

Addressing Heirs' Property in Louisiana: Lessons Learned, Post-Disaster

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After disasters like hurricanes and floods cause property damage, low-income homeowners are often unable to access government rebuilding grants and insurance funds because they lack clear title to inherited family homes. Since 2007, Louisiana Appleseed has been working on title issues involving inherited property in Louisiana and has learned many lessons. First, legislative advocacy and education of community members and policy makers are essential for removing roadblocks to rebuilding efforts. As decision makers craft legislation and policies, legislators need to understand the impact of unclear title so they can make necessary and vitally important decisions regarding post-disaster restoration, elevation and relocation of homes in the face of rising sea levels, coastal land loss, and flooding. Second, forming partnerships with government, legal services, other nonprofits, and community leaders is necessary in order to successfully identify systemic problems, formulate solutions, and effect change. Third, post-disaster problems revealed the need to help homeowners with title issues to be proactive to ensure that clear title passes to the proper heir or heirs. Only then can families truly protect their property, helping not only themselves but generations to come and the community at large.

LOUISIANA APPLESEED—OUR MISSION

Louisiana Appleseed—founded in 1997 and reconstituted in January 2007—is part of a national network of 17 public

interest law centers in the United States and Mexico. We are a legal nonprofit dedicated to solving Louisiana's toughest problems at the root cause. Our approach is unique: we engage professionals to donate pro bono time to perform policy-oriented research and advocacy. Louisiana Appleseed forms partnerships and works with government, legal services, and other nonprofits to identify systemic problems, formulate solutions, and engage pro bono counsel to advance social justice by effecting change at the policy, or systemic, level. This innovative approach allows our organization to achieve its mission and create maximum impact in a cost-effective manner. Louisiana Appleseed's projects focus on increasing access to justice, opportunity, and education. Since its inception, Louisiana Appleseed and its volunteers have advocated for improved inheritance and succession procedures and educated lawyers and community members about heirs' property.

DISASTER STRIKES—TWICE

On August 29, 2005, Hurricane Katrina hit New Orleans and flooded 80 percent of the city.¹ Some areas were inundated with more than 10 feet of water.² In the Gulf Coast region, Katrina displaced more than a million people.³ Up to 600,000 households were still displaced a month after the storm hit.⁴ Hurricane Rita hit southeast Louisiana less than a month after Katrina. Additional flooding further prolonged the region's recovery.⁵

¹ Appleseed. (2006, June). *A Continuing Storm: The On-Going Struggles of Hurricane Katrina Evacuees*, pp. 1, 15–16. Retrieved from Texas Appleseed: <https://www.texasappleseed.org/sites/default/files/25-HurricaneProjectPublication.pdf> [Date last accessed: May 6, 2019] (Appleseed, *A Continuing Storm*).

² Plyer, A. (2016, August 26). *Facts for Features: Katrina Impact*. Retrieved from The Data Center: <https://www.datacenterresearch.org/data-resources/katrina/facts-for-impact/> [Date last accessed: May 6, 2019]. (Plyer, *Facts for Features*).

³ See Appleseed, *A Continuing Storm*, p. 1.

⁴ See Plyer, *Facts for Features*.

⁵ *Id.*

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At their peak, hurricane shelters housed 273,000 evacuees and, later, Federal Emergency Management Agency (FEMA) trailers housed at least 114,000 families.⁶ Katrina damaged more than a million housing units in the Gulf Coast region.⁷ About half of these damaged units were located in Louisiana. In New Orleans alone, 134,000 housing units—70 percent of all occupied units—suffered damage from Hurricane Katrina and the subsequent flooding.⁸ By early October of 2005, the last of the flood water was finally removed from New Orleans and residents started returning home in an attempt to rebuild their homes and revitalize their communities.⁹

FEMA fielded 1.7 million requests for aid over three States—Louisiana, Alabama, and Mississippi.¹⁰ The total damages from Hurricanes Katrina and Rita were approximately \$150 billion—\$135 billion from Katrina and \$15 billion from Rita.¹¹

THE EMERGENCE OF HEIRS' PROPERTY PROBLEMS

After the 2005 hurricanes, some Louisiana residents were hit with another problem—they were unable to receive Federal and State aid for property damage caused by these disasters. These residents owned their homes; most even paid property taxes. Legal documents, however, did not list them as the owners of the property. Residents lacked “clear title.” Their homes were passed down through generations by family agreement but not through the legal system with the correct paperwork. The hurricanes of 2005 thus revealed a systemic problem that had been around for decades yet invisible to the naked eye: heirs’ property.

