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How Attys Are Helping DC Residents Keep Family Homes

By **Alison Knezevich**

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A row of houses on C St. SE in the Hill East neighborhood of Washington, D.C., is pictured. The city has recently provided \$1 million in new funding to provide legal services to help low-income Washingtonians navigate issues related to homes that have been passed down through families but where the title has not formally changed hands. (Sarah L. Voisin/The Washington Post via Getty Images)

When Washington, D.C., resident Lonnie Robertson was getting behind on his house payments, he called his mortgage servicer to see what he could do.

But the company said it wouldn't work with him, he told Law360.

"They said, 'Well, we can't do a payment plan with you because you don't own the house,'" said Robertson, a 25-year-old ride-share driver.

The home was what's known as "heirs' property," and Robertson was experiencing one of the many legal complications associated with such houses. His mother, who was the owner of the three-bedroom duplex built in 2005, died without a will when he was in sixth grade, and her name remained on the title for years after her death.

Heirs' property, which is passed down between generations without going through the legal process of formally transferring a title, is a fragile form of ownership, attorneys told Law360, making residents vulnerable to a range of potential repercussions, including foreclosure, tax sales and being the target of investors attempting to buy the home below market value.

Now, the new D.C. Heirs Property Assistance Program aims to support people in situations like Robertson's. Two nonprofits in the district, DC Affordable Law Firm — which Robertson turned to for help last year — and Legal Counsel for the Elderly, each received \$500,000 grants from the D.C. Department of Housing and Community Development to provide legal representation to people navigating issues related to heirs' properties.

"Not only does it create an opportunity to stay home and in an affordable house," the program is also "a way to create wealth and opportunity to become more financially stable," said Colleen Green, director of the housing agency.

It's among growing efforts across the country by legal services providers and others to tackle heirs' property issues.

The program, which the district's housing agency launched this past fall, follows other local initiatives that have helped residents with legal issues surrounding heirs' properties — also known as homes with "tangled titles" — in cities such as Philadelphia, Baltimore, and Gainesville, Florida.

In Robertson's case, he was facing foreclosure even though he was only slightly behind on the mortgage, said Dan Passon, a DC Affordable Law Firm attorney who represented Robertson. Passon and a title attorney worked with Robertson to transfer ownership of the property to him.

"He has title to 100% of his house now," Passon said.

"It was a lifesaver," Robertson said of keeping the family home, adding that the cost of his monthly mortgage is only a fraction of what it would take to rent in D.C.

Closing the Wealth Gap

Homeownership is a key driver of wealth for many Americans. And with heirs' property disproportionately affecting Black residents, experts say addressing it is a crucial way to preserve intergenerational wealth and help close the nation's huge racial wealth gap.

Providing legal services to assist with the transfer of heirs' property was among the recommendations of a "strike force" launched by Washington, D.C., Mayor Muriel Bowser in 2022 to increase Black homeownership in the nation's capital, and address the lasting legacy of discriminatory housing laws and policies that excluded many families from owning a home.

A strike force report released that year noted the district's dramatic decrease in Black homeownership in recent years. In 2019, the Black homeownership rate there was 34%, down from 46% in 2005, the report said, citing data from the U.S. Census Bureau's American Community Survey. That's compared to a white homeownership rate in the district of 49% in 2019.

Challenges passing property down to heirs "have exacerbated racial disparities in homeownership preservation," according to the report.

Local government and court officials in D.C. told Law360 they do not have an estimate on how many heirs' properties are in the district. But nationally, the estimated value of heirs' property tops \$32 billion, according to a report last year by the nonprofit Housing Assistance Council, which focuses on expanding affordable housing availability in rural America.

With gentrification pushing up property values in D.C. neighborhoods such as Columbia Heights, Petworth and Navy Yard, some of the residents served by Legal Counsel for the Elderly live in properties worth nearly \$1 million or more, said senior managing attorney Tina Nelson.

But while the city offers property tax relief programs to homeowners, some end up losing out when it's discovered they don't hold the title to their homes. As a result, they can see their tax bills skyrocket, putting them at risk of foreclosure.

"When you're forced to move, that means you have lost all the equity that has built up in that property over the years," Nelson said. "You're no longer able to leverage that property ... to send your children or your grandchildren to college."

Losing a home "not only destabilizes the family, but it destabilizes the community as well," Nelson added.

When someone doesn't have the title to their home, they may also miss out on benefits such as grant programs to help repair a roof or to make their home more accessible as they age, attorneys told Law360.

Navigating probate — the legal process that happens after someone's death — can be time-consuming, expensive and tedious, attorneys said, and many people lack information on how to do it.

A lot of people in the D.C. area go through probate without having someone represent them. For low-income individuals or moderate-income individuals, there are not a lot of attorneys that take those cases.



Tina Nelson

Legal Counsel for the Elderly

"A lot of people in the D.C. area go through probate without having someone represent them," Nelson said. "For low-income individuals or moderate-income individuals, there are not a lot of attorneys that take those cases."

Some people don't know they have to take legal steps to transfer ownership, said Samuel Wilkins, a DC Affordable Law Firm attorney. They may have been living in their family home for years after the title owner's death, paying taxes and the mortgage, and they "see that property as theirs."

