisiana, even though the law provides for an immediate transfer of property rights from the decedent to their heirs at death, most title examiners will not approve title without a judicial proceeding and a judgment of possession formally recognizing the new owners (Weiss 2006). A judgment of possession is a legal ruling by which a judge determines who formally holds interests in a property. The process requires a thorough investigation of familial ties organized along biological and social axis through death, birth, marriage and divorce. Temporal dimensions are accounted for along with debts and financial obligations. Mapping out these family trees, especially for estates that have been transmitted across more than one generation, is a complex task. Adding to this complexity is the need for a formal succession to be completed for every deceased co-owner. For those able to complete the task, when the judge signs the judgment of possession, the succession proceeding is complete and the property formally transfers from the decedent to the heirs. What was cloudy title, from the moment of the original owner's passing, now becomes clear. The property is still heir property, but it is now officially so, with all eligible heirs identified and in legal co-possession of the home. Any legally recognized action still requires all co-owners consent, except for a partition sale, which can be initiated by any individual co-owner wanting to exercise their right to withdraw their economic interest in the property.

The cultural practice of not opening estates when a property owner dies, in Louisiana called successions, is stratified along lines of race and class. There are, however, geographically distinct dimensions pertinent to New Orleans, including Louisiana's unique synthesis of common and civil law. One example is that up until 1995, laws regarding forced heirship dictated the distribution of one's estate regardless of one's wishes. Heirs were entitled by law to inherit a

specific proportion of an estate, in some cases half of the estate and in others, two thirds. As Chris Coty, a staff lawyer with the New Orleans Pro Bono Project described to me, this meant different things for individuals based on the value of their estate.

For richer people they could do estate planning and say for a \$500,000 estate, with a house worth \$250,000 and \$250,000 in stocks and bonds, the kids could split the stocks and bonds, while Mom can keep the house. But when all you have is the house, there is no way to compensate all of them but for all get a piece of the house.

For many homeowners, their homes were their primary financial asset and could not be effectively apportioned between heirs apart from being sold, which would in turn displace the current occupants. Often the only viable option was for it to be inherited with a shared interest held by all. This contributed to the common perception that a will was unnecessary and cultural practices determining the continued use and occupancy of the home generally dictated its use. Paul Tuttle, a lawyer who headed up Southeast Louisiana Legal Services heir property initiative explained to me,

I think people that have money, when somebody dies, they call a lawyer and say, “What do we do now?” The low-income people didn’t have that option. But generally, I think there is a lot of misperception about the laws. People think that the oldest child gets it, that the wife gets everything, and she doesn’t. People think it’s automatic, that you don’t have to go to court. So there was a lot of misperceptions out there, people coming in and saying, “This is my house,” and you do a title search and say, “Well, actually, no, you own it with all these other people,” and they’d be like, “What? I’ve been livin’ there so long, it’s mine, right?”

But there was more to the proliferation of heir property than just misperceptions or declining economic prosperity. Avoiding a formal succession after an owner died also served to keep the property ‘below the radar,’ sidestepping threats posed by filing the value of the asset in the conveyance office. Doing so could trigger a reappraisal by the local assessor who might raise

the taxes on the property. Another risk in filing the value of the asset in the conveyance office was the potential of alerting distant relatives to the value of the home, prompting them to file a suit to sell the home or having the names of all eligible heirs appear in the vendee's index, which might alert potential creditors of the opportunity to lay claim to an outstanding debt (Meyer 2008). So apart from the real costs associated with clearing title, which with lawyer's fees and filing fees could easily run into thousands of dollars, the potential risks of debt collection and alerting other heirs to the value of the family home often deterred heir property owners from formalizing their ownership rights.

Cultural factors also played a large role in deterring homeowners from initiating and completing a formal succession on heir property. In an interview with a young man in his late twenties, who had taken over the responsibility of settling his deceased grandmother's estate, he discussed her reticence to complete probate on property she owned after her husband passed away, "She didn't have a strong trust in the legal system, so she figured that the lawyer was just tellin' her things to kind of lead her along." The historic precedent of dispossession when African Americans participated in formal legal processes was one factor that led to the high levels of heir property in New Orleans. The proliferation of heir property was no secret to legal advocates in the area, but it was of low importance to the residents. Tuttle described a survey his agency conducted in the community to set their agenda during a strategic planning period,

We knew that people weren't doing their successions work even before the storm, but it was a low priority for our clients. We send out surveys and try to find out what our clients want us to do, and before the storm, successions always came in really low, because people took over the house when their mom died, the mortgage might have been paid off, they just kept paying the property tax. Nobody was tryin' to kick 'em out of the house. They just didn't feel like it was a big problem.

But this was all about to change in the months that followed Hurricane Katrina. What had been a low grade problem with disjointed economic and social consequences become an acute crisis as huge numbers of homeowners lacked the clear title required to take advantage of the available recovery options. Homes decayed on every block as federal recovery funds sat in the bank accounts of the Louisiana Recovery Authority, out of reach for heir property owners. Heir property owners needed to be identified and informed of their options to clear title and mediate family disputes. Legal services to facilitate these processes had to be made available and funded in order to address the problem for low-income homeowners. Road Home policies required adaptation and grant managers prepared for the complexity of heir property cases. Finally, state probate laws needed to be amended in order to simplify and reduce the cost of successions.

Lovett, questioned the lack of interest in exploring the link between disasters like Katrina and property law and concluded that property law “is typically understood as an institution whose very identity and purpose is intimately associated with the task of promoting stability – not with responding to the kind of radical change that Katrina wrought” (2007:466). Shapiro (2006) has noted the significance of owning one’s home to wealth generation in the middle class and the racial disparities therein, with a white-black homeownership gap of 26.2% in 2004. Critical race theory and interdisciplinary legal studies are relevant theoretical approaches that have analyzed methods of racial and class discrimination in the formation and application of property law to issues of heir property (Gilbert 2002; Mitchell 2005; Rivers 2007; Zabawa et al. 1991). Solutions to heir property issues must take into account the economic, social and legal conditions that gave rise to heir property and the importance of protecting African-American homeownership for a prosperous and equitable future.



Figure 1: A house in the Lower Ninth Ward – damaged but still standing



Figure 2: Two houses in the Lower Ninth Ward with different recovery trajectories

Insurance in Post-Katrina New Orleans

As the first tier in a market based response to post-disaster housing recovery, insurance settlements are the primary means by which homeowners repair or rebuild their damaged homes after a disaster. By May 2006 over 95 percent of the claims received by the federal government from policyholders with the National Flood Insurance Program (NFIP) had been paid, amounting to nearly \$16 billion in claim payments (Michel-Kerjan 2010). For heir property owners who held insurance policies on their homes with appropriate coverage for flood damage, this route to recovery was blocked until they had performed a formal succession on their inherited homes. A lawyer in New Orleans described his experience working with an heir property owner,

A new client was sitting across the conference table, barely four months after Hurricane Katrina changed the face of New Orleans forever. Her home, located in the Mid-City section of New Orleans, suffered severe damage and was uninhabitable. Nonetheless, she was one of the lucky ones. Unlike many of her neighbors, she had insurance and her adjuster promised a check within days. The problem: the check would be made payable to her mother, who died 35 years ago. Now, like thousands of other Katrina victims she required legal help to negotiate the insurance check and clear title so her family home could be either sold or refinanced to pay for needed repairs (Weiss 2006:42).

While a large number of homeowners were without insurance coverage or the appropriate types of coverage, the picture is more nuanced and points to systemic and structural dynamics. These include perceived risks, the availability of adequate insurance products, the designation of federal floodplains, and choices of necessity made in circumstances of chronic economic deprivation. Attempts made to characterize Katrina survivors as irresponsible in terms of their lack of insurance coverage were unfounded. Louisiana had the highest participation level in the National Flood Insurance Program of any state in the nation with 483, 593 flood policies in force and a 26% insurance penetration (Michel-Kerjan 2010). According to a survey by the Gulf Coast

Recovery Office, 64% of Louisiana homes sustaining flood damage were covered by flood insurance (Lovett 2006).

Brinkmann and Ragas (2006) draw on data from a variety of sources detailing the number of flood policies in place at the ZIP code level, as well as the tenure characteristics, reported damage and repair cost estimates. Their results show that many areas with extensive flood insurance coverage experienced little damage, while some heavily damaged areas had less coverage. For example, in the 70130 ZIP code, 2,091 of an estimated 2,925 residential structures had flood insurance while only 175 structures had flood damage. Comparatively in the 70117 ZIP code, an area that encompasses the Lower Ninth Ward, only 5,908 policies were in effect and 15,503 residential structures damaged. In the best-case scenario, only a third of the damaged properties could have had any insurance coverage. Insurance coverage is not required in homes without mortgages, heir property owners with less disposable income may have, out of economic necessity, chosen to forgo the recurring payments required to maintain coverage. Additionally, many homeowners in the Lower Ninth Ward were outside the federal flood plain, despite being flooded after Hurricane Betsy forty years previously, and could not be covered through the national flood insurance program.

When the waters subsided and the post-disaster housing recovery process began, it became clear that homeowners who were underinsured or not insured at all would be dependent on personal resources, neighborhood groups, non-profits and other civil services to help facilitate housing recovery. Government assistance was also necessary and required an interface between the local, state and federal levels to fund and administer aid across the affected geographies.

Federal Housing Recovery in New Orleans – The Road Home Program

In August 2006, the State of Louisiana set up *The Road Home Program*, under the direction of the Louisiana Recovery Authority (LRA), and contracted with ICF International, a private multinational corporation, to implement the channeling of emergency federal dollars made available through Community Development Block Grants (CDBG) to distressed homeowners (Finger 2008). The Road Home Program ultimately distributed more than \$8.9 Billion dollars to over 130,000 residents through out the Louisiana coastal area (Road Home Program 2014).

Three options were available to homeowners who had experienced major damage in the flooding and lacked insurance or sufficient funds to rebuild their homes. Option 1 was a rebuilding grant for the original property, option 2 was to sell the home to the Louisiana Recovery Authority and use the money to buy or build another home in Louisiana, and option 3 was to sell the home and use the dollars however they chose. These were the three initial options, but as time went by other supplementary grant options were made available, including environmental mitigation grants to elevate existing homes and additional compensation grants for homeowners who needed more funds than their original grant amount to facilitate recovery.

The first step in the grant making process was to meet with a case manager, on the phone or in person and begin the application. Supporting documents indicating ownership and occupancy at the time of the storm were necessary, as well as, a decision on what grant type was being applied for. Once a completed application was received, the Road Home case manager would check it for completion and contact homeowners to make any necessary amendments. At the same time a title check was run, searching various databases for any other property issues, including a tax lien on the property. The process was fraught with delays and roadblocks for

many, and hearings were held at the state and federal level to understand the delays and speed up the grant making process. A RAND study on the Road Home Program detailed a number of difficulties beginning with the unpredictable time for an eligible homeowner to receive a grant, a time span ranging between two to sixteen months (Eden and Boren 2008). Over a quarter of the applications were considered ineligible or inactive and most problematic was the glacial pace of grant distribution; 18 months after the storm only 137 grants had been distributed out of 130,000 requests (Sturgis 2009). Due to growing frustrations with ICF International's administration of the Road Home program, state legislators voted 97 – 1 for Governor Blanco to cancel the contract. State leaders decided not to do this, as they feared it would end up costing more money in the long run, but ICF was ultimately replaced as the program agent when their contract expired (Evans 2009).

