

Preventing Tax Foreclosures for Older Adults: Accessing Tax Relief Options

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems getting on the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

About NCLC

The National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness service; and training and advice for advocates.

Overview

- Communities at risk: impact of tax foreclosure on older adults and communities of color
- Strategies and options for preventing tax foreclosure
 - Constitutional law issues
 - Homeowners' Assistance Fund; repayment plans
 - Bankruptcy options
- Outreach to the community
- Protecting heirs property owners

Property Taxes: Poll Question #1

- Have you assisted older (55+) homeowners with a delinquent property tax who had not applied for an exemption, abatement, or other assistance?
 - a) Yes
 - b) No

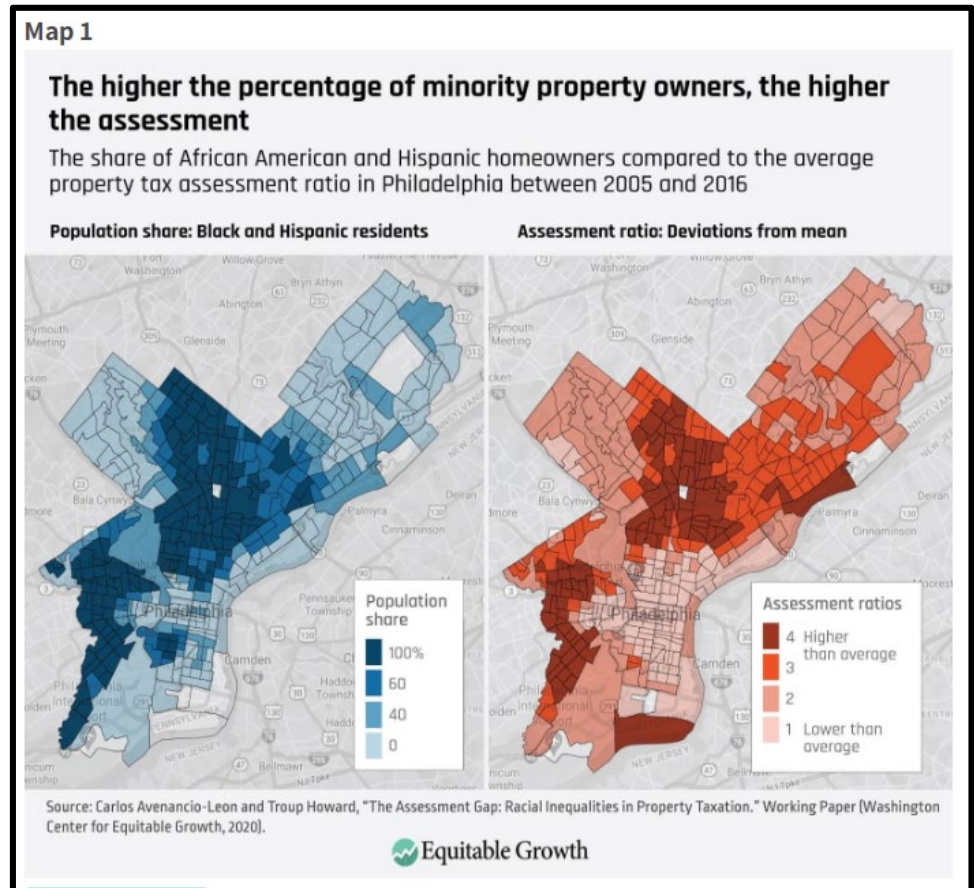
Risk Factors & Impacted Communities

Past Surveys of Elder Advocates: Property Tax Foreclosure Risk Factors

- What are the main hurdles for older adults facing unaffordable taxes or tax liens?
 - High taxes, death of a spouse, increase in expenses
 - Insufficient exemptions, inadequate repayment plans, or other relief options for low-income seniors
 - Addition of interest and penalties to account for late payment
 - Dementia/ cognitive impairment/ difficulty remembering to apply for property tax relief programs
 - Lack of technology or difficulty applying for property tax relief programs

Racial Impact of Property Tax Foreclosures

- Article: [Misvaluations in local property tax assessments cause the tax burden to fall more heavily on Black, Latinx homeowners](#)