Heirs’ property arises when the necessary legal paperwork is not completed after a property owner dies. Heirs are persons related to the deceased property owner by blood or marriage or named in a will and alive when the property owner dies. Upon death, the decedent’s ownership interests in the property immediately pass to the living heirs, however, title to the property does not automatically transfer to the heirs. Rather, if immovable property was part of the decedent’s estate, heirs had to file a succession in court and obtain a Judgement of Possession before heirs could obtain clear title. Many heirs, especially low-income heirs inheriting small estates, could not afford the necessary legal paperwork due to high court costs

and attorneys’ fees associated with this required process. Without this paperwork, title to the property remained unclear and “unmarketable,” meaning that selling the property would be extremely difficult.

If an heir does not have clear title to land, the heir can sell only his or her fractional interest in the property and not the entire interests of all the co-heirs. Further, co-heirs may be limited in their ability to make repairs to the property, borrow money against the property, cash an insurance check, negotiate with a bank on a foreclosure, qualify for government aid to fix the house, obtain a homestead exemption, get notice of city or parish actions against the property, or have a court rule on probate actions.

The 2005 hurricanes illuminated the fact that, over the last century, numerous Louisiana residents had inherited small estates—but did not have the requisite documentation to substantiate their ownership. The collective lack of clear title represented a seemingly insurmountable barrier to community rebuilding efforts. With no proof of ownership, homeowners were being denied FEMA funds, Small Business Administration (SBA) loans, and other recovery funding.

By early 2007, other nonprofits and organizations were trying to rebuild parts of the Ninth Ward and other disaster-stricken areas after Hurricane Katrina. Organizations helping with the rebuilding efforts learned that FEMA and the State recovery program, Road Home, had denied applications for rebuilding funds because residents could not prove ownership; these organizations asked Louisiana Appleseed for help. As a first step, Louisiana Appleseed’s lead volunteer successfully advocated for the extension of application and appeals deadlines for those with successions and title issues. As this work progressed, however, the need for statewide reform to Louisiana’s small succession¹² laws emerged.

THE NEXT STEP: LEGISLATIVE REFORM

To address title issues, Louisiana Appleseed began its legislative reform by selecting a legislative champion, then State Senator Edwin Murray, and asking him to propose a study resolution in the Louisiana State Legislature to make changes to small succession laws. In 2008, the study resolution was passed, which formed a

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ See Appleseed, *A Continuing Storm*, p. 1.

¹¹ See Plyer, *Facts for Features*.

¹² In Louisiana, “succession” is the name given to the legal process of transferring ownership of property to heirs or people named in a will. Louisiana law defines “small” succession as a succession involving property valued below a certain amount. See LA. C.C.P. art. 3421.

legislative committee to study the effects of ownership of heirs' property and issued recommendations. Louisiana Appleseed provided the committee with the background, research, and recommendations necessary to develop and implement the legislation.