For heir property owners, the Road Home program was an uphill struggle from the outset. Mark Moreau, the director of Southeast Louisiana Legal Services (SLLS), reported that many low-income homeowners were told incorrectly by ICF employees that they needed to clear title before they could apply to the Road Home Program, which resulted in an unknown number of homeowners missing the application deadline completely (DeBerry 2008). It became evident in the months that followed that there was more heir property than anyone had expected. Some kind of coordinated response would be necessary if thousands of homeowners were to have any chance of accessing Road Home grants. In February 2007, the Louisiana State Office of Community Development budgeted half a million dollars for legal aid attorneys to help homeowners clear title. But by March 2008, over 2,200 Road Home applications with judgment of possession issues were still unprocessed (Bates and Green 2009). In post-disaster recovery efforts, time is of the essence, both in terms of ameliorating the damage that compounds over

time and in maintaining the necessary hope and motivation necessary to navigate bureaucratic systems and family dynamics. In June 2008, a group of nonprofits were contracted to provide legal services for applicants who needed to complete successions on their property. Paul Tuttle, the lead lawyer on Southeast Louisiana Legal Services' heir property project, described to me how the volume of heir property issues escalated.

When the Road Home program started, and that was, like, a year after the storm that they started doing applications, then we really got a storm of people saying, "I'm not eligible for Road Home because I can't prove that I have title to this house that I lived in." We realized we were gonna have a flood of cases, and we started trying to figure out how we were gonna deal with that.

In an early article on heir property in New Orleans, Meyer wrote that approximately 15 percent of the property titles examined did not have record owners corresponding with the claimant and that "this astoundingly high percentage could potentially translate into 20,000 or more 'non-merchantable' titles in New Orleans" (2008). This figure was widely referenced in subsequent writings, testimony and research on heir property in New Orleans. An internal ICF document obtained during my research (on next page) supports this estimate with at least 10% of applicants and over 6,000 cases of heir property identified in early 2008. This document provides a unique opportunity to observe heir property's prevalence and its relative distribution across a geographical area, in this case through-out New Orleans Parish. Note that even the terminology related to heir property, 'Judgment of Possession,' was so unfamiliar that it was mistakenly listed as 'Justice of Possession' and then corrected by hand. The yellow bars rising up from each ZIP code represent the number of applications for Road Home grants received, while the green bars represent the number of applicants with judgment of possession issues, or heir property requiring a succession.

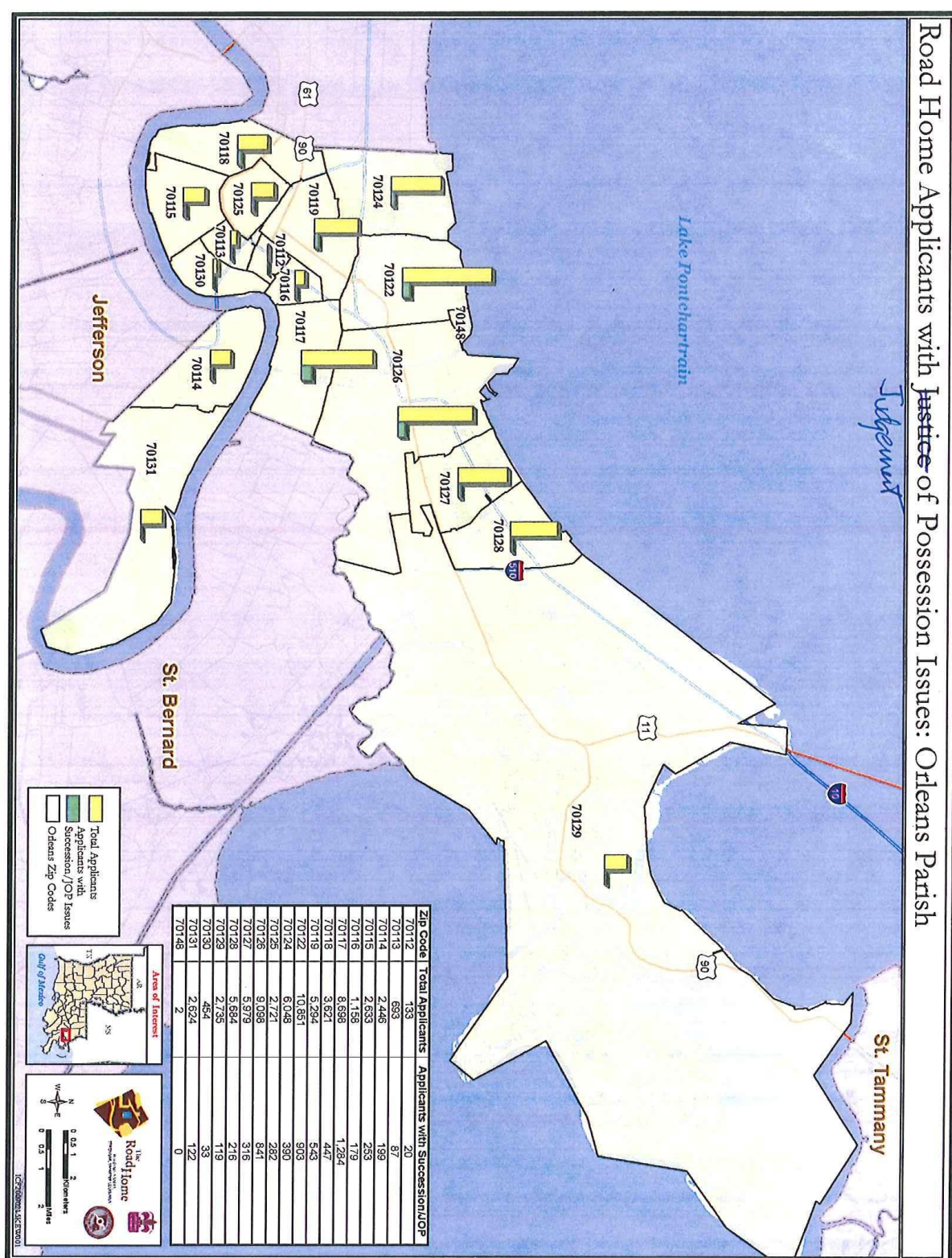


Figure 3: Map detailing Road Home Applications and incidences of heir property

The data contained in the inset table of Figure 3 are displayed in Table 1 and 2 below. Included are the number and percent of individuals below the federal poverty level and the percent of the population who are Black or African American in each ZIP code (2000 US Census). Across New Orleans at the time of this report 6,234 cases of heir property were documented making it the largest substantiated account of heir property in the literature. In 70117, which encompasses the Lower and Upper Ninth Ward neighborhoods, 1,284 or 15 percent of applicants faced the uphill battle of clearing title if they were to access funds to rebuild their damaged or destroyed homes. In that area nearly 20,000 individuals were under the poverty level and 88.8% of the residents identified as being Black or African American.

Table 1: Number of Road Home applications, judgment of possession issues and select demographics (Road Home program documents, 2000 US Census).

ZIP Code	Road Home applications	Judgment of Possession Issues	Individuals below the poverty level	% Population below the poverty level	% Population Black or African American
70112	133	20	4,083	71.9	75.0
70113	693	87	4,965	49.1	94.3
70114	2,446	199	9,837	35.3	73.6
70115	2,633	253	11,332	28.6	51.0
70116	1,158	179	5,851	35.3	68.1
70117	8,698	1,284	19,298	38.0	88.8
70118	3,621	447	9,092	26.2	51.6
70119	5,294	543	14,353	32.8	72.1
70122	10,851	903	10,738	23.5	73.2
70124	6,048	390	1,285	5.6	1.3
70125	2,721	282	8,721	39.5	71.3
70126	9,098	841	9,157	22.8	87.1
70127	5,979	316	5,604	18.1	85.6
70128	5,684	216	3,480	17.1	87.2
70129	2,735	119	4,068	27.7	50.0
70130	454	33	5,371	36.6	46.2
70131	2,624	122	3,661	13.1	41.8
TOTAL	70,870	6,234	NA	NA	NA

Adding owner occupied housing units and calculated the amount and relative share of each dimension by ZIP code. It is clear that over fifty percent of the judgment of possession issues identified were clustered in just three ZIP codes, 70117, 70122 and 70126. In these ZIP codes, the number of Road Home applications nears or exceeds the total number of owner occupied homes in the 2000 Census. In these areas virtually every homeowner submitted a Road Home application to try and secure funds for rehabilitation. In eight ZIP codes over ten percent of the applicants had issues of unclear title. Fifteen percent of Road Home applicants in 70112, 70116 and 70117 were held up due to heir property issues.

Table 2: Number and relative share of owner-occupied homes, Road Home applications, and judgment of possession issues in New Orleans (Road Home documents, 2000 US Census)

ZIP Code	Occupied Housing Units Census 2000	Owner Occupied Housing Units 2000	% of Occupied Housing Units Owner Occupied 2000	# of Road Home (RH) Applicants	% of Owner Occupied Homes to RH Applicants	# of JOP Issues	% of RH Applicants with JOP Issues	% Share of RH Applicants with JOP Issues
70112	2,423	171	7%	133	78%	20	15%	0%
70113	4,078	790	19%	693	88%	87	13%	1%
70114	10,358	4,208	41%	2,446	58%	199	8%	3%
70115	18,219	6,934	38%	2,633	38%	253	10%	4%
70116	7,924	2,133	27%	1,158	54%	179	15%	3%
70117	18,804	8,635	46%	8,698	101%	1,284	15%	21%
70118	15,026	6,807	45%	3,621	53%	447	12%	7%
70119	18,590	6,284	34%	5,294	84%	543	10%	9%
70122	17,819	11,208	63%	10,851	97%	903	8%	14%
70124	10,727	7,464	70%	6,048	81%	390	6%	6%
70125	8,986	3,311	37%	2,721	82%	282	10%	5%
70126	14,487	8,169	56%	9,098	111%	841	9%	13%
70127	11,754	5,676	48%	5,979	105%	316	5%	5%
70128	6,699	4,686	70%	5,684	121%	216	4%	3%
70129	4,653	2,528	54%	2,735	108%	119	4%	2%
70130	7,377	1,721	23%	454	26%	33	7%	1%
70131	10,327	6,864	66%	2,624	38%	122	5%	2%
TOTAL	188,251	87,589	47%	70,870	81%	6,234	9%	100%

The following table details the change in active residential addresses by ZIP code before the storm and nine years later, the percent change and whether it gained or lost population according to US Postal Service vacancy data. Comparing the data from the two tables it is evident that many of the ZIP codes with high levels of heir property are also areas with a significant decline in active residential addresses, with 70117 having just 70% of the active addresses it had before the storm and 70122 with only 80% of its pre-storm housing stock occupied. If we look at levels of blight in these areas the same pattern is observed, with high incidence of blight in areas with high levels of heir property. While it is not possible to determine causality without individual level data, it is clear that high levels of heir property corresponds with low levels of recovery.

Table 3: Change in active residential addresses by ZIP code (GNOCDC 2014)

ZIP Codes	July_2005	April_2014	% Change	+/-
70112	2,637	3,200	121.4%	+
70113	4,033	4,151	102.9%	+
70114	11,897	10,618	89.2%	-
70115	18,407	17,945	97.5%	-
70116	7,917	7,605	96.1%	-
70117	20,191	14,269	70.7%	-
70118	15,779	15,531	98.4%	-
70119	19,594	19,228	98.1%	-
70122	18,233	14,628	80.2%	-
70124	11,278	9,340	82.8%	-
70125	9,119	7,344	80.5%	-
70126	15,085	11,220	74.4%	-
70127	11,853	9,636	81.3%	-
70128	7,491	6,961	92.9%	-
70129	4,919	3,351	68.1%	-
70130	8,611	10,177	118.2%	+
70131	11,188	11,114	99.3%	-
New Orleans Parish	198,232	176,318	88.9%	-

In a discussion with Allison Plyer at the Greater New Orleans Community Data Center (now The Data Center), she was critical of my use of ZIP codes,

The zip codes in the New Orleans area are very large and cover multiple neighborhoods of varied demographic profiles. Moreover the flood lines don't at all correspond to the zip codes. You'd be better off doing block or census tract level analysis if you already have the data at that granularity.

I agreed with her of course, but it was impossible to find heir property data at any granularity lower than ZIP code. Had it been available at the neighborhood or block level I am confident that an even closer relationship between heir property and recovery would have been observable.