Legacy of Housing Discrimination

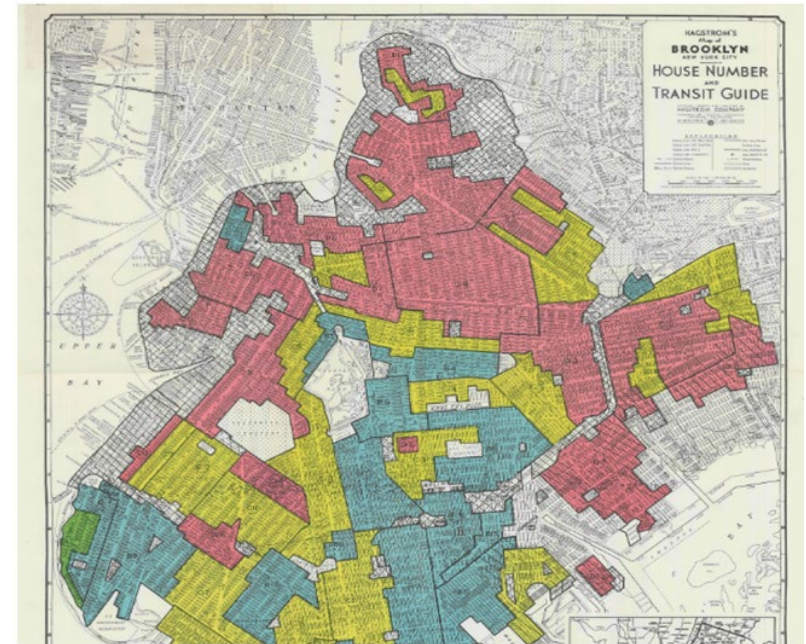
- Laws and policies that segregated public & private housing
 - Redlining
 - Financing
 - Exclusionary zoning
- Age 65-74 Homeownership Rate—84% white & 58% Black

The New York Times

TheUpshot

SELF-FULFILLING PROPHECIES

How Redlining's Racist Effects Lasted for Decades



Loss of Generational Wealth & Community Stability

- Loss of homeownership & home equity for historically disadvantaged groups—majority of whom were denied access to homeownership until the 1960s
- Loss of generational wealth
- Loss of community stability
 - Tax investors may renovate and “price out” the former residents in home sale prices. This quickly erases the ethnic and racial history of a neighborhood.
 - Investors may hold ownership of properties & offer rental rates that “price out” prior residents from staying in the community as tenants.

Impact of Property Tax Foreclosures

- Loss of diversity in neighborhoods
- Loss of affordable housing (homeownership and rentals)
- Acceleration of gentrification

Baltimore Tax Sale Prevention Clinics (2020)

- 72% of clients were older adults
- 48% were disabled
- 85% identify as Black
- Nearly three-quarters (72%) reported annual household incomes of less than \$30,000

Overview of Property Tax Foreclosures

Brief Overview of Property Tax Foreclosures

- Every state has specific laws about property tax assessments & what happens if those property taxes aren't paid.
 - The penalties and process of property tax foreclosure vary from state to state.
- Relief options may be available.
- Contact local taxing authority and non-profits
 - State Homeowner Assistance Funds (HAF) program may cover property tax arrears! Check with state housing agency to see if program is still open.

When Do Tax Payment Problems Occur?

- Most homeowners pay taxes through mortgage escrow account, but:
 - approximately 20% of mortgages do not have escrow accounts
 - Older adults and heirs often have paid off homes with no escrow
 - Older adults with reverse mortgages have not had escrows
- Homeowners most at risk are those who have difficulty with handling financial affairs

Tax Foreclosure Process

- Stages of process in many states:
 - Nonpayment and imposition of lien
 - Notice of tax sale
 - Sale of tax deed, lien, or certificate
 - Period for homeowner to redeem
 - Foreclosure of right of redemption
 - Final transfer of property

General Questions & What to Look For

- Did the person get a notice about unpaid taxes?
 - A letter, court papers, eviction notice, something else?
- Do they own the property/are they on the deed? If not, who is?
- When is the last time the person paid their property taxes?
- Do they know how much is owed on the taxes?
- Do they have the money available to pay the taxes, or family members who can help?
- What is their goal for the house? Save/sell/something else?