In 2009, Louisiana Appleseed, its volunteer attorney, Malcolm A. Meyer of Adams and Reese, and Senator Murray successfully advocated for the passage of legislation which changed the law on small successions. The revised law allowed, for the first time, the use of a small succession affidavit—or an “Heirship Affidavit”—for immovable property (houses, land, and funeral plots).¹³ Thanks to the revisions, thousands of Louisiana residents were provided access to a legal procedure making it easier and less costly to clear title. The revised law allowed property owners to use the affidavit to obtain clear title if the estate was valued at less than \$75,000 at the time of the decedent's death. The affidavit can typically be used only if the property owner died without a valid will and requires: date of death of the deceased and his or her home address at the time of death; marital status of the deceased and the name and address of the surviving spouse, if any; names and last known addresses of heirs and their relationship to the deceased; and legal description of the property. The affidavit must be mailed to the last known address of all co-heirs and allow the heirs 10 days to object. The intent of this legislation was to provide a less expensive and easier way to clear title. Small successions no longer had to be filed in court, which saved time and court costs for families.

In 2011, Louisiana Appleseed and its volunteers successfully advocated for another revision to the small succession laws, which expanded the use of the small successions affidavit.¹⁴ The law removed the residency requirement so that the claimant did not have to live in or on the property that was being transferred. The affidavit was also available to non-residents of Louisiana, even non-residents with a will, if the will had been probated elsewhere. An affidavit could simply be recorded with the conveyance office in which the immovable property was located, describing the property and naming the heirs, and then the property was legally transferred.

Later, in 2012, Louisiana Appleseed and its volunteers helped successfully pass another amendment to the succession laws, expanding the use of the small succession affidavit even further.¹⁵ This legislation allowed for the use of the small succession affidavit, thereby eliminating the need to open court succession proceedings for all estates where the property was valued at \$75,000 as of the date of the property owner's death, or estates of any value if the date of the property owner's death occurred at least 25 years prior to the filing of the affidavit. Through these revisions to the law on small successions, more Louisiana residents were provided with a less expensive and easier way to clear title.

ANOTHER DISASTER STRIKES

In 2016, another natural disaster struck Louisiana. On August 12, 2016, severe flooding impacted one-third of Louisiana's parishes. Over 10 days, an estimated 6.9 trillion gallons of rain fell in the Greater Baton Rouge, Northshore, and Lafayette areas. Over 10,000 people were evacuated. In a report commissioned by Louisiana Economic Development, it was estimated that the 2016 floods totaled over \$8.7 billion in damages.¹⁶ For many families, the lack of clear title to inherited property created serious barriers to recovery. Owners without clear title cannot sell the property, use the property as collateral for a loan, or get Federal or State disaster aid for home repair. Without clear title, banks cannot lend, and insurance companies cannot pay out on claims, causing property across the city to remain in disrepair and become blighted. After the 2016 floods, Louisiana Appleseed learned that FEMA again denied funds to homeowners who did not have clear title to their property. This time, the State recovery program, Restore Louisiana Homeowner Assistance Program, also required proof of ownership to be eligible for recovery funds.¹⁷

Louisiana Appleseed and its volunteers—faced with this new series of events and difficulties—again sought to expand Louisiana's small succession laws to provide more Louisiana residents with an avenue to obtain clear title and to help families build wealth for the next generation. Along with volunteers Patty McMurray (attorney with Baker Donelson) and Madison McMurray (University of Virginia School of Law student), Louisiana Appleseed worked with another legislative champion, State Representative

¹³ See La. C.C.P. art. 3421, as amended by Act 81. A small succession affidavit is a statement under oath by two or more heirs (including the surviving spouse, if any) as to certain facts.

¹⁴ La. C.C.P. art. 3432, as amended by Act 323.

¹⁵ La. C.C.P. art. 3421, as amended by Act 618.

¹⁶ Terrell, Dek. (2016, September 28). *The Economic Impact of the August 2016 Floods on the State of Louisiana*. Retrieved from Louisiana Economic Development: http://gov.louisiana.gov/assets/docs/RestoreLA/SupportingDocs/Meeting-9-28-16/2016-August-Flood-Economic-Impact-Report_09-01-16.pdf [Date last accessed: May 6, 2019].

¹⁷ Funded by the U.S. Department of Housing and Urban Development, the Restore Louisiana Homeowner Assistance Program is available to provide recovery assistance to homeowners in Louisiana affected by the severe flooding that occurred throughout much of the State in 2016.

