

**Testimony of Shirley Horng
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**Before the Committee on Housing and Executive Administration
Council of the District of Columbia**

**Budget Oversight Hearing Regarding the
Department of Housing and Community Development**

March 30, 2022

The Legal Aid Society of the District of Columbia¹ submits this testimony to support the inclusion of new Heirs Property Legal Services funds in the Mayor’s proposed Fiscal Year 2023 budget for the Department of Housing and Community Development (DHCD), designed to assist heirs to get on title of their family homes after the original homeowner has passed away. We also eagerly await the agency’s opening of the full Homeowner Assistance Fund (HAF) which will deliver \$50 million in federal funds to help District homeowners who suffered financial hardship relating to the pandemic.

This Committee plays a vital role in overseeing the budget and operations of DHCD. Specifically, we hope that the Committee will do the following with respect to heir property funding, and the District’s Homeowner Assistance Fund (HAF):

- **Approve the new proposed recurring funding for Heirs Property Legal Services**, which would provide critical support for low-income heirs who need to go through probate to get on title of their family homes after the homeowner has passed away;

¹ The Legal Aid Society of the District of Columbia was formed in 1932 to “provide legal aid and counsel to indigent persons in civil law matters and to encourage measures by which the law may better protect and serve their needs.” Legal Aid is the oldest and largest general civil legal services program in the District of Columbia. Over the last 90 years, Legal Aid staff and volunteers have been making justice real – in individual and systemic ways – for tens of thousands of persons living in poverty in the District. The largest part of our work is comprised of individual representation in housing, domestic violence/family, public benefits, and consumer law. Our consumer law practice focuses on preserving the limited income and assets of low-income DC residents, with foreclosure prevention and related homeownership issues making up a substantial portion of our work. From the experiences of our clients, we identify opportunities for court and law reform, public policy advocacy, and systemic litigation. More information about Legal Aid can be obtained from our website, www.LegalAidDC.org, and our blog, www.MakingJusticeReal.org.

- **Guide and support DHCD to address delays in making HAF payments for approved applications**, including asking the agency what faster alternatives to its current vendor registration process could expedite payment disbursement; and
- **Ask how DHCD plans to prioritize HAF program funds for homeowners who are at highest risk of foreclosure**, specifically (1) condo arrears and (2) active foreclosure court cases or active tax sale court cases.

The Council Should Approve the New Proposed Heirs Property Legal Services Funds to Help Heirs Get on Title to Inherited Properties

Legal Aid supports the \$1,000,000 in Heirs Property Legal Services funds in the proposed budget for DHCD, which would provide critical assistance to allow income-eligible heirs to access legal help with the probate process to get on title to generational homes. Assisting heirs to get on title to their family homes through probate would help to preserve rare sources of affordable housing, stem the tide of displacement of longtime Black and Latinx residents, support housing and economic stability, and build generational wealth.

Getting Heirs on Title Should Be a Policy Priority

It is a common misconception that probate is only for the wealthy. Probate is not just for people with significant assets. People with low incomes, whose only asset is their home, must also go through probate. When heirs don't get on title of the properties they inherit, it is a problem that impacts housing stability, financial security, and racial justice in the District of Columbia.

In our practice preventing mortgage foreclosures, it is not uncommon to see a low-income District residents who have lived in their family homes for decades struggle to avoid foreclosure after a family member passes away and housing payments become delinquent, even if the heirs would have sufficient income to make regular housing payments going forward. If someone lives in a home that is still legally owned by the deceased family member because the probate process was never initiated or completed to transfer title, then the heir-occupant is often considered ineligible for numerous important financial supports or options for avoiding foreclosure, including mortgage loan forbearance or modification, refinance, and property tax relief. As a result, many heirs in the District are at risk of losing their longtime family homes to foreclosure – which would strip the equity accrued and the ability to pass wealth onto future generations, on top of destabilizing families and neighborhoods and widening the racial wealth and homeownership gap. The new proposed funds would address the need for both legal representation and financial assistance to cover costs associated with the probate process.