I spent an afternoon at the Notarial Archives in downtown New Orleans in order to get a sense of what tracing the title on a home entailed and to see if there was a way for heir property to be identified beyond the Road Home Program document or a case-by-case basis. As all the records were paper-based and not aggregated by any potential indicator of unclear current tenure, there was no way to identify the full scope of heir property in New Orleans. I spent some time with Chris Coty at the Pro Bono Project looking through the assessor's office online database trying to find a way to flag potential cases of heir property based on the last sale or transfer date. By cross checking potential cases against the Vendee's index we found the data to be inconsistent and as the system lacked any bulk export capability it turned out to be a dead end. As far as the total numbers of heir property were concerned, the best I had to work with was the internal Road Home program document. This is a remarkable data source but hardly inclusive of all the heir property in the area and was at a very macro scale. From it we know that over 6,000 applications were delayed or deterred as heir property owners tried to demonstrate ownership and gain the consent of all eligible heirs. Despite my best efforts, I was unable to build a quantitative data set to conclusively link the prevalence of heir property with blight and uneven

recovery rates. I continued to collect qualitative data in order to describe the challenges encountered by heir property owners and institutional actors working on heir property issues to achieve recovery and rebuild their homes, lives, and communities.

In July 2008, the Louisiana Recovery Authority (LRA) announced a deadline of September 5, 2008 for applicants to turn in any outstanding documents necessary for their applications to move forward. The homeowners affected by this deadline included 3,000 who were yet to provide ownership documents. In response, David H. Williams, a litigation director for Southeast Louisiana Legal Services, and Davida Finger, a staff attorney for the University of Loyola Law Clinic, drafted a public letter to the governor and executive director of the LRA, demanding that the deadline be rescinded. They opposed the deadline on the grounds that it was illegal, arbitrary, and would have a detrimental impact on applicants, including those attempting to clear title to their property. About this specific group of applicants who would be negatively affected by the deadline they wrote,

In our experience, about 90% of the homeowners with difficult succession matters are African American. Nowhere near 90% of the homeowners affected by Katrina were African American. As a result, it is clear that the impact of this change would disproportionately disqualify African Americans from participating in the program (Hammer 2008).

Williams and Finger clearly acknowledge that the majority of homeowners struggling to access federal recovery dollars, due to issues of unclear title, were African-American. Furthermore, the calculations used to determine the grant amounts for homeowners have proven to be racially discriminatory as the Road Home Program used the pre-storm value of the home (Hammer 2010). The ‘double discount’ on African American owned land described by Mitchell (2007) when rural heir property is sold at partition sales, pennies on the dollar, finds its corollary in urban heir property, undervalued and road-blocked from the two primary mechanisms of

recovery. The maximum Road Home Award of \$150,000 was regularly mentioned in the media and figured prominently in the expectations of homeowners, while in reality the average grant was only \$60,000 (Plyer 2009). And the low values of grants extended beyond just heir property owners and African American applicants, as a Policy Link study detailed,

An astounding 81 percent of recipients in New Orleans and 69 percent of those in other parishes who planned to rebuild did not have sufficient funds to cover repairs even when taking into account insurance and Road Home grants. Because grant awards were based on pre-storm home values rather than total repair costs, the average gap between damage estimates and rebuilding funds was \$36,000. Gaps were larger in lower income and African American neighborhoods; in the Lower Ninth Ward the average gap was \$75,000 (Plyer 2009:4).

To understand the basis of this funding gap, experienced across the continuum of homeowners, but most acutely by those in predominantly African American neighborhoods, it is necessary to begin with how home values were determined by the assessor's office. The local tax assessor's office is tasked with reassessing the values of residential properties every four years, but given the structural constraints of under-staffing and limited funding, it is conducted in a manner that consistently undervalues properties. Instead of directly assessing the value of a home through a physical inspection, or through a determination of replacement costs, the local tax assessor based the valuation on the sales values of homes physically proximate to them (Coty 2010). If homes are rarely sold in a neighborhood or on one's block, owing to low demand or unmerchantable title due to heir property, the valuations of homes based on recent sales figures are low. As property taxes are calculated on these assessments it may have been in the short-term interest for homeowners to accept these lower than replacement cost valuations. It could have also served to keep the home values below the household exemption threshold, effectively eliminating the need to pay real estate tax.

As Road Home grants were calculated based on the estimated damage and assessed value of the home minus a penalty for failing to hold insurance coverage, in neighborhoods where home valuations were very low, the grants received made recovery unlikely. Along with the devaluation of homes through this method of assessment, homes in predominantly Black or African-American neighborhoods are priced below market averages and fail to appreciate in value at the same rate as homes in predominantly White neighborhoods (Rusk 2001). Ultimately the racial disparities in grant disbursements were so egregious that a civil lawsuit was filed by the Greater New Orleans Fair Housing Coalition in partnership with the NAACP Legal Defense Fund in the U.S. District Court in Washington, D.C. The plaintiffs secured a \$62 Million settlement, which was distributed to 1,500 homeowners as supplemental home rebuilding grants. The judge ordered the Louisiana Recovery Authority to use the cost of rebuilding rather than the pre-storm home value to calculate rebuilding grants in the future, although he did not order the recalculation of grants already disbursed as the plaintiffs had hoped (Reckdahl 2011). Shifting recovery grant calculations to take into account replacement costs would be a significant improvement in future grant-making scenarios and would facilitate recovery far more effectively.

Despite the shortfall, for most homeowners a \$60,000 rebuilding grant was better than nothing. So for heir property owners with title issues, the first step in the grant process required formalizing ownership rights to their home through a formal succession. If paid for out of pocket, this process generally costs \$3,000 to \$5,000 (Meyer 2008). Heirs first demonstrated the initial homeowner's legal possession of the property by getting copies of the original acts of purchase from the Notarial Archives. With the assistance of an attorney, heirs would then prepare a statement detailing all the legal heirs of the original owners using family records like wills, birth, death and marriage certificates, and by consulting published obituaries. Three legal

documents were then prepared; the petition of the heirs to judge for the identification of heirs, the affidavit of the heirs, sworn as being correct, signed and notarized, and a description of the value of the property. Once submitted a judge then reviewed the documents and when satisfied with their completeness signed a Judgment of Possession, which the attorney or heirs would then file with the Notarial Archives (Stanfield 2008).

After the judgment of possession was completed, the Road Home applicant was required to secure ‘rights of attorney’ from all the other co-owners in order to be designated as the heir who would receive the funds with which to rebuild. The support of co-owners was demonstrated through their signing of an affidavit of support that allowed a single heir to collect the insurance or Road Home monies for the purpose of repairing the damaged home. It also conferred contractual responsibility upon the Road Home applicant to complete the repairs within a three-year window or be held liable for prosecution by the state. The liability conferred on Road Home applicants to have repairs completed within three years has proven problematic as less than 40% of 109,335 Road Home grant recipients surveyed in November 2011 could show they were back in rebuilt homes (Hammer, 2011). Legislation passed in 2010 gave grantees whose homes had not been rebuilt, were deemed blighted or in violation of code enforcement policies, the ability to sign over ownership of the property to the Louisiana Recovery Authority (LRA) in exchange for being indemnified from the liability of paying back the grant. How this form of code enforcement will affect heir property owners who received grants to rebuild is unknown. The ability to sign over ownership may still require clear title – and only a fraction of all heir property in New Orleans has been brought up to this level of formal ownership.

Interviews – Institutional Actors

In presenting the qualitative data and analysis I begin with institutional actors, whose early interviews helped frame my understanding of their property issues in post-Katrina New Orleans. While I interviewed eight institutional actors, I have structured this section around the two most informative interviews which best serve to describe the institutional response to their property issues in New Orleans from the perspective of legal practitioner and policy maker. I have included confirming and countervailing voices drawn from the other interviews, thereby integrating all the relevant data collected while maintaining the narrative structure of each interview.

A Practitioner's Perspective

It was already blazing hot as I exited my hotel in the French Quarter at 8:00 AM and walked the half dozen or so blocks to the downtown offices of Southeast Louisiana Legal Services. The agency's stated mission is to "achieve justice for low income people by enforcing and defending their rights through civil legal aid, advocacy and community education" (SLLS 2014). As the largest public interest law group in the area, Southeast Louisiana Legal Services had played a defining role in the institutional response to their property issues in the post-disaster recovery period. By the time I reached the building the back of my shirt was wet with perspiration. Grateful for the air-conditioning, I took the elevator up to the reception area and waited with four other people who were waiting to avail themselves of a variety of legal services. Paul Tuttle, the lawyer whose name appeared on the majority of succession documents filed in New Orleans since the Road Home Program began, led me in to his office. After hearing a little of my background he shared that he had served in the Peace Corps in West Africa for a number of years before entering public service law in New Orleans. This was a point of early connection

and our conversation flowed easily over the next hour or so. With the audio recorder running, he launched into his recollections of the post disaster recovery period as it pertained to heir property issues.

When Paul had first returned to the city in October two months after the flooding, his agency's offices had been closed due to water damage and they were working across the river at another office. As practically the whole city had been underwater, the property records in the notarial archives housed in the basement of the courthouse had been damaged by water. These irreplaceable property documents were sent to Chicago in refrigerated trucks, where they were flash frozen in order to preserve them, to the tune of a few million dollars. It is an interesting thought experiment imagining what would have been done had they been irreparably damaged. If possession had been inferred by occupancy, might this have been a more effective policy for achieving post-disaster recovery? Thought experiment aside, the documents did sustain some damage and with most of the ink signatures washed off the working policy was, 'if it was filed it was complete.' There was also a sanitary problem with these files, as some of the water damage was caused by backed up sewage. Latex gloves were required, along with disinfectant when handling the 'poo-poo documents' (Stanfield 2008).

Tuttle's first direct encounter with heir property as a potential roadblock to recovery occurred when homeowners tried to claim insurance monies,

A few weeks after the storm, we started getting phone calls from people who had made insurance claims, and they were startin' to get checks back and they were made out to their mother or father who had originally owned the house, and they had never done the succession. So we started to realize that we were gonna have to start doing successions.

That's the Louisiana term for probate.

Heir property issues related to insurance claims, sizable as they were, turned out to be just the tip of the iceberg. The real scope of the heir property issue became clearer in the months that

followed when the federal and state housing recovery programs were instituted for those lacking insurance or sustained more damage than their policies could help cover. Tuttle continued,

When the Road Home program started, we realized we were gonna have a flood of cases, and we started trying to figure out how we were gonna deal with that. What we did was solicit volunteer attorneys, mostly from out of state, because most of the attorneys in-state were dealing with their own problems. At first we had high school students, we had law students, we had various attorneys that had no background in Louisiana law or successions law at all, just comin' through, usually a week or two weeks at a time. I was havin' 'em call clients and do questionnaires, research issues for me, draft documents.

A few months in to doing the successions work for Road Home applicants, Tuttle was approached by a wealthy law firm in North Carolina, Wombyle Carlisle, best known for it's work litigating on behalf of big tobacco. The firm had a number of Louisianan attorneys wanting to help out their home state. Tuttle jumped at the opportunity and for the rest of the summer teams of attorneys were flown in to New Orleans for a week at a time. They provided a variety of pro bono services for heir property owners, researched family trees, looked through damp property records in boxes spread out in the convention center, and assembled the documents needed for a formal succession. Tuttle described the scene,

They were goin' over there and lookin' through the boxes and doin' title searches. They usually had about five or six attorneys on a team, and they had a new team come every week, for the entire summer. They interviewed about 300, 350 people. Some people we couldn't help at all because they really didn't have title to the land, or they had lost it in a tax sale or something like that before the storm. It took 'em a little while to get into the swing of things. They're North Carolina attorneys. They had no experience in this area at all. We had to teach them from scratch. They were a little afraid at first, but when they started doin' it, it started to pick up steam, and it took a little over two years to get the bulk of the cases done.