Different Tax Foreclosure Methods

- Sale by auction is most common method
 - Sale conducted by town official – usually no court involvement at this stage
- Strict foreclosure
 - Town simply executes on its lien by taking the property and may later sell property at auction

Bidding Procedure at Auctions

- Tax sales are not like ordinary auctions!
- Lien certificate or deed typically not sold to highest bidder based on property value
 - Sold for amount of unpaid taxes, interest, fees, penalties, and related costs
- Some states have devised proxy for competitive bidding

Legal Defenses & Strategies

Legal Defenses/Practice Tips

- Review and speak with attorneys in your state to understand legal defenses.
 - Proper procedures followed at the tax sale
 - Proper parties, notice, & compliance with requirements
 - Lawful calculation of fees and costs by lienholder
 - Tax lien already paid
 - Fraud
 - Enjoining sale
 - Bankruptcy



Constitutional Law Challenges

- Many states do not require the taxing authority or purchaser to reimburse the former owner for any surplus equity in the property that is transferred after foreclosure of right of redemption
- In May- Supreme Court found that it is unconstitutional for a local government to take a home at a property tax foreclosure and keep the homeowner's equity after the tax debt is paid (surplus equity)

Tyler v. Hennepin County (1 of 1)

- Geraldine Tyler, 94 years old, fell behind on her property taxes after moving into a senior community.
- The county taxing authority took her property, subject to a three-year redemption period.
- When she failed to redeem the property by paying the outstanding taxes, interest, and penalties in the amount of \$15,000, title to the property transferred to the county.

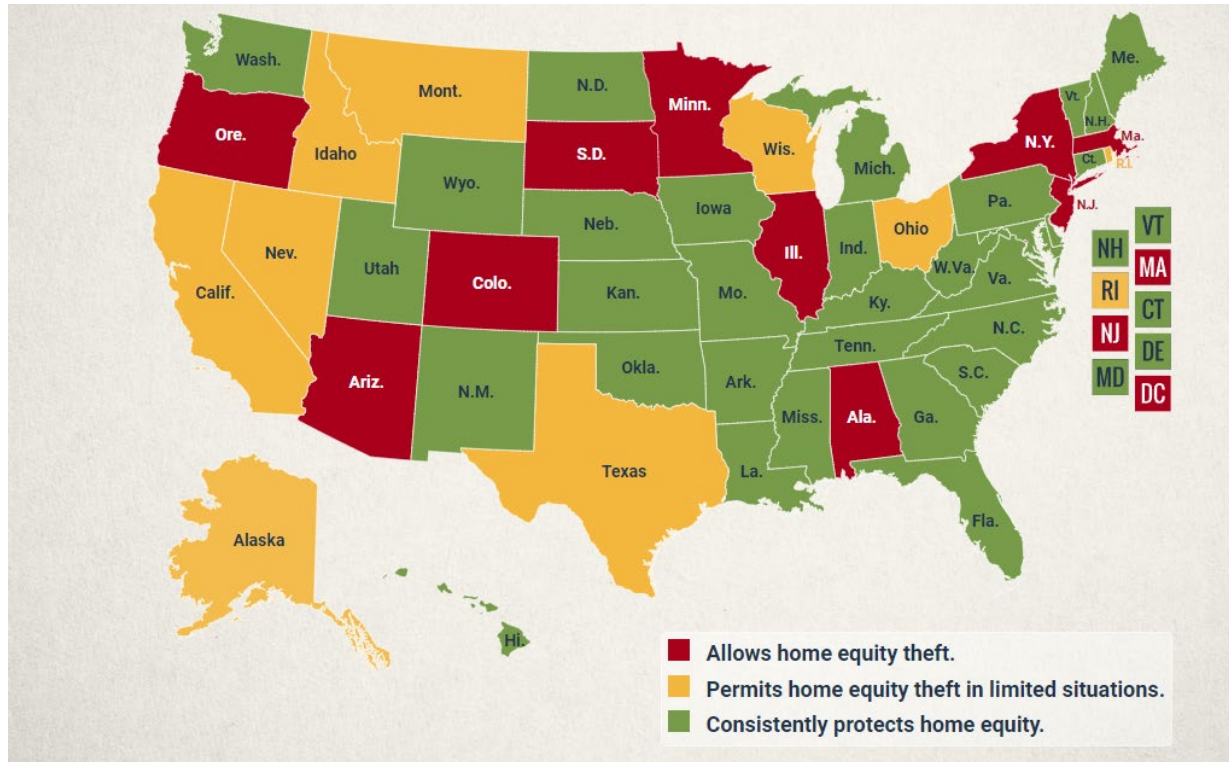
Tyler v. Hennepin County (2 of 2)