Paula Davis, on proposed legislation. In 2017, they successfully advocated for another revision to the small succession laws. The revision raised the value of the estate from \$75,000 to \$125,000 and allowed for more property owners to use the heirship affidavit for estates of any value where the property owner died over 20 years ago, reduced from 25 years.¹⁸ Through the revisions to the law on small successions, more Louisiana residents were provided with an opportunity to clear title.

COLLABORATIVE EFFORTS HELP EFFECT CHANGE

Following the 2005 hurricanes and the 2016 floods, various organizations, nonprofits—including Louisiana Appleseed—and community members across the State joined efforts to help those in need.¹⁹ After Katrina and Rita, these organizations and many other project partners worked together on a 2-year project to provide community education, outreach, and direct legal services to address post-disaster succession issues and title problems. Together, Louisiana Appleseed and its project partners educated the community about heirs' property and the importance of clearing title, advocated for further changes in the law, and provided free legal services to low-income individuals with title problems. During that time, volunteers helped preserve home ownership for over 740 homeowners, with an economic benefit of more than \$10 million in New Orleans alone.²⁰

Furthermore, after the August 2016 flood, Louisiana Appleseed and Southeast Louisiana Legal Services (SLLS) received funding from the Baton Rouge Area Foundation to address heirs' property and title issues in the areas most affected by the flood.²¹ At that time, the "Flood Proof" program was established.²² This program was a 2-year collaborative effort to educate the communities affected by the flooding about heirs' property, provide direct legal services, and advocate for more changes to the small succession laws. Overall, these collaborative efforts helped save over 360 homes in the Baton Rouge area, creating an economic benefit of more than \$7 million.

LOUISIANA APPLESEED'S VISION FOR THE FUTURE—A PROACTIVE APPROACH

Louisiana Appleseed is still working to expand efforts across the State. Staff, community partners, and volunteers continue developing projects that take a proactive approach to disaster response and title issues, rather than a reactive one. Funding from the Greater New Orleans Foundation enables Louisiana Appleseed to continue educating residents of coastal parishes, who are especially prone to coastal erosion and flooding. Through this proactive approach, Louisiana Appleseed can equip residents in these parishes with the knowledge, as well as the ability, to obtain clear title to their homes before another disaster strikes.

CONCLUSION

Since 2007, Louisiana Appleseed's heirs' property and title clearing projects have been a huge success for various reasons. Through legislation and education, Louisiana Appleseed, volunteers, and project partners helped residents preserve homeownership throughout Louisiana. Specifically, Louisiana Appleseed and project partners helped clear title for more than 1,100 property owners with more than \$17 million in economic benefits being returned to the community. Louisiana Appleseed built relationships with more than 100 organizations and faith-based communities throughout the State of Louisiana and educated thousands of people through canvassing, outreach events, educational pamphlets, and radio, print, and television ads. Through all of these efforts, Louisiana Appleseed learned the importance of making our communities more resilient. Thus, since building a network that prides itself on preparation and education, Louisiana Appleseed continues to educate residents about being proactive and getting the paperwork straight beforehand to ensure that clear title passes to the proper heirs in order to effect lasting, systemic change that will assist generations to come and will pay major dividends when the next disaster strikes.

¹⁸ See La. C.C.P. art. 3421, as amended by Act 96.

¹⁹ For this project, Louisiana Appleseed partnered with Southeast Louisiana Legal Services, The Pro Bono Project, and the Lawyers' Committee for Civil Rights Under Law.

²⁰ This amount includes recovery benefits obtained, insurance proceeds assessed, and equity protected.

²¹ Funding was also received from the W.K. Kellogg Foundation, the Louisiana Bar Foundation, and the Louisiana Disaster Recovery Alliance.

²² For the "Flood Proof" program, Louisiana Appleseed partnered with SLLS, Southern University Law Center, LSU Law Clinic, the Baton Rouge Bar Association, the American Bar Association Center for Innovation, and the Louisiana State Bar Association.