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is in excess of the amount required to provide the owner a reasonable return on its equity investment.

The ARRA made the following minor revisions to the original NSP legislation: (a) NSP funds may be used for the establishment and operation of land banks for homes and residential properties (as opposed to just the establishment of land banks) and (b) NSP funds for the redevelopment of demolished or vacant structures can only be used for housing. The original HERA legislation permitted small scale commercial uses.

The ARRA caps each grantee's spending on demolition in connection with land bank and redevelopment activities at 10% of their grant unless HUD determines such use appropriate to local market conditions. The ARRA forbids grant and loan recipients from refusing to rent a unit in an NSP assisted dwelling to a household based on their status as a Section 8 voucher holder (this applies to the original NSP legislation) and establishes required notice periods for certain tenants prior to eviction.

NSP 1 and NSP 2 provide many interesting opportunities for developers and local jurisdictions to help alleviate the effects that subprime lending and foreclosures have had on our neighborhoods. HUD has been actively engaged with the CDBG and the developer community to help draft the regulations in such a way as to maximize the effectiveness of the program. We are starting to see the first effects of this funding make its way into a number of different projects and the results look promising. We are hopeful that this program will make housing opportunities available to low income residents while helping to stabilize our neighborhoods affected by this unprecedented housing crisis.

HEIR PROPERTY PROJECT

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All real estate attorneys have seen those properties- the ones with titles that seem impossible to clear, with dozens of unknowns and generations of families spread throughout the country. As practitioners, most of us call our title insurance companies with bated breath hoping for answers other than the ones we suspect are inevitable in these situations. A deal is on the table, and no one wants to hear that months, or sometimes years, of corrective work are needed before title can be deemed marketable. Although a common problem, most in the real estate community have not stopped to assess the causes or the possible solutions.

The issue, gaining recognition as the "heir property problem", was revealed most prominently across the southern United States in the aftermath of Hurricane Katrina, when lack of clear title to property prevented families in Louisiana from accessing disaster assistance available for home owners recovering from the impact of the disaster. In trying to identify whether persons rebuilding

after Katrina held proper title to the property for which they were seeking federal assistance, the government discovered that an estimated 20,000 titles did not correspond with the identity of the claimant.¹

Initial research shows that heir property largely results from intestate succession and more prominently arises in African-American communities in the rural South, where as many as 80% of African-American rural landowners do not have wills.² Often, when a decedent dies intestate, parties who succeed to property in accordance with the Georgia intestacy laws fail to formalize title to the property in the deed records. Georgia laws on descent and distribution provide that intestate property to which there are multiple heirs-at-law, is held jointly by such heirs in a tenancy-in-common ownership arrangement.³ Tenants in common each have an undivided, fractional ownership interest in the whole of the property. While each tenant has a distinct interest in the entirety of the land, no tenant holds legal title to a distinct portion of the land that corresponds to the fractional interest.⁴ Therefore, co-owners of heir property as individuals lack clear title to land and as a result are not eligible, independent of all other co-owners, for government assistance and grant programs; have difficulty using the land as collateral to obtain loans; and cannot use the timber, mineral or agricultural resources of the land without the consent of all co-owners. Thus, lack of clear title resulting from heir property succession limits the ability of those living on the property to rehabilitate, maintain or develop their property.

The end result is that an entire group of Georgians, who are already disadvantaged and marginalized, face the threat of greater social and economic loss due partly to a lack of knowledge about the issue of heir property.

Georgia Applesseed, a public-interest law center and campaigner for social justice, adopted Heir Property as the signature project of its Young Professionals Council (YPC) in order to help address the problem in Georgia. The YPC is comprised of young professionals committed to carrying out the mission of Georgia Applesseed by encouraging young professionals to devote pro bono time and effort to effect systemic change. Led by YPC President, Jason Carter (Bondurant, Mixson & Elmore, LLP) and YPC Heir Property Chair, Avril McKean-Dieser (UCB, Inc.), YPC and Georgia Applesseed were awarded the prestigious Cousins Fellowship at the UGA School of Law to

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DAVID BURGE APPOINTED TO GEORGIA REAL ESTATE COMMISSION

David J. Burge was appointed by Governor Sonny Perdue to the board of the Georgia Real Estate Commission which licenses and regulates Georgia real estate brokers, salespersons and property managers. Burge, who is a past Chair of the Real Property Law Section, is a partner with Smith, Gambrell and Russell, LLP, in Atlanta, where he practices commercial real estate law.