- The county then sold Ms. Tyler's home for \$40,000 and kept the \$25,000 sale proceeds.
- Minnesota law provided no right or procedure for Ms. Tyler to recover the surplus equity, which is the difference between the total amount owed on the tax debt and the value of the property at the time full ownership was transferred.

Right of Redemption

- Purchaser acquires interest subject to right of redemption by homeowner
- Redemption period often one to three years
- Interest rates on amounts owed can be 18% or more + fees and costs
- No redemption = loss of home
- Transfer of ownership may occur automatically at end of redemption period or only after court order foreclosing right of redemption

Home Equity Theft Consequences: *Over Twelve States (plus DC) Allow Home Equity Theft*



**Consequences of
unpaid property taxes
& homeownership /
equity loss**

Green = least

Yellow = medium

Red = worst

<https://pacifical.org/home-equity-theft/>

Other Constitutional Grounds for Challenging Tax Sales

- Failure to provide **adequate/proper notice** to homeowner at each stage of the tax foreclosure process (*lack of due process*)
- The practice results in **a disparate impact on a protected class** as result of intentional discrimination (*lack of equal protection*).
- The value of the property taken, plus interest, penalties, and cost are far in **excess of what's needed to satisfy a delinquent tax debt** (*excessive fines and fees*)

Relief and Local Assistance

- Making sure the homeowner has all relief options
 - Abatements/ exemptions
 - Special relief for seniors, disabled, veteran
 - Refund program for low-income owners
 - Pre & repayment plans
 - Retroactive eligibility for exemptions
- Homeowner's Assistance Fund (HAF): [Interactive map that links to each state's HAF program](#), where you can find instructions on how to apply. (Source: The National Council of State Housing Agencies' (NCSHA))

Bankruptcy Strategies

- Chapter 13 bankruptcy repayment plan: homeowner can repay property tax arrears over 60 months. Confirm the deadline for bankruptcy filing under state law.
- Challenging the property tax foreclosure
 - Argument that a sale may be reversed if the property did sell for a reasonable amount

Other Options – Big Picture

- Depending on available funds from family or friends, or if client's financial situation improves –
 - Lump sum lien redemption
 - Loan or mortgage to pay off the lien—family investment
 - Reverse mortgage for eligible senior citizens

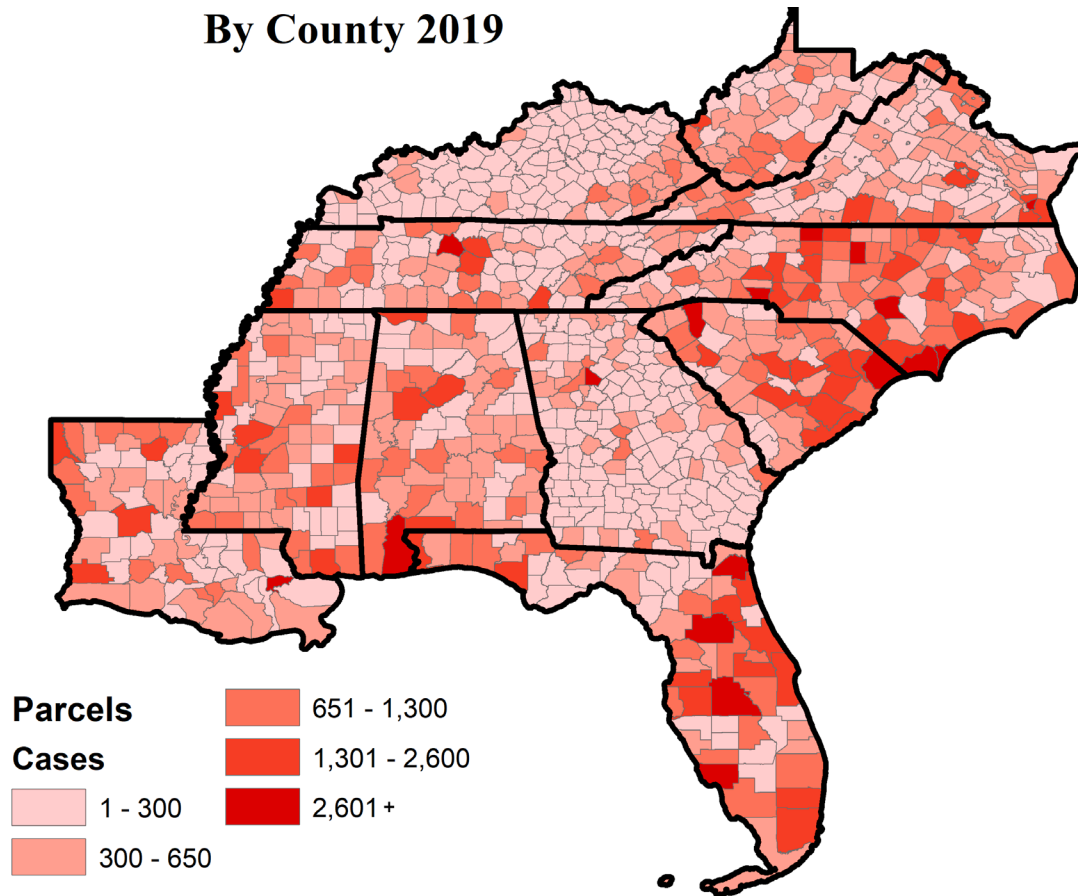
Community Engagement: LISC Jacksonville

Strategy

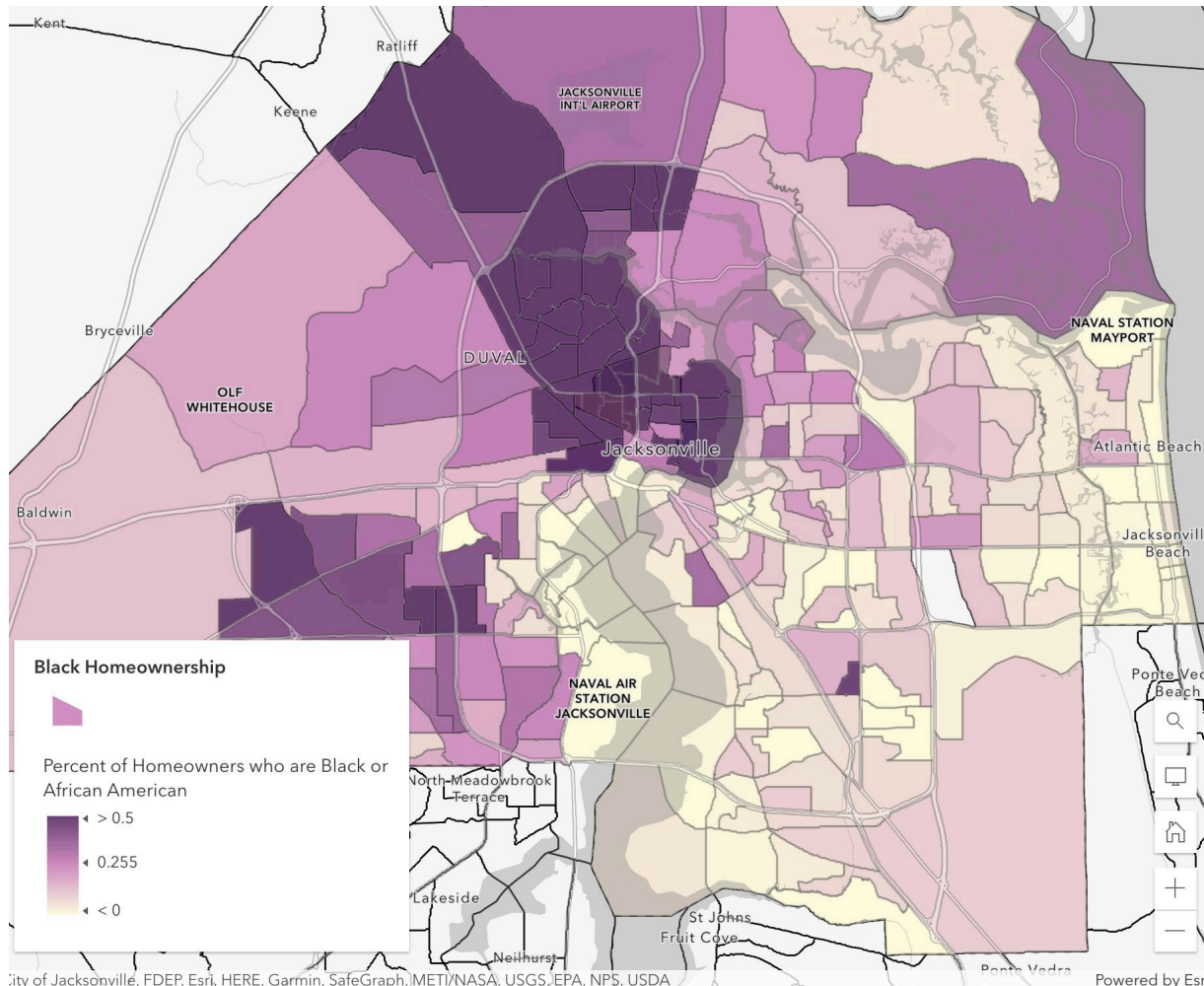
- LISC & partners utilize data to identify neighborhoods
- Residents and partners design interventions
- LISC provides resources to support interventions
- Ownership is preserved and equity gains accrued

Parcels of Heirs' Property

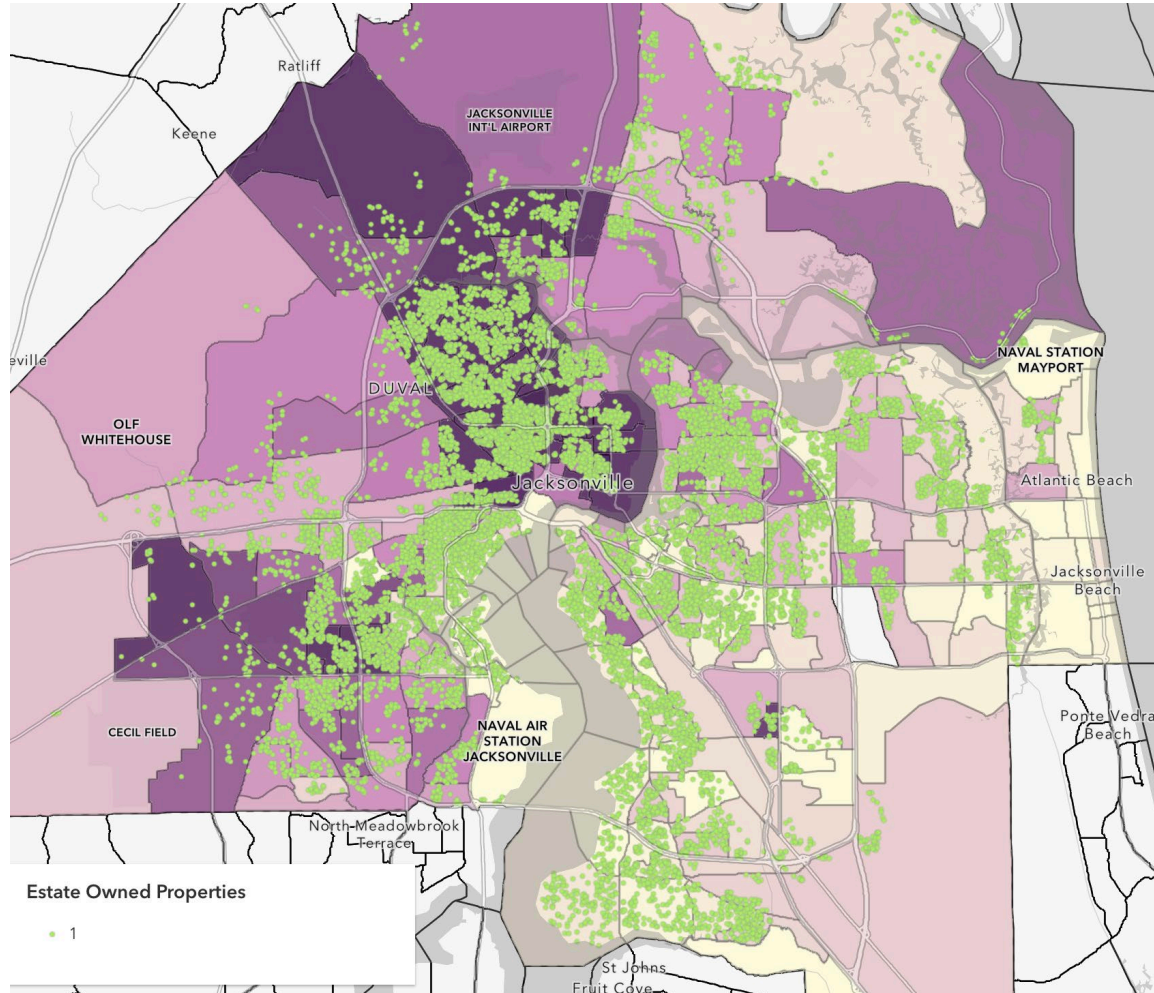
By County 2019



Jacksonville: Black Homeownership



Jacksonville: Estate-Owned Properties



LISC Jacksonville: BIPOC

Intergenerational Wealth Creation

Driving systems change through community empowerment

- **Build Base of Resident Leaders**
 - We provide funding and TA to adapt and expand a Speakers Bureau model. Residents work alongside legal professionals to identify and engage neighbors at risk of home loss.
- **Co-Design Interventions**
 - Residents & partners design interventions that are culturally rooted.
 - E.g., resident-directed property tax relief fund to help vulnerable households avert displacement
 - E.g., scaled innovative home repair effort
- **Support Interventions**
 - Provide financial and technical resources and leverage collaborations.
 - E.g., partnership with civil legal service providers
 - E.g., community-wide enrollment in tax exemption program

Heirs Property Owners and Property Tax Relief

- Heirs Property
 - Family owned home that is jointly owned by descendants of a deceased person whose estate has not yet gone through probate
- They own the home but if names are not on the deed; no “record title”
 - Must go through probate but not familiar with the process
 - Time consuming and expensive

Consequences for Heirs: High Tax Burden

- The deceased owner may have had an exemption in place that lowered the amount of tax due
- That rarely transfers to heirs upon the owner's death- most likely terminates
- Heirs must alert tax assessor of change of ownership and must apply for their own exemption if applicable

Consequences for Heirs: Lack of Record Title

- Can limit access to property tax relief
 - While most states offer tax exemption and relief programs, they are usually limited to the record owner of the property.
 - Excludes heirs from property tax relief options that could lower their tax burden and help them save the home.
 - If they pay the rate in place = underpayment
- Can limit notice of relief options
 - By the time heirs realize the amounts due for property taxes, it is often soon before a tax sale, or after the sale has happened, and options are limited.

Disparate Impact

- High prevalence of heirs property with seniors and in lower-income communities and communities of color
- Tax foreclosures cause the further erosion of homeownership and intergenerational wealth in these communities that has been taking place for decades

Caution for Heirs

- One investor strategy: buy the interest of one heir at a fraction of the market value and then force a sale to take that share of the equity at a huge profit
- The [Uniform Partition of Heirs Property Act](#) provides some limited protection of this in 22 states
 - Can check [map](#)

How to Help Heirs

- Advocate for the use of an “**affidavit of heirship**” certifying their ownership of the property instead of a deed when applying for an exemption
- Advocate for the exemption to be applied **retroactively** for a certain period of time if the heir can attest to living in the property and otherwise qualifying for the exemption during that time period.
- Advocate that your local tax assessor, upon the death of any homeowner as determined through death records, **provide notification to the heirs of the process by which they can and should apply for the tax exemption.**

Resources

- [NCLC, Property Tax Foreclosures on Heirs' Property \(Aug. 2023\)](#)
- [NCLC, Supreme Court Stops Equity Theft in Property Tax Foreclosures \(June 2023\)](#)
- [Property Tax Foreclosures on Heirs Property: An Interview with Sarah Mancini, Andrea Bopp Stark, and Kristopher Smith \(NCLC & LISC Sept. 2023\)](#)
- [Video on Property Tax Foreclosures & Older Adults: Tyler v. Hennepin](#)

Thank You!
Questions?



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Case Consultations

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

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