Once an heir is on the deed, they have legal title and can access important options that they previously could not. First, most fundamentally, heirs on title can sell the house. This important ability means the equity that their parents or spouse worked so hard to build is preserved and maintained rather than lost through foreclosure. Second, as mentioned above, heirs who want to stay in their family home can often access critical foreclosure prevention programs (like forbearance or loan modification programs from mortgage companies) or property tax benefits

(like the D.C. Office of Tax and Revenue’s homestead deduction) only if the heir is on title. Third, heirs on title can apply to take out a loan against the property to resolve property tax or other housing-related arrears left by the deceased relative that may threaten the heir’s ability to remain in the family home. And if there is a lawsuit for foreclosure of the property, heirs on title can participate as a party in the case and defend against foreclosure.

Probate Resources for Low-income Heirs Will Help Preserve Black and Latinx Homeownership

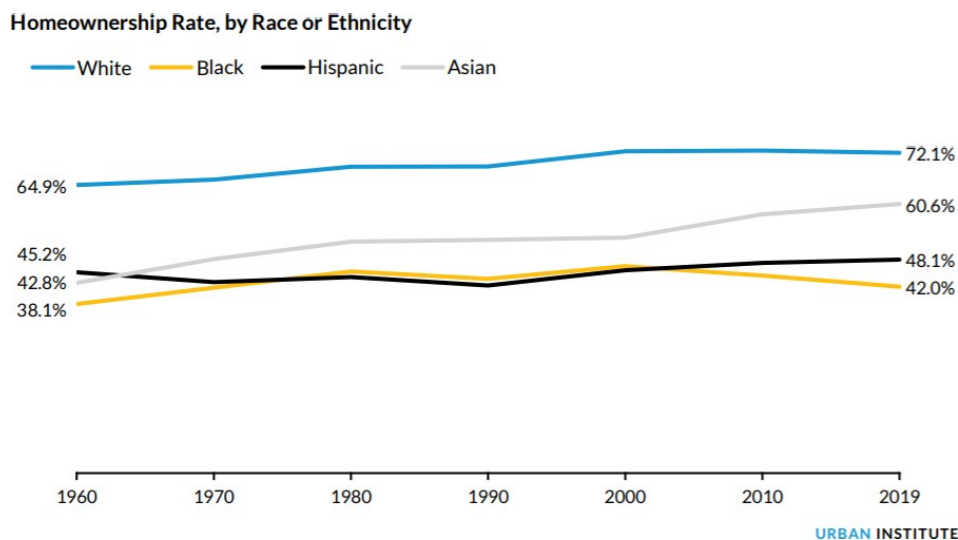
Getting low-income heirs on title is also a substantial racial justice issue. Properly probating estates is essential to maintain and pass down the only source of family wealth and stave off homelessness that might occur as the result of foreclosure. This is particularly important to ensure generational wealth for communities of color and address the issue of gentrification in the District. More and more families who are low-income are forced to move outside of DC into Maryland and Virginia because they cannot afford to keep up with increased property taxes as the assessment values of their properties increase as a result of gentrification.²

In Washington, D.C., the racial wealth gap is extreme: according to an Urban Institute research report, “The Color of Wealth in the Nation’s Capital,” White households in DC have a net worth 81 times greater than Black households, with disparate rates of homeownership and home values playing a major role.³ Urban Institute data also indicates that the gap in homeownership rates between White and Black households has not improved since 1960 – in fact, it has widened.⁴

² Diego Mendoza, How Rising Property Taxes Are Disproportionately Impacting Low-income, Gentrified Neighborhoods, WUSA9 (Aug. 21, 2021), *available at* <https://www.wusa9.com/article/news/local/dc/rising-property-taxes-disproportionately-impact-low-income-gentrified-neighborhoods/65-3851f7b5-f2aa-415f-8880-d19e44122618>.

³ Urban Institute, “The Color of Wealth in the Nation’s Capital”, (Nov. 1, 2016) *available at* [https://urban.org/research/publication/color-wealth-nations-capital-:-:text=White households in DC have,significantly lower for Black families](https://urban.org/research/publication/color-wealth-nations-capital-:-:text=White%20households%20in%20DC%20have%2C%20significantly%20lower%20for%20Black%20families)

⁴ See Urban Institute Research Report “Closing the Gaps: Building Black Wealth Through Homeownership”, Figure 3 (Nov. 2020), *available at* <https://urban.org/research/publication/closing-gaps-building-black-wealth-through-homeownership>



Sources: Decennial Census and the American Community Survey.

On top of the extreme wealth gap and widening homeownership gap, homeowners of color face a grossly disproportionate risk of losing their homes to foreclosure. The Census Bureau’s Housing Pulse Survey from September 2021 indicates that nearly 7,000 households in the District have reported being behind on their mortgage payments.⁵ This is not the full picture, as it only includes those reporting and does not capture households that may be struggling with other types of payments including property taxes or condominium or homeowners association fees. But even looking at that subset of data – out of all District households reporting being behind on their payments, almost 95% identify as Black or Hispanic.⁶ As described above, households involving heirs property (where title hasn’t transferred to the heir) face the additional and substantial barrier of having far fewer options for avoiding foreclosure and the loss of generational equity and wealth.

Probate Resources for Low-income Heirs Are Scarce

Probate is often a long and stressful process, making it difficult for people to navigate on their own. The court cases are complex and often take two to three years to complete, even with the help of a lawyer. The costs associated with probate places further financial strain on those who are already economically vulnerable.

Through our work helping homeowners and heirs who are low income, we have seen a substantial need not only for financial assistance relating to probate court fees and costs but also

⁵ U.S. Census Bureau, Week 37 Household Pulse Survey, Housing Tables, Table 1a. “Last Month’s Payment Status of Owner Occupied Housing Units” (Excel spreadsheet), *available at* <https://www.census.gov/data/tables/2021/demo/hhp/hhp37.html>

⁶ Id.

for legal assistance and representation. Specifically, heirs who are living in their family homes – most commonly after a parent or spouse has passed away, and title remains in the deceased person’s name – need an attorney to open a probate estate in D.C. Superior Court and to administer the estate so that title to the home can be transferred to the heir.

Unfortunately, finding free or affordable legal representation for probate can be extremely difficult. In a set of extensive recommendations presented by the D.C. Access to Justice Commission and the Council for Court Excellence in February 2022, the D.C. Estate Administration Working Group highlighted probate estate administration as a major and continuing justice gap, noting that resolving probate issues is “often necessary to preserve home ownership from one generation to the next or to address a foreclosure issue.”⁷

This new funding offers hope to low-income heirs who otherwise fear losing their family homes to foreclosure simply because they cannot navigate the complicated, costly, and long probate process on their own.

The Council Should Ask DHCD Questions About Its Implementation of the District’s Homeowner Assistance Fund

Legal Aid first wants to thank the DC Council for extending the moratorium that protects all owner and heir-occupied properties from foreclosure through June 30, 2022; and through September 30, 2022 for homeowners who provide documentation to the other side by August 30, 2022 that they have a HAF application under review, pending payment, or under appeal. This protection is critical while District homeowners continue to await the opening of the full HAF program, and it will remain necessary to prevent foreclosures and displacement before the program is fully functioning and delivering funds for approved applications.

Legal Aid also wants to thank DHCD for its thoughtful and deliberate administration of the HAF-Pilot and preparation for the upcoming opening of the full HAF Program. We applaud the extraordinarily dedicated staff who are working diligently to ensure equitable, effective, and efficient operation of the program and are committed to the program’s success. We appreciate the agency’s efforts to apply lessons learned from the HAF-Pilot while remaining committed to keeping the full HAF application process low barrier. We also appreciate the continued engagement with stakeholders throughout the planning process.

Once the full program is up and running, HAF will help low- and moderate-income homeowners catch up on mortgage payments, condo fees, property taxes, and other housing-related payments to avoid foreclosure and displacement. However, the payment disbursement process has become a major obstacle to the timely opening of the full HAF Program. Despite