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study heir property in Georgia. Crystal Chastain Baker, Esq. is the Cousins Fellow. The mission of the YPC Heir Property Project is threefold: to find solutions that provide low income landowners of heir property with the necessary tools to protect and preserve their property from land loss while generating wealth and economic value among these landowners; to increase the capacity of service providers to offer pro bono services in Georgia in an effort to address and remedy the problems associated with heir property; and to find sustainable solutions by increasing awareness of the issue and pursuing systematic responses, including possible legislative changes within Georgia.

Two early goals of the project have been met. *Heir Property in Georgia*, a booklet for landowners, was published in conjunction with the University of Georgia School of Law, Alabama Appleseed, and DLA Piper, and an educational seminar on heir property has been developed. The booklets and educational seminars will serve to empower Georgians to better understand their rights and obligations as landowners, and enable them to confront the common (and often complex) legal, social, and environmental issues brought on by ownership of heir property. The first seminar was held on May 2, 2009 in Liberty County, Georgia. The YPC hopes to continue these seminars on a statewide basis.

The input and assistance of the Real Property Section is essential to the success of Georgia Appleseed's Heir Property Project in Georgia. Pro bono involvement is needed of attorneys and other real estate professionals who are familiar with this issue to render advice and offer suggestions for solving this problem affecting many disadvantaged Georgians. The YPC particularly welcomes the involvement of young professionals throughout Georgia, as this project has a statewide focus.

Current volunteer opportunities include researching tax database and property records to determine the prevalence of heir property in various counties in Georgia; presenting educational seminars to interested organizations; researching partition cases in targeted counties; and training to assist individual property owners with legal and non-legal property issues.

To learn more about Georgia Appleseed, the Young Professionals Council and/or the Heir Property Project, please contact Georgia Appleseed at (404) 685-6750, visit Georgia Appleseed's website at www.gaappleseed.org/heir, or contact Crystal Chastain Baker at ccbaker@uga.edu.

¹ Malcolm A. Meyer, *Louisiana Heirship Property: Solutions for Establishing Record Title*. LA BAR J., Vol 55. No. 5 (2008).

² M. Thomas, J.Pennick, and H. Gray, *What is African American Land Ownership?*, Federation of Southern Cooperatives Land Assistance Fund at www.federationsoutherncoop.com (2004).

³ GA CODE ANN. § 44-6-120

⁴ See *Deal v. State*, 153 S.E. 537, (1914); *Glover v. Ware*, 510 S.E.2d 895 (1999) (An undivided interest in real property may be created into as many fractional shares as desired because it is fractional ownership in the whole and not a division of the land into discrete parts).

PLEASE PARTICIPATE

Attention all RPLS Members – Volunteers are needed to serve on various Section committees. Please consider donating your time to serve on one of the Section's committees, including the legislative, newsletter, property tax, pro bono or web/listserv committees. If you are willing to serve, please contact RPLS Chair, Shelli Willis, at: shelli.willis@troutmansanders.com.

UPCOMING CALENDAR DATES REAL PROPERTY LAW SECTION

— 2009 —

SEPTEMBER 11th – 13th, 2009
Executive Committee Fall Retreat
(Reynolds Plantation)

OCTOBER 20th, 2009
RPLS monthly meeting
(Troutman Sanders)

November 12th, 2009
Fall Commercial Real Estate
Law Seminar
Georgia State Bar Headquarters

November 12th, 2009
RPLS monthly meeting
(Capital City Club)

December 15th, 2009
RPLS monthly meeting
(Troutman Sanders)

— 2010 —

JANUARY 19th, 2010
RPLS Monthly Meeting
(Troutman Sanders)

February 12th, 2010
Spring Residential Practice Seminar
Georgia Public Television Headquarters
(February 18th Replay)

February 16th, 2010
RPLS monthly meeting
(Troutman Sanders)

March 16th, 2010
RPLS monthly meeting
(Troutman Sanders)

April 1st, 2010
Foreclosure Seminar
Georgia State Bar Headquarters

April 20th, 2010
RPLS monthly meeting
(Troutman Sanders)

May 6th - 8th, 2010
Real Property Law Institute
(Sandestin Hilton)