And working through the legal issues often comes at a time when "our clients are dealing with immense grief and loss" Wilkins said. Combine that with work and personal obligations, and "it's so easy to see how these things fall to the back burner."

Robertson, who represented himself in some of his probate proceedings before working with DC Affordable Law Firm, told Law360 he felt he waited too long to seek an attorney when working through some of the issues related to his mother's estate.

"I filed the paperwork wrong the first time ... [and] I didn't realize it," he said. "If I would have done it with Dan the first time, there probably would have been less issues."

Increasing Awareness of Estate Planning

Increasing the prevalence of estate planning goes hand in hand with efforts to address heirs properties.

When issues are dealt with on the front end, "it saves time, it saves expense, it saves emotional trauma and drama," Nelson said.

A recent report on heirs' property by the National Consumer Law Center noted that "lack of access to, as well as exploitation at the hands of, the legal system has discouraged generations of Black families from utilizing probate or estate planning services."

"With that distrust, we had people retreating instead into more informal ways of property ownership to shield themselves from being a target for home loss," said Nketiah "Ink" Berko, an Equal Justice Works fellow at the center and one of the authors of the report.

According to a 2022 Consumer Reports survey of U.S. adults cited in the report, 77% of Black people and 82% of Hispanic people don't have a will, compared to 61% of white people and 67% of English-speaking Asian people.

Many people don't feel a sense of urgency when it comes to estate planning, attorneys said.

It's something that Lowenstein Sandler LLP attorneys Molefi McIntosh and Megan Wernke are hoping to help change as they lead a new estate planning and heirs' property clinic at Howard University School of Law.

"It's not something that people are thinking about, with all that we have to think about every day," McIntosh told Law360.

The clinic, which started last year with funding from JPMorgan Chase and the Robert Wood Johnson Foundation, has seen McIntosh and Wernke working with a group of student attorneys to help people with heirs' property issues, and to draft estate planning documents such as wills and powers of attorney. The goal is to both provide free legal representation to D.C.-area residents and to train the next generation of lawyers to take on these cases.

"I think it's really interesting and satisfying and fulfilling work," Wernke said. "And yet, there aren't enough attorneys to do it."

Some are also working to change the probate process in D.C.

D.C. Councilmember Charles Allen introduced legislation last year to simplify it, drawing on recommendations from the Council for Court Excellence and the District of Columbia Access to Justice Commission, which undertook a review of the local probate administration system.

Allen told Law360 he had learned about constituents' experiences where "different family members wanted different outcomes, and it would get tied up for years and years and years and years."

Even without family disputes, "it was very slow and painful to get through probate court," he said. "So we worked on, how do we help actually administer probate in a different and better way?"

The bill would streamline the appointing of representatives for a deceased person's estate, expand the number of estates considered "small estates" — which are subject to a simpler process — and reduce the number of legal notices someone dealing with an estate has to publish, among other changes.

Cousins Charlene Holloway and Linda Goode Fitchard, former clients of DC Affordable Law Firm, learned firsthand how complicated navigating an estate can be when they lost their uncle, Walter Goode, in 2020. He had no children and left behind a Victorian-era row house in Washington's Shaw neighborhood that had once belonged to Holloway and Fitchard's grandparents.

A U.S. Air Force veteran who served during the Korean War, their uncle was an avid book collector who loved talking about sports, politics and religion, his family recalled in his obituary. He had retired from the federal General Services Administration.

Although he had a will, the family learned after his death of a complication: Holloway's mother — their uncle's sister-in-law — was named as a beneficiary, but legally could not inherit anything because she had also been a witness to the will.

They faced other hurdles, too. The case got delayed as the COVID-19 pandemic slowed down local courts. And everyone in the family wanted to sell the house, as their uncle had directed in his will, except for one person who had been living there, said Holloway and Fitchard, who were appointed to administer the estate.



Cousins Linda Goode Fitchard (left) and Charlene Holloway learned how complicated administering an estate can be when they lost their uncle in 2020. They said the legal guidance they received from attorneys with DC Affordable Law Firm was invaluable.

"Instead of us being able to take advantage of a very hot real estate market ... we had to go through this elongated process because one person disagreed with selling the home," Holloway said, adding that dealing with the estate was practically a part-time job. "That was a major complication for us. And that was one of the things that DC Affordable Law really helped us to navigate."

With nearly a dozen relatives named in the will, it was a complex situation.

"If we had to do that entire to-do list on our own, without [attorneys'] help, we would have lost the home," Fitchard said.

The house had once been a gathering spot for their large family and a place that helped others get their start in D.C., the cousins said. Their grandparents were originally from Mecklenburg County, Virginia, and were the first in the family to have a home in the district, they said.

"They would allow other relatives from different parts of the country to come into D.C., live with them, get jobs and then move out and get their own homes," Holloway said.

Legal guidance was invaluable, they said — and so were the firm's affordable rates, because the case dragged on.

After so much stress and time spent on the estate, it was gratifying to see how the eventual sale of the home last year benefited the family, the cousins said.

"Not only being a hub for so many members of our family over the generations, but being a financial blessing to us all when we had to sell it — it was definitely good to see that end result," Holloway said.

--Editing by Lakshna Mehta.

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