This passage makes it clear how complex and time-consuming successions work can be, as it took teams of lawyers to sort through their cases. The lawyers would then head back to North Carolina and draft the succession documents, send them back to Paul to look over and print. When satisfied with their completeness, Tuttle would call the family members in and have them sign the documents and then file them in court. As such, he was the named attorney on all the pleadings. As Southeast Louisiana Legal Services was contracted with the Road Home Program to provide legal assistance for those applicants who had issues with clear title, at the behest of the state legislature, they had the capacity to influence some of the policy and procedure. Tuttle described this process,

When the Road Home program was in full swing, we had a lot of meetings with Road Home and their attorneys. We had a lot of collaborative meetings with them, trying to hammer out the procedures for getting a grant. We said, “Look, why don’t you not acquire formal succession every time? It might be difficult. They might not be able to afford the court fees.” We managed to get them to accept a shortcut affidavit, where they just did an affidavit that they owned the land, and that was just that they were getting a grant.

This shortcut affidavit cut out much of the paperwork and research required, and instead had available heirs describe the full pool of heirs to the best of their ability and sign an affidavit to that effect. It is important to note that this process did not result in merchantable title of heir property, but rather established exactly who the co-owners were, in a manner sufficient for the Road Home to affirm ownership, and move the application on to the next stage of the process. At closing, it was still required that all eligible co-owners agree on what type of grant to receive. Tuttle went into detail regarding this distinction, and described the different grants available in the program,

You also had the option in the Road Home program to sell your property to the state if you didn't want to come back or you couldn't rebuild. The people that wanted to sell, we had to go through all the legal motions, because it had to be marketable title. The state wanted to sell these properties, get rid of 'em somehow, after this was all over. The people that were selling their properties, we did everything that we could to clear the title so that they could sell it. The people that were just getting a grant we did the affidavits for, just 'cause we wanted them to be able to get their money as quickly as possible. But as most of the difficult work had been accomplished already in the process of proving ownership, it would be possible after the Road Home rebuilding grant was disbursed for owners to finish up the work and establish clear merchantable title to their properties at a later date.

The people that were just getting a grant we did the affidavits for, just 'cause we wanted them to be able to get their money as quickly as possible, and then we said, "Why don't you come back later on, in a year or two, and maybe we'll be able to do the succession work for you." But we put our emphasis on, if we could do it quickly, let's do it quickly and go on to the next person, because we had tons and tons of people coming in. So no, the people that were getting grants were not getting marketable title. They were just getting Road Home money. But a lot of them took a little bit of the Road Home money and went to a private attorney and had it done, and if they were able to hand the attorney the affidavit we had done, 80% of the work had been done. The title search had been done and the information had been gathered. It would be real easy for the attorney to draft up documents and file them.

The services offered by Southeast Louisiana Legal Services and their working relationship with The Road Home Program significantly improved the chances for applicants with heir property, but multiple points of contention arose between the two parties. These included payment from the Road Home Program for the services SLLS provided, the Road Home's unwillingness to quickly adapt their processes to help applicants, and the poor quality of third party contractors hired to check for title issues at the beginning of the grant making process. Tuttle explained this final issue that caused so much difficulty for applicants,

All along, they've had their own title companies. But for whatever reason, we didn't find them to be very competent. They didn't do very good title searches. For example, they would send us a case and say, "This person has a lien on their property, and we've got to clear it before we would give them a grant." When we'd go and look, we'd find all they did was run that person's name through their civil district court database, and any lawsuit that came up with that person's name, if the guy's name was John Smith, there might be 30 cases, and they would just say there was a lien on the property. And we'd have to prove that that John Smith was not the John Smith listed in any of these cases. It was very difficult trying to prove. And I don't think if you were selling your property, that that's what the title company would do.

There were reports in the press about these sloppy title searches, as well as the high sums made by contractors who churned through large volume of cases with little quality control. As was the case with loan originators before and 'robo-signers' issuing foreclosure notices after the Great Recession, the incentive structure favored volume rather than accuracy. Many title agents were paid per unit, incentivizing speed over accuracy, and lead to issues as banal as a commonly occurring name leading to serious delays. Tuttle made a solid point; the stringency and sloppiness of the work would have been unlikely for homeowners attempting to sell their homes in regular circumstances, yet occurred frequently for displaced homeowners trying to access federal recovery grants. The use of private contractors with little oversight and delayed accountability caused a variety of problems in the recovery period. In the face of these difficulties, the efforts of legal aid providers and volunteers enabled hundreds of applicants to collect grant money and make progress in the recovery process.

As noted in the heir property literature, fractionated ownership poses real practical problems when a unanimous decision is needed. Tuttle described the issues associated with multiple co-owners as they determined what to do with shared property, along with the legal underpinnings that contribute to this difficulty,

You need 100% of the co-owners' cooperation or assent to be able to do anything with the property, to rebuild it, to mortgage it, or to sell it, even if I only have a 1% interest in the property and somebody else has 99%, they need me to sign off on everything. So that created a lot of problems, 'cause you got a lot of people that are missing, children inherit, you've got to do a tutorship or a guardianship for them, someone that's mentally incapacitated is an owner, so you've got to do an interdiction and have a guardian placed over them to be able to sign the papers for them. So that Louisiana law created a lot of problems, but that's the bedrock of the Louisiana land-owning system. There was never any question of changing that. Maybe there should be, obviously everyone discussed it, but the people in the state bar that study these kinds of issues, they found that there was absolute resistance to changing land rights. Property rights are very, very sacred, not just in Louisiana, but in the U.S. in general. To be deprived of your property without your assent is something that people don't like at all.

This is a complicated reality for lawmakers, as the fear of unintended consequences can be a significant hurdle to making changes. The need for 100% agreement cut both ways in the grant selection process, in some cases co-owners wanted to sell and refused to budge, in others co-owners wanted to rebuild and were similarly unwilling to yield. If an agreement could not be reached the application would stall, and the property would continue to deteriorate. Many institutional actors described this scenario and it served to highlight the difficulties in requiring a group of people to make decisions through consensus rather than a simple majority. These broken down houses affected individual homeowners and the recovery of their neighborhoods more broadly. City officials were reticent to take the property through code enforcement, as they'd be faced with the bad press of taking their constituent's homes because they were too under-resourced to fix it. A change in the law designed to make it easier to appropriate blighted heir property and cycle it back into the formal property system would similarly disadvantage the poorest members of society, more often than not, African-American as well. As Meyer noted,

You've got to ask the question, whose property do you take away (when changing the existing laws)? The answer is, by and large you take away poor people's property. So you're gonna have politicians who are just gonna be against any change in the law that would allow a quicker seizure of property because that's gonna in effect be a burden on poor people. So all that has to be worked through, and the solution has to be found. Across the spectrum of interviews people were unsure of what to do when co-owners of heir property reached an impasse. Paul described his conflicting emotions regarding the subject.

My clients are poor, low educated, and I have a lot of sympathy for 'em, but I've also got to have sympathy for these people that are trying to live in these neighborhoods, next to these blighted properties, and at some point you've got to take it away from 'em. They've got to have rights, they've got to know what's goin' on, they've got to have a chance to test it in court. But if you've got a family that can't agree on what to do with the property, not paying the property taxes and not taking care of the property, at some point you've got to do something about it.

I encountered this sentiment speaking to community leaders in the Lower Ninth Ward, who were face to face with blighted heir property on every block. Most were co-owners of some family property themselves. Many saw it as a family issue, and one that should be resolved at the family level wherever possible. A cultural dimension of heir property I had not read in the literature was uncovered in my discussions with Linda Jackson, a community leader in the Lower Ninth Ward. One of the reasons for heir property's continued perpetuation was that for many, undertaking a formal succession indicated that there was some kind of family problem going on. Rather than being seen as a responsible act, to clear up ownership after Mom, Dad, or Auntie had died, it was seen as family members who wanted to get 'theirs' and not hold it in common anymore (Jackson 2010). Nevertheless a court-approved succession was needed after the storm, and this requirement acted as an external pressure, superseding the existing cultural values. In my interviews with heir property owners, all indicated that they were weary of the

difficulties presented by cloudy title and the need for consensus on every decision and wanted to be in full legal compliance in the future. For some this meant keeping up to date on probate procedures when an heir passed away, while for others it meant securing outright clear individual title through sale or donation of other heirs' interests in the property.

I asked Tuttle how many heir property owners Southeast Louisiana Legal Services had assisted in their heir property efforts since the storm. Changing databases twice during the course of the project made it difficult for him to gauge exactly how many heir property owners they had helped but estimated conservatively that at least 500 homeowners had successfully navigated the process and received a rebuilding check. Using the \$60,000 average grant amount this totals to over \$30 million reinvested in some of New Orleans poorest and hardest hit neighborhoods, predominantly populated by African-Americans. Talking about this success, and the unlikely partnerships that had helped to achieve it, Tuttle portrayed the communities that emerged around heir property issues and others in the post-disaster recovery period,

It was a tremendous effort. When I think about all the different people from all over the country that have worked together on this, it's just incredible. I think the television images after the storm. I think people here and in the rest of the country were just absolutely shocked at what happened and at the lack of response by the government. There was a real perception, which was correct, that private groups and volunteers and people themselves were gonna have to step up and help. And that's been the case all throughout, that the state and local—our leaders have failed us. Most of the rebuilding work has been done through churches and nonprofits and people just jumpin' in their cars and comin' down here with their tools. It's nice to see that Americans can fill the void, they don't sit back and wait.

And neither did the public interest law groups like Southeast Louisiana Legal Service, the Pro-Bono Project, and Louisiana Appleseed. Rather than shying away from the difficult task of helping heir property owners access recovery dollars, they forged new alliances, employed the

services of well-intentioned volunteers and helped reform, in part, some of the more stringent policies that barred this group of homeowners from achieving a measure of recovery. Work has continued since I interviewed Paul, and in May 2011, the Community Development Project launched its New Orleans Title Clearing Initiative to continue to provide legal assistance, education, and outreach, and policy reform around heir property issues. I contacted the archivist at the Notarial Archives housed at the civil district court in New Orleans and asked how many Judgment of Possessions had been filed since they moved to an electronic recording system after Hurricane Katrina. Christina Bryant responded that 6,936 had been filed between 6/1/2007 and 8/1/2011 (the time of my data request) along with 674 amended judgments and 220 extract judgments over that same time period. Juxtaposed with David Stanfield's 2008 report for UN-HABITAT in which he reported that 1,281 judgments of possession had been filed between 6/1/2007 and 12/1/2007, it is clear that some significant progress has been made in the formalization of ownership of property previously held under cloudy title.

A Policymaker's Perspective

I interviewed Malcolm Meyer, a prominent New Orleans' real estate lawyer who emerged as the leading legal authority on heir property after Hurricane Katrina, prior to arriving in New Orleans and again in-person during my field research. I met him at his office at One Shell Square in New Orleans Central Business District and we had lunch at a restaurant nearby that served a French Provencal fare. He related to me that he returned to the city soon after the storm to find the civil and criminal court system in disarray. He was included in a series of meetings with members of the Louisiana Supreme court and other invested parties in the legal and criminal justice system who were trying to get the court systems back up and running. Their

focus, however, was mainly on the criminal courts, and questions of how to get them back into place and protect people from languishing in jail because they couldn't have their trials. Meyer suggested that the criminal and civil law people separate for future meetings in order to help kick-start the recovery of the civil courts, which were taking a back seat to the more pressing criminal court issues. At the first meeting of civil law practitioners, he addressed the need to work toward restoring the property system and told those in attendance,

“I don't think you guys realize that the rebuilding is not going to be able to go forward until records are available and also any title issues are resolved.” My first solution, was that under the emergency powers given to the governor, the governor can appoint what we call a special master, who would be in charge of determining who is entitled to receive the direct funds to rebuild a house. And so instead of, if you had a title and you have it owned by 8 grandchildren, this person is like a mini-judge, he would have a hearing, he would call all 8 grandchildren in, and he says this house needs to be rebuilt, and so and so lives in it. I propose, that so and so, even though they only own one-eighth of it be authorized to receive the money from the federal government and to rebuild the house.

Having written the definitive book on Louisianan real estate law, Malcolm was in a position to consider solutions and the way things could be, as opposed to simply being frustrated by the way things were. This legal inquisitiveness and pragmatism was evident in both interviews. His initial idea of the appointment of a special master didn't gain traction and as the Road Home Program picked up steam, and more and more heir property issues began to emerge, he considered alternative measures. He related this process,

Now maybe 85% of the people had good titles and started getting their money but 15% of the people did not. And they just started getting road blocks thrown in front of them at every point and that's where I came up with the next idea and that was instead of having to spend maybe \$1500 on each decedent's estate they'd have to prove, establish who the heirs are, we ought to be able to do this just with an affidavit and have all the surviving

heirs sign, and then file it and you could cut the cost down by 2/3 or more. And when I first proposed that at another meeting, the answer from several of the people was “We’ve never done that in 200 years why would we ever do it now?” And I said, “These are extraordinary circumstances we need to consider something like this.” So I went off alone and then somehow by accident I ran across the people at Appleseed.

Together with Christy Kane at Louisiana Appleseed they began to strategize how to introduce a cost saving and time saving measure for heir property owners. It would allow them to clear title on their homes without conducting a full succession for each deceased eligible heir, and be eligible for Road Home grants and insurance monies. They found that heir property owners in Alabama, Texas, and Mississippi affected by Hurricane Katrina were also running into similar problems when trying to access federal recovery grants. I asked Malcolm how the idea germinated, and what it took to implement it.

The difficulty was convincing other people that the procedure could be changed without damage to the system.

(Who was concerned about that? Was it the legislature?)

Oh, other lawyers basically, you know there is an initial inertia. I mean when I tell you “We’ve done it this way for two hundred years, why would we ever want to change that?” This is a reaction that came from different people but when you are dealing with real estate lawyers who are the most conservative lawyers, you know their whole work, and my work too, is looking at the past in order to determine if you have good title...so you have the most conservative group of legal professionals dealing in this area, and that’s one problem.

In Bourdieu’s (1987) essay “On the Force of Law,” he details the confrontation between legal practices and ‘sacred legal texts’ and the social realities they are supposed to express or regulate. In his formulation, the power of law is special, as it extends beyond the circle of believers who subscribe to legal texts to those whose ethical and political inclinations have the responsibility of applying them, creating a self-reinforcing cycle of legitimation and stability.

Along with the specific legal texts, a whole host of structured behaviors and customary procedures serve to structure this site of struggle, a phenomena evident in the case of heir property. Along with the theoretical difficulties posed by changing elements of the laws, the business of law associated with clearing title and the standard operating procedures would be affected. Malcolm continued,

The second problem is the fear of loss of revenue, and what I tried to explain was if you're making your money off of these poor people you need to get in another profession because you know, in my opinion you'll actually make more money. For example, if I can charge you \$1500 and do a lot of paper work, and you don't have \$1500 you won't come to me. But if I can do the same thing in one third of the time for \$500 and you can pay me, I just made \$500, I haven't lost \$1500 I've made \$500 where I would have made zero.

This made economic sense and assuaged the concerns of some legal practitioners. Malcolm and Christy devised a twofold strategy to help coordinate the process of passing the bill.

Step number 1, we identified an issue that we knew could be supported. It wasn't an issue that we'd make money on; just an issue that we knew was good. Step number 2, was the timing. By having the study group and working the statute very carefully and doing it well, people who expressed the idea that "Oh we haven't done that in 200 years" all of a sudden started saying, "We can do this." By the time we introduced the statute we had unanimous support for it, we actually did not have a single vote in Louisiana legislature in either house against the bill.

The reward for their work was the successful passage of Act 81 in 2009 and Act 323 in 2011.

Both of these bills made it acceptable for the filing of affidavits for Louisiana small successions containing immovable property. The legal justification for this change rested in the fact that co-owners under the current code were already owners of the deceased's estate, even though they were not formally recognized as such until the succession had been completed. The effect of the acts would be to allow affidavits of support to establish this co-ownership in a legally recognized

manner rather than a formal succession (Meyer 2011). Meyer notes how the plight of heir property owners struggling to access recovery grants acted as a focusing event with sufficient emotional weight to help reform a larger process.

It's a broad enough issue, the focusing point were these individuals who were in the direst of circumstances but in approaching that issue it then exposed a larger element within the overall practice that could be improved.

While the affidavit solution provided some measure of relief for heir property owners in the application process and beyond, Tuttle pointed out that more was needed to be done to deal with this issue in the future to avoid the chronic long-term effects of heir property in society.

You still need the same information for an affidavit. It just makes it a little less costly, that they don't have to go to court and pay the court process fees. I don't think it's gonna be a radical help. It makes it a little less expensive for people. If you've got a lost will or missing co-heirs, you're still in trouble. What's more important, I think, is just to make people aware of how important it is to keep clear title and continue to provide that service, which unfortunately we're not doing right now. I think we just need to on an ongoing basis make sure that there's some group somewhere in the city that is doing title work and educating people on how important it is, and consolidating ownership

Time and again in my conversations with institutional actors came the refrain, "How do we get people to do this kind of work before the next storm strikes?" This is a question for New Orleans as well as other areas of the country where heir property exists. The 'storm' could be literal as it was in New Orleans, or other hazards to heir property owners' tenure. In South Carolina, as the Gullahs become sought-after real estate, or in Alabama, as Black Belt farmland goes under the hammer at auction, fractionated ownership and unclear title poses a severe threat to the livelihoods of many. What this points to is the need for education of heir property owners of the peril and promise of their form of land ownership before it's too late. It is also necessary to find ways to provide incentives and eliminate barriers for their participation in the formal system

of property recordation without sacrificing the communal characteristics that bind extended families together on land held for generations.

In an interview with Christy Kane, the executive director of Louisiana Appleseed, she outlined her organization's commitment to education and outreach. Legal clinics were held at community centers, public awareness campaigns instituted, and local leaders recruited to act as champions for the importance of clear title. A number of simple, straightforward brochures outlining the risks associated with heir property and rewards for clear title were developed and distributed to community based organizations in areas with a high prevalence of heir property. These resources were shared with other Appleseed organizations in the region to help facilitate a regional response to heir property. Malcolm suggested other potential selling points for elderly heir property owners,

Maybe—the approach has got to be pointing out the rewards. “You can borrow money at 6%, 7%. You have somewhere secure to live when you get old and on Social Security, because you won't have to use your Social Security money to pay rent. You can use it to do other things that will make life more comfortable. Those are the rewards that we're trying to sell to you. It's all within your power.”

Informing people of the need to protect their assets and providing assistance in order to clear title to their homes is one solution to the problems posed by heir property. Another, implemented in Louisiana, is to simplify the probate process and decrease the associated costs of clearing title. The institutional response to heir property issues, spearheaded by legal advocacy groups and supported by other stakeholders, has had a significant impact on the outcomes for many heir property owners in post-Katrina New Orleans.

Public serving legal practitioners and civic-minded policymakers, like those represented in the previous interviews have been instrumental in helping heir property owners protect their most important asset and achieve levels of post-disaster recovery in New Orleans.



Figure 5: A brick house in the Lower Ninth Ward with a simple request

Interviews – Heir Property Owners

The next section focuses on in-depth interviews conducted with heir property owners in and around the Lower Ninth Ward. I have tried to preserve the narrative flow of each interview to provide context both for the individual's story and for the research act itself, while also looking for broader themes and connecting patterns across the interviews. While everyone had their own unique story to tell, four major themes were identified across all interviews: tenacity and trauma, breaking the social contract, disorientation and dislocation from social capital, and roadblocks to recovery.

I present substantial sections of quoted text from each interviewee that best demonstrates these themes along with supporting evidence from other interviews and the research literature. I also provide added commentary and supporting evidence that helps to generalize from the experience of one to many. As mentioned in the methods section, I have used pseudonyms for all heir property owners in order to preserve their anonymity.

Tenacity and Trauma

My first interview with an heir property owner was in the offices of Common Ground Relief in the Lower Ninth Ward. It was another sweltering hot day and the staff graciously allowed us to meet in the air-conditioned Internet café on the top floor. Sitting across from me was Alvin, a middle aged African-American man with large broad hands, which he used to gesture expressively while he spoke. He avoided direct eye contact and seemed more comfortable gazing at one of the computer monitors while I asked him questions. Alvin's story typified the experience of many middle-aged male urban heir property owners I heard from and read about. He had fallen on hard times and had returned to his childhood home in the Lower Ninth Ward after his Dad passed away. Other interviewees recounted some kind of setback that precipitated their moving in to family-owned homes. Alvin had been unemployed for an extended period after losing his job at a large corporation and had lived with his brother for a few years before Hurricane Katrina struck. His father and mother built the home in the 50's and raised their 12 children there over the course of thirty years. Like many residents of the Lower Ninth Ward, they had moved there from other parts of the city to provide a safer environment for their children to grow up in. Alvin recalled the neighborhood,

I thought it was a nice place – I didn't have anything else to compare it to. I grew up a happy child... My dad built the house. When he passed, he basically left the property to

his children. My mother passed before, previously. I had been taking care of the house, paying all the bills, the taxes and everything.

Alvin's brother was also unemployed and uninterested in maintaining the property, so he felt obligated to take a more active role in its upkeep. This is often the case with heir property; a single co-owner assumes most of the responsibility for the general upkeep. This includes paying the utilities and taxes on the home on behalf of all co-owners, and taking care of routine maintenance, as well as, more substantial repairs. Often this falls to the heir who occupies the home, but not always. I interviewed a gentleman who took care of all these duties while his niece and younger brother occupied the home. All of these tasks, generally understood to be the role of a conscientious homeowner, conferred a sense of stability and ownership to the heirs, which only added to the shock when heir property issues arose after the storm. Alvin kept the taxes on the home current by filing the paperwork to maintain his household exemption due to the low assessed value of the home and his current economic hardship. He related this to me,

The taxes had to be paid for the house. That's when I started. Around 2003, I paid them the first year. I'd go down there to city hall and take care of it, or you could either go exempt or somethin' like that or pay the taxes or whatever, with your ability to pay. My dad's name was on it at first. My sister's name—you know, basically, whoever paid for it. Somebody's name was on it, and you didn't really mind. You just paid the taxes.

Many counties allow this unclear ownership to continue and simply send a tax notice to the "The Estate of X" or "The Heirs of X" giving heirs a false sense of security that their ownership has been legally recognized, but merely paying taxes never ripens into recognized legal ownership (Gedding 2010).

While some heir property owners had difficulty proving occupancy prior to the disaster, Alvin was in the house the morning the industrial canal levee wall was breached by a ship that

had slipped it's mooring, releasing an explosive wave of water into the Lower Ninth Ward.

Gesturing out the window over his shoulder he recalled the events of that August morning,

This was actually, this particular street right here, the break was right there. So when that happened, water rushed in this direction diagonally. So all the houses in that path were washed away. Water went from that direction in that direction, on a diagonal towards the lowest-lying area, and all the houses in that path were basically washed away. Then it filled. In my house the water wasn't rushing, it just rose. I was in the house durin' the hurricane, me and my brother and a friend —the flood waters started to come up and we had to break through the ceiling, the roof, to get out of the house. The water rose all the way up to the ceiling in the house. The house is, like, three feet off the ground, and the ceiling is, like, nine feet high, and the water went all the way up to the ceiling, and we were up there in the attic. In order to get out, to get on a boat, we had to break through the roof.

This is an element easily forgotten in the heir property debate; homeowners weren't just burdened in the recovery period but were traumatized by the disaster itself. Many were lucky to be alive and saw rebuilding their homes as a way to move through and past the trauma of Hurricane Katrina. Nearly everyone I met had a story from the storm, which they reflexively shared at some point in our discussion. That the acute trauma of the incident was compounded by the chronic trauma of the ensuing weeks, months, and years compels us to improve our disaster response and recovery strategies.

After a boat rescued Alvin, his brother, and a friend from their roof they were dropped off with fellow survivors and a helicopter flew them to higher ground where they spent five days sheltered in a neighborhood school. When the city was evacuated soon after, he was taken to the airport and flown to Georgia where he was put up in a motel for nine months. During his time there Alvin obtained part time work and was able to save enough to buy himself a used car, a Dodge Caravan he told me. He made his first trip back to New Orleans in January 2006, four

months after the flood, to inspect the house that he had last seen submerged beneath nine feet of water. He described what he saw,

This area wasn't open to the public yet, but you could drive here, just to see your house and stuff like that. Basically the house was caked with mud, five inches on the floor, all over. But it was still standing up. There was a hole in the roof, and everything in it was fully gone. The area was completely devastated... Yeah, that (the shock) was pretty bad, because you've gotta remember that when we left, the last time I left, the water was all the way up to—basically to—not above the roof, you could still see the roof, but the water was touchin' the ceiling. So there was nothin' to see. You couldn't see the houses that were sitting on the ground. So when I came back, whew, everything was pretty much torn up. No one was allowed to live back here. So I knew what I was comin' back to when I came back in April.

Alvin drove back to Georgia determined to return to New Orleans as soon as he was able.

Although his neighborhood had been decimated, he felt the draw to return, in contrast to many in a similar situation. He recounts the contrasting sentiments of many of his neighbors and peers,

Most people that were in Georgia with me, stayed there. Most people weren't gonna come back. They basically had to endure a lot from the hurricane and everything they went through, ripped from their lives. So they basically had enough of New Orleans. They weren't gonna come back. But I decided I wanted to return. So I got my things together and drove back down here to take care of the house, just make sure that it wasn't going to wind up bein' torn down, demolished. They were demolishing houses. I didn't want 'em to tear the house down. I wanted to keep the house together.

Alvin's concerns for the fate of his home were justified. In late December 2005, the city announced plans to demolish 2,500 homes that had been damaged by the floodwaters and on March 6, 2006, the first homes were torn down and hauled away (Finger 2007). All that was left behind were bare plots, often marked by a lonely set of concrete stairs leading up to nowhere, like gravestones marking the spaces where houses had once stood.



Figure 6: Concrete stairs are all that remains of a demolished home

As many residents hadn't even been able to return to inspect their homes, let alone appeal the city's decision to have the structures torn down, there was widespread public outrage and public legal defenders filed for injunctive relief (Finger 2007). Alvin's solution was more direct, as he returned to his home and began to tackle the damage that the floodwaters and subsequent months of neglect had wrought.

First I had to gut the house, get everything out. Everything was gone, everything was totally lost. The house had to be stripped. And some time in, I think it was June or July, FEMA started to give people trailers. So I put a trailer in the front yard, to live in while I repaired the house.

Alvin's response to dig in with his own hands and begin to clean up in order to restore his home demonstrated significant commitment to rebuild, and given the deteriorated state of his entire neighborhood, courage. But his struggle to rebuild his family home quickly became more complicated, even as the promise of federal recovery dollars brought it within the realm of the possible. He now had to face the realities of co-ownership of heir property in a recovery program unprepared for the widespread proliferation of unclear title. He described what happened next,

There was this federally funded Road Home program. They basically was gonna fund the rebuilding of the property if you wanted to rebuild the house. There was a problem because my brothers' and sisters' names were also on the deed of the property. And in order to receive the money from Road Home, I had to obtain basically power of attorney in order to receive the money from Road Home. I was able to access some funds, but right what this thing is, I have to get signatures from some of my brothers and sisters, and one who in particular is saying, "I'm not gonna sign unless you—" One is tellin' me he's not gonna sign unless I give him some money. [laughs] The money needs to go towards the house!

Within many families, disputes over what to do with heir property came to the forefront and contributed to heightened tensions between family members in an already strained environment. Davida Finger, a staff lawyer at Loyola Law School's Katrina Law Clinic, described to me the slew of family arbitrations that they facilitated, in an attempt to assist family members to resolve their conflict over what to do with the home. Often the occupant or someone with a strong sentimental attachment to the home would be set on selecting Option 1 in the Road Home Program, which consisted of a rebuilding grant, while other co-owners were interested in selling the property to the state and dividing the proceeds according to the fractional ownership of the property. I asked Alvin if the process had strained his relationship with his nine surviving siblings. He responded,

Yeah, because the process, you know, in a sense put us—I don't want to say put us at odds with each other, but they wanted to do one thing with the house because they knew they weren't gonna be around. They wanted to go off somewhere, and I wanted to be here. And I do have support from my family, but they're not here. They're not livin' here. I'm the one that's here all the time.

Alvin was able to gain the signed support from all his family members to secure the rebuilding grant, although what that required with regard to the obstinate brother, he was reticent to disclose. This is understandable given that it would amount to criminal misuse of federal funds designated for rebuilding damaged homes if he had acquiesced to his brother's demand for a payout. Trying to get a sense of what he was working with, I asked him how much he had received. He was guarded about the value of his Road Home grant and answered vaguely,

I did get some funds, but I think if I would have gotten that \$150,000 from Road Home, things would have been a whole lot better. But I'm still going through the process with 'em, and hopefully one of these—hopefully they will allow me to have that. They only paid a part of what they could have paid. And in the process of them—what was called a second closing, their process changed. And so I'm kind of left with a house 80% done, hoping that—the progress is so slow now because I'm spending what I have, my own money, to get it done, and hopefully Road Home will do something.

The Road Home program ended up having more money available than they were able to disburse in the first round of grants, and so a second round of grants was instituted for environmental mitigation efforts. The purpose of these grants was to provide funds to elevate homes, making them more flood resistant in the event that water found its way into the neighborhood again. This was a significant concern given resident's recent experiences, and prior to that, Hurricane Betsy in 1965 whose waters had also flooded the Lower Ninth Ward, albeit under just a few feet of water. Alvin described his plans for the second grant,

What I want to do now is elevate the home. It's three feet off the ground. It needs to be somewhat higher. If there's another flood down here, water's gonna get in the house

where it's three feet off the ground. It needs to be at least six feet. So I would like to elevate the house, that's the next step, if Road Home agrees to let me do that. Yeah. They do want you to raise the house and take care of everything else, and then I would feel comfortable there, because goin' through Katrina was not somethin' ... [trails off with a disturbed look in his eye] —if there's a tropical storm in the Gulf, I think about it all the time.

Having obtained the first round of funds, less than was needed to finance the necessary repairs, it was the paperwork and procedure for the second disbursement that Alvin was embroiled in when I interviewed him. He was required to gain his siblings signatures again in order to receive the second grant with which to elevate his home and finish the repairs.

My second application had been submitted. Road Home has approved it. But the state is saying, even though Road Home is saying, "OK, you deserve to have this money to fix up this house," the state is saying, "No, he has to have the signatures from all of his brothers and sisters in order for that money to be released." Road Home actually is saying, "No, we find everything that you're saying is on the up-and-up. You're entitled to have the money. The clean title is waiting for Road Home, from the state, to say, "OK, let 'em have it." But they're not doin' it at this time. I don't know what the process is. I've gone through an appeals process. I just cannot get my brother to sign. So I don't know what's gonna be done. Even though the previous time, they did allow me to have it and I have a house that's 80% repaired.

This convoluted and somewhat contradictory explanation highlights an understandable mystification due to the lack of clarity in the process of applying, qualifying, and closing in the Road Home Program's grant process. For many heir property owners, the sheer frustration or impossibility of collecting the required documentation and signatures, submitting the paperwork, and then waiting months to hear that they were back to square one, was toxic. Jimmy, the respondent who declined to have his interview audio recorded, saw it as a deliberate tactic designed to perplex applicants and discourage them from pursuing their federal recovery grants.

He told me that the Road Home Program “Wants you to be out of your head.” His advice to other heir property owners was to give up the illusion that it would happen overnight or in the time frames they were expecting. Rather they should prepare for the long haul. He told me, “You need to work with it, pray, think and slowly move with the strength to refuse to be stopped.”

Given that Jimmy had a primary place of residence and was working to secure a grant to rebuild his dad’s old home in the 8th Ward, he was at an advantage to Alvin, who was dependent on the Road Home grant to fix the roof over his own head. Jimmy’s plan was to fix up the family house for any family member who had fallen down, to get back up on their feet. He was clear however, that clear title and outright ownership was his intent. He would buy out other heirs or have them donate their share so that he wouldn’t be in the same scenario in the future. Alvin also saw his home as a place, not just for him, but a home for any family member who needed it. This was a dimension of heir property I encountered in multiple interviews, even amongst individuals who were pursuing outright ownership; heir property was seen as a place that any family member could come back to in times of need. Heir property functioned as the perennial ‘Plan B’ and refuge of last resort.

I asked Alvin if before the storm he had ever considered unclear title to the home he was living in an issue to be concerned about,

Oh, no, no, I had no idea. Because you know, I always felt that, OK, I’m here, I’m taking care of this house, everything is fine. I’m keeping it up and everything, paying all the bills, the utilities and everything. And if one of my siblings needed somewhere to live, the house would be there for them. Because it’s a large house. So that was my idea. Now, with some of them saying, most of them saying, “Get the house back together,” and some of them saying, “Tear it down and split the money and go our separate ways,” it’s—you know, it causes a strain there. The situation is complex. There are other situations where people were co-owners on the house, and in most cases the house gets torn down. You

can't make someone agree to something that they're just not gonna agree to if they just want to get money out of it. There's nothing you can do but buy 'em out or something. The situation was indeed complex, and without resolution many family homes were simply left to molder and fall apart. While residents and community members felt a level of empathy for homeowners trying to work out what to do with the family home, as time stretched on they grew frustrated with the blighted homes on their block. Alvin responded to this impasse with a typical resoluteness and tenacity to move forward with or without support,

No, the thing is, you can know if someone wanted to rebuild, but if someone is just adamant about not allowing you to rebuild, you just can't do it. If someone is adamant about not havin' the house torn down and someone wants the house torn down, I'm not sayin' the house will get torn down, but nothing actually gets done. If the state doesn't agree to allow me to complete the house, then I'll just have to do it myself, I guess. 'Cause I'm not gonna let them tear the house down at this point.

Alongside this tenaciousness, Alvin demonstrated empathy for others. Through out the interview he put himself in the shoes of other family members, as well as the officials in charge of the guidelines and policies for homeowners without clear title. Rather than bitterness or anger, he expressed confusion and a sincere wish to restore some degree of wholeness to his life by repairing his home. I asked him if he had any suggestions for policymakers to help residents recover from the damage wrought by the breached levees and subsequent neglect. He replied,

There are always these stumbling blocks. The conclusion that I've come up with is, there are so many things to consider from the state standpoint, I would imagine, that they're lookin' at every possible scenario and how things should be done without—I don't know—being held responsible for anything, while at the same time, knowin' that these houses need to be redone, things need to be done right, people need to live in these houses. It seems like they're going, "I don't know what we can do for those people, in the Lower Ninth Ward." They should just allow people to have their houses rebuilt. I've been takin' care of that house, and they should allow me to complete that task.

A few days later I received a call from Alvin, he excitedly informed me that his second grant had been approved and that he would be receiving a second disbursement with which to continue the rebuilding and elevation of his family home. His determination had paid off and the home his father had built with his own hands had been saved by a son unwilling to give up the fight, be it with the Road Home program or within the sphere of his own family. Of all the interviews I conducted, this was the only one that resolved favorably for the respondent during the course of my research.

Breaking the Social Contract

In interviews with heir property owners and institutional actors I encountered a recurring theme; respondents felt that a social contract had been broken during the disaster and the recovery period. Heir property owners expected the federal housing recovery program to help them rebuild and felt betrayed when their attempts to acquire a grant were thwarted due to issues of unclear title. In a phone interview with an older gentleman received after giving my card to a local politician's aide, Mr. Levi described his ongoing difficulties in repairing his family home. After introducing myself and explaining that I didn't have any power to effect change in his case but was researching heir property issues, he launched into his story. His brother and niece were living in the family home when the storm struck and the levees breached. He told me,

My mother and father had left that property to us. After they died, it automatically came into our name, but we had to do a succession on it and stuff like that. We done that, and everything was OK on that part. We had started it right before Katrina, and then Katrina had came. We never finished it. We just started the process, and then Katrina had came, and all the paperwork was destroyed. So we had started immediately right after Hurricane Katrina doin' that, and we got that done. My brother, like I said, he was the only owner

occupyin' the property, and so he gave me power of attorney to process the claim on the house.

Only occupants living in the home at the time of the storm were eligible to apply to the Road Home Program, so Mr. Levi's brother gave him power of attorney in order to submit the application on his behalf. But little is simple in the realm of heir property, or federal recovery programs. There was a range of suitable documents to include in the application to demonstrate occupancy at the time of the storm. Chief amongst these was an electric bill or another kind of dated, personally addressed bill. As Mr. Levi's brother had poor credit, the bills were all in the name of his niece who was also living with him, but wasn't a co-owner. This posed a problem as a possessing heir needed to prove occupancy in order to be eligible for federal recovery assistance. Unwilling to pull out due to this technicality they pushed ahead,

We simply filed it with what I had. They still asked me for an electric bill, and I kept tellin' him we don't have no electric bill in his name. Also, I put that in my appeal. When I appealed it, it had my affidavit in there, and his original FEMA application had his name, address, Social Security number on there, and his ID card, and his last arrest record showin' that he was livin' there. They was formal documents, but it wasn't the documents that they were requirin'.

They received a rejection to their initial application on the grounds that they didn't have adequate evidence of his brother's occupancy at the time of the storm, an arrest warrant would not suffice. After filing a formal appeal to the Road Home program, which was denied, Mr. Levi filed an appeal with the state, which was also denied. While appealing the Road Home program's decision, the house continued to deteriorate. Delays in the disaster recovery period often lead to compounded damage. I asked Mr. Levi how the house looked, how badly it had been damaged in the flooding and in the years since the storm,

It wasn't destroyed, but it wasn't livable. It was one of the houses that didn't float down the street. It stayed on its foundation. But now, since it's been so long since we've done

anything on it, it's gonna cost probably much more than the \$150,000 they're offering to give us to get it back to livable, you know? So now it's worse than it was then. It's just been deteriorating ever since. I don't know if that's gonna ever come about or what. I don't know what's gonna happen. It's crazy. This is—I work, I pay my taxes. If the government is funded, the state's supposed to do the right thing, but it don't seem like they're tryin' to do the right thing. I'm a combat veteran, fought for the same rights as they're fightin' for foreign people's rights. I feel now like my own country denied me my rights. It's crazy.

I didn't have the heart to tell him that had he received a grant it would likely have been half or a third of what he was expecting. Mr. Levi's frustration was palpable as he recounted the service and sacrifices he had made personally for his country and the feeling that he was being let down now in his time of need. It is useful to remember how the Road Home program was constituted; in response to the crisis along the Gulf Coast, funds had been made available by an emergency act of the U.S. Congress to help citizens rebuild their lives and homes. In light of this, a minor deviation from the standard operating procedure, namely an arrest warrant serving as evidence of residence as opposed to an electric bill, shouldn't stand in the way of a family rebuilding their home. By the same token, a home that's been in a family's possession for generations should not be disqualified from a federal recovery program because a deceased family member's name is on the title rather than a co-owner who hadn't gone through the court proceedings necessary to formalize their ownership. It is clear that bureaucratic stringency, and uncompromising programmatic policies and procedures, interfered with the goal of facilitating recovery.

Mr. Levi raised an important issue concerning the social contract that people hold with their elected officials and government, a sentiment echoed by all respondents. In accepting the jurisdiction of the government in times of peace, paying taxes and following the laws of the land, it is expected that the government intervene and come to the aid of its citizens in a time of crisis.

That there was a failure of this social contract before, during, and after Hurricane Katrina struck New Orleans, at all levels of government from the local to the federal is beyond dispute. And in the case of heir property owners as they navigated the bureaucratic byways of the Road Home Program, this neglect and lack of flexibility was highlighted once again, to the detriment of both the people and the community as a whole. Mr. Levi and his family were in a tough spot, the rebuilding of their family home had stalled out and they'd used up their appeals. I thanked him for sharing his story and hung up with a heavy heart, it was unlikely that Mr. Levi and his family would receive help from a recovery system that had failed them.

Disorientation and Dislocated Social Capital

All the heir property owners I interviewed seemed disoriented as a result of the breached levees, flooded neighborhoods and their radically changed circumstances. It was more than just their homes or neighborhoods that had been damaged, but the locus of their identities rooted in the physical, spatial, and social relationships that had made up their worlds. Jazmine, a young African-American woman, had lived in the Lower Ninth Ward her whole life and came in to Common Ground Relief's Anita Roddick Legal Advocacy Center during walk-in hours. She had relocated to the Upper Ninth Ward due to the deteriorated conditions of her family home, heir property she had lived in with other family members before the storm. We stood on the porch at and she gestured at the overgrown streets all around us.

I mean, like the street, the streets were this wide [indicating with her arms a wide avenue]. But now, since nothing's bein' repaired, the grass is growing out in the street, it's gettin' small. It's just closin' in. To rebuild you'll have to move all that cement-filled ground again and open it up. That looks like it never was a street!



Figure 7: Streets throughout the Lower Ninth Ward encroached by vegetation

Social capital is a critical component of resilience for all communities. For those with low levels of financial capital these networks of mutual affiliation and reciprocity are especially important. When social capital is disrupted, those who had employed it lose both its value and the orientation it provided in navigating their spatial and social surroundings. Jazmine described what it was like growing up in this neighborhood, where everyone knew everyone. People would keep an eye out for each other's children and if you were caught misbehaving you'd be as liable for a scolding from a neighbor as you would your mama. Parties and get-togethers would spring up on porches and in backyards and go on late into the night, with home cooking a source of celebration as well as comfort. Wistfully, her eyes gazing upon the past, Jazmine opined,

If we have nothin' else, we have our community. But it's disintegrating in front of our eyes... I want to sit on my porch and be like, "Hi, how are you?" instead of like, "Wow, is that a big old rat over there!" And this is my home. I tell you no lie! I'm born and raised down here. I tell my sister, I can't live down here. I sit here and I walk around these streets, and it be like, "I remember when such-and-such was here. I remember this house was there." Half the time now I'm like, "Which street I'm on? What way to go?"

A New York Times article recently referred to the Lower Ninth Ward as 'Jungleland,' replete with rattlesnakes, king snakes, armadillos, raccoons, coyotes and even a four-foot alligator (Rich 2012). The vegetation throughout the Lower Ninth Ward was extraordinary as the neighborhood rests on the Mississippi's historic flood plains replete with rich alluvial soil. I asked Jazmine if the neighborhood's current state of disrepair discouraged her from making the effort required to rebuild her family property. She replied,

Yeah. You be like, why come back? Why even do anything? I want my son not to know where he comes from, are you kiddin' me, to bring him down here to this? No. I saw how places used to be—it was a place to live, not like a jungle.

Jazmine and her family, along with many heir property owners throughout New Orleans, were unprepared to reintegrate into the formal systems of property recordation. Cultural practices that had informed the continued use of homes through relationships of reciprocity among kith and kin had been disrupted. I described to Jazmine the process required to clear title and told her the first step was to map her family tree. But even small steps, such as obtaining the death certificate of her aunt who had occupied the home after her grandmother died, required financial resources she didn't currently have. We set up a time the following day to continue our interview but Jazmine didn't show and I didn't hear from her again.



Figure 8: An abundance of saw grass engulfs a blighted home in the Lower Ninth Ward.=

Roadblocks to recovery

A theme common through out all interviews with heir property owners was their frustration with the roadblocks to recovery they encountered as they tried to rebuild their family homes. These bureaucratic obstructions came in myriad forms, but sprang up at nearly every juncture in the recovery process where eligibility requirements were narrowly defined. In the following interview the respondent describes some of these roadblocks. Even with a high level of business acumen and legal awareness, policies and procedures beyond his scope of influence thwarted his families' recovery efforts.

Driving up and down St. Claude looking for the right cross street, I was a full hour late for my interview. Nevertheless I was graciously welcomed into a home with a strikingly African feel to it – both in its circular arrangement and décor. Saul, an African-American man in his mid twenties, had striking features and a melodious voice that rose and fell lyrically. He led me to a study, and asked that I sit across from him and began to describe his experiences post-Katrina.

Before my grandmother passed, we realized the importance of establishing a will. I'm the type of person, bein' of a later generation, Generation Y, to understand that it's best to have things documented. Having gone to school, Tulane University in architecture, UNO for business and acting, I had a business-orientated sense to have everything documented so everything won't be ambiguous when she died, informed. I knew that laws are good. They help clarify things, keep them clear. In a family setting, you're always so informal about handling business, and some people want to keep it like that. However, with that informality, it can go in all type of directions, and it can be spread out over years to come and things may never get settled.

Saul had a different perspective towards the law than others I'd interviewed. This could have been the result of his educational attainment, his age, or his family's socioeconomic status. Rather than seeing laws and the courts in an oppositional light, he recognized the utility of working within the legal system. With my notepad out and the digital recorder running, I listened to his experiences navigating the complexities of heir property ownership in the Road Home program and his general thoughts concerning the post-Katrina landscape of New Orleans. There were two main areas where Saul, as the sole executor of his grandmother's estate, had run into difficulties. First off, his grandmother had failed to finish the probate process on property she had inherited in Florida. Now he was in the process of tracking down eligible heirs and working through the succession process on this out-of-state property. I asked him why she had failed to finish the probate process during her lifetime and he explained,

She passed and didn't finish the Florida probate situation. The lawyer withdrew from that case because my grandmother was takin' money out of the account, because she didn't have a strong trust in the legal system, so she figured that the lawyer was just tellin' her things to kind of lead her along. So she couldn't get—she didn't see any—what is it? She wanted quick satisfaction. She couldn't wait. She didn't have the trust. But that was that. But the lawyer was doin' her thing of process and procedure. You know how the process and procedure can be so long. People run out of patience with the bureaucracy.

I probed a little deeper, asking why she had felt that level of distrust in the system and the need for 'quick satisfaction.' In my literature review and in conversation with legal professionals, I had encountered this dynamic before: heir property owners distrusted lawyers and legal procedures regardless of the particular legal objective that was being pursued. This was especially pressing when legal proceedings were drawn out, as many heir property owners abandoned the process in an almost instinctive reaction to the prolonged exposure. Individuals tend to consider the legal sphere based on their past experiences, and heir property owners, overwhelmingly African-American and poor, have experienced systematic legal discrimination in the United States (New York State Judicial Commission 1991). Saul confirmed that she had reason to be distrustful based on prior encounters,

She comes from a background where she's been through a rough time. Her mother actually owned a brothel in New Orleans, in the red-light district off Bourbon Street. That was taken from her mother when they urbanized downtown, just like they're doin' now. It's a repeat from the past. So yeah, I see why she did the things she did. Whether she was wrong or not, you have to look at where she was comin' from. She had the ideology that the people who were rich, they got it by takin' it from somebody else. That's the things she was exposed to before. I really can't fault her or get very upset with her. I just did my best to just contain certain behaviors.

Saul's difficulty accessing Road Home funds in New Orleans was not related to the process of probate on the property in Florida. As the executor of his grandmother's estate he was

obligated to ensure that all her eligible heirs received what was due to them. His grandmother had received a Road Home grant with which to repair her home, but the Additional Compensation Grant (ACG) designed to bridge the gap between the actual repair costs and the original grant amount, had been held up. As she had died before the second grant was transferred to her account, Saul's uncle, who had inherited the property, expected the funds to complete the necessary repairs. Saul expressed his and his family's frustration when they were denied these funds,

Road Home will soon be closing. Their rules is that the person who directly inherits the property has access to any monies left over. But see, they have a formula with ACG funds. ACG funds are designated for low-income homeowners, that is extra money, aside from regular Road Home monies. The regular Road Home monies he got, but the ACG funds he can't get. That doesn't go under Louisiana laws of inheritance. I don't see how they split up the money like that, how they made up the formula. Usually when they make up these intricate formulas, they do it for undetermined purposes, outside purposes you don't understand. So that money can't go to our family. Where is that money goin'? Why do they have these rules in place, to where it can't trickle down to the family?

At this juncture, Saul revealed some of his political perspective. Most of the people I interviewed had strong opinions on the political process and their elected and unelected official's rationales. There was a high level of political awareness in New Orleans with strong opinions about politicians' motivations and true intentions. He reasoned through the perceived logic as he imagined their discussions,

"OK, we're gonna give you these funds," but with all this information we have, we're devising from community routes, different political leaders, the information that they gather to spend their money. You know they do these focus groups before they actually go ahead and give you the money. Research focus groups asking "What are you gonna do with the money if we give it to you? Are you gonna stay here? Rebuild your house? Sell?" So based on all these findings the city has, they're gonna devise a code, a formula,

on the money they're gonna give you. And they're gonna use that information not so much to help you out per se. They're gonna use that information to play on how they can attract this funds. Most people are gonna leave, so most of the people are gonna just splurge their money. So they find a way to get this money before it goes back to Baton Rouge, if that were to happen... [In an exasperated tone] Just give the people their damn money!

Saul offered a fairly cynical perspective on how focus groups are used to benefit outside interests. But his conviction was compelling and sounded firsthand, and I asked him if he had participated in any research or community-based focus groups after Katrina. By that point in the interview, a family friend had joined in the conversation. Saul's friend expressed contempt for the community hearings and meetings that proliferated after the storm, and for the balkanized environment as neighborhoods and parishes jockeyed for attention and recovery assistance. She noted,

When we first came back here after Katrina and participated, I was in meetings after meetings after meetings. The town needed a master plan. They do it under the guise of participatory democracy, because they got all these idiots together to argue what this one wanted in their neighborhood and that one. We should be talkin' about what we need for the whole city, not the neighborhood. That's tribalism, and that's what they use to keep us all divided. I'm as concerned about what's happening any place in this city as I am right here on this block. It matters the least to me about this neighborhood or that neighborhood. It's our environment. I'm worried about the poor fishermen as much as I am about the grocery store shopkeepers. We're all in this together. It's all a food chain. We all depend on each other for something, to buy, to sell.

The conversation continued on for some time over the relative merits of various forms of political representation and land tenure, past and present. After his friend left, I asked Saul what he had encountered in his family and his community after Katrina, and what it had meant to people in the context of their families. He replied,

Katrina did kind of bring families together, because they had to room together. But then, coming back kind of broke down the support, those stringent rules. I would say not even stringent, but just divisive. There was an understanding, people have a sense of awareness of what's going on. Sometimes it's OK, but if there's not a sense of awareness, it can be divisive. And what happens in a family is microscopic to what happens in society as a whole.

His description reminded me of the 'corrosive' and 'therapeutic' communities described in the disaster literature, in which climates of competition or cooperation influence recovery trajectories (Dynes 1994, Peek 2011). At this point, Saul paused and showed me the letter he had received that stated his uncle was ineligible for the additional funds. He had appealed the decision, but the prospect of receiving the funds to finish the repairs that the initial grant had failed to cover seemed unlikely. Saul's frustration also stemmed from the fact that the closing agent had sent two letters to his grandmother while she was still alive asking where they should deposit the funds after the second grant had been approved. According to him, they already had the account info from the initial disbursement and had no reason to delay depositing the additional funds. If they had transferred the money, his uncle would have inherited it and been better equipped to finish the repairs needed on their home. It was clear from the interview that the Road Home Program's grant allocation process was fraught with potential roadblocks for heir property owners regardless of their legal sophistication and willingness to follow guidelines.

Chapter 4: Conclusions

Heir property's prevalence in New Orleans and the associated mechanisms that led to it being a source of vulnerability in the post-disaster recovery process can be attributed to a variety of intersecting social structures and practices. Tens of thousands of homeowners failed to write wills or complete probate procedures on inherited properties due to economic, legal, and cultural conditions that spanned generations. Low levels of trust in the legal system and economic disincentives such as the high costs associated with clearing title and the potential that a co-heir's outstanding debts might jeopardize the family home, led homeowners to avoid successions work on inherited property. Cultural attitudes also had a role to play as successions were seen as an indicator of family conflict and avoided. Unable to collect insurance money and ineligible for federal grants due to title issues, heir property owners were required to clear title if they were to achieve recovery. This entailed successions work which required diagramming and documenting the relevant family details of death, birth, marriage, and divorce in order to determine the full ownership pool and then securing power of attorney from all eligible heirs to select a grant option. For many, this proved impossible and an untold number of heir property owners were excluded from the federal housing recovery program due to the letter of the law, rather than its spirit.

While heir property owners worked to clear title and secure the consent of all co-owners, their homes continued to deteriorate, leading to lower chances for recovery. As grant amounts were based on the pre-storm market price of the homes, the lower assessed values of homes where heir property was prevalent, corresponded to grants that were insufficient to cover the rebuilding costs. These compounding difficulties made recovery an even more difficult task for

heir property owners, exacerbating their pre-storm vulnerability in the post-disaster recovery period. For many heir property owners, the loss of home and neighbors, a difficult circumstance for anyone, was more damaging to their life chances as it depleted one of their primary assets, geographically contingent social capital. Similarly, family relationships, a source of pre-storm resilience for heir property owners, were negatively impacted as many families were divided over what to do with the Road Home recovery grant.

This research, drawing on quantitative and qualitative data, demonstrates how recovery policies in the post-disaster recovery period, exacerbated a pre-storm source of vulnerability, heir property ownership, for a substantial number of New Orleans residents. While heir property ownership was prevalent throughout New Orleans, it was concentrated in areas predominantly African American and poor. This cumulative disadvantage translated into lower levels of post-storm recovery through market-based recovery mechanisms that privileged individual home ownership. Heir property owners could not access private insurance or the federal housing recovery program until they had cleared title and secured the consent of all eligible co-owners, putting them significantly behind other homeowners in their pursuit of recovery.

Heir property's impact, although located at the individual family level, radiated outwards to neighborhood blocks and beyond. The effect of heir property at the neighborhood level can be clearly observed in the Lower Ninth Ward. As an extensively damaged area with high participation levels in the Road Home Program, issues related to heir property slowed down recovery efforts and translated into high levels of blight and vacancy. Unequal recovery rates, due in part to issues associated with heir property, have further stratified the post-disaster landscape and contributed to increased social inequality in post-Katrina New Orleans.

In the course of my research I did uncover positive outcomes for some heir property owners. Tenacious heir property owners, often with the support of dedicated institutional actors and volunteers, have succeeded in their quest for recovery. Non-profit agencies like Southeast Louisiana Legal Services, the Pro Bono Project, Common Ground Relief and Louisiana Appleseed, provided critical legal services for heir property owners and advocated for sensible changes to both policy and procedure. Their efforts resulted in changes to Louisianan legislation that simplified probate procedures and lowered the associated costs of clearing title and protected heir property owners from predatory partition sales. Due to the scope of the problem, the response of a variety of stakeholders and the emotional appeal of this issue, Road Home procedures were eventually changed in an effort to increase heir property owners' chances of successfully securing a recovery grant. The visibility of thousands of cases of heir property also drew the attention of legal scholars and was used to support the passage of the legislation a series of simple due process protections for co-owners in various states throughout the country. And in New Orleans, the importance of maintaining clear title has been indelibly inked in the minds of many homeowners making it unlikely that it will proliferate as widely as it did ever again.

Recommendations

In the course of this research, I encountered a number of interventions that would aid heir property owners in navigating the post-disaster recovery landscape more effectively. While these recommendations are grounded in the experiences of heir property owners in New Orleans, they could have utility for other post-disaster housing recovery programs. Vulnerabilities associated with heir property owners were exacerbated by many of the post disaster housing recovery policies and market based mechanisms. This case study highlights elements of our current

recovery systems that fail to protect the most vulnerable, and as a result, decrease the resiliency of the community as a whole.

1. Be prepared for a variety of ownership arrangements.

Any program designed to help homeowners rebuild post-disaster needs to take into account the range of homeownership arrangements and potential difficulties that exist in a given area. Pathways to recovery should be identified and the necessary procedures outlined as soon as possible. These could include fast track probate procedures and ongoing family mediation for heir property owners and mortgage assistance for homeowners dealing with financial difficulties. Program staff need to be aware that ownership arrangements that differ from the typical model exist, including heir property and rent-to-own arrangements, and have specialists or special tracks to refer participants to in order to assist with their more complicated cases. If heir property owners had been identified earlier and encouraged to take the necessary steps to clear title while their applications were being processed, rather than being discouraged and essentially sent to the back of the line with conflicting and unclear next steps, a better outcome for thousands of homeowners could have been achieved.

2. Post-disaster housing recovery programs need to be continuously evaluated.

Timely and ongoing process evaluations should be instituted in housing recovery programs so that unexpected problems, like heir property issues in post-Katrina New Orleans, can be met with a timely and thoughtful response. Evaluations should focus both on process and outcome, so that inevitable complexities can be identified and mitigated while remaining true to the ultimate goal of recovery for the widest possible range of individuals. Other related issues including rebuilding grants too low to facilitate recovery, racially discriminatory grant values,

low-quality title checks, and the unacceptably slow application and granting process could have been exposed and addressed in time to make a difference.

3. Funds for legal assistance need to be included in housing recovery program budgets.

Discretionary funds should be included in housing recovery program budgets to provide legal assistance for homeowners in the post-disaster recovery landscape. As the case of heir property in New Orleans makes abundantly clear, there are myriad legal issues, including unclear title, liens, and the need for family mediation that cannot be addressed without legal assistance. Funds were eventually directed towards this need in New Orleans and enabled agencies like Southeast Louisiana Legal Services to aid homeowners, but for many it was too little too late. Having funds available at the outset would allow for direct immediate assistance and create a climate where agencies could proactively identify problem areas and address them rather than simply reacting. A portion of these funds could also be used in the planning process to consult local legal practitioners and experts who would be able to identify potential difficulties and suggest processes and policy changes to mitigate them.

4. Heir property issues should remain on the agenda for policymakers and practitioners.

In order to prevent the ongoing proliferation of unclear title and its negative effects on families and neighborhoods, education and outreach to heir property owners needs to be an ongoing process. A public awareness campaign that highlights the lowered costs and increased benefits of clearing title on heir property, and frames successions as something that informed and conscientious families engage in, could support a shift in cultural practices and values concerning heir property. Continued innovation in legislation that streamlines the probate process for low-income homeowners and protects homeowners who, out of choice or necessity, continue to co-own family property should also be supported.

5. Rebuilding grants should be based on replacement value rather than market value.

If the goal of post-disaster housing recovery programs is to facilitate the rebuilding or replacement of damaged homes then the grant values should reflect the cost of recovery more accurately. By basing grant values on replacement costs rather than assessed home values, recovery programs can more effectively meet their stated aims and avoid racial discrimination.

6. Supports should be proactively provided for vulnerable populations post-disaster.

Areas where heir property and other sources of pre and post-storm vulnerability are concentrated, like the Lower Ninth Ward in New Orleans, need greater support than their more resilient neighbors in the post-disaster recovery period. Disasters exacerbate social vulnerability and a concerted effort needs to be made to prevent individuals and communities from falling even further behind. If post-disaster recovery programs fail to focus on the needs of all members, a vital component of healthy social life is lost with consequences that extend beyond the physical structures and social relationships that constitute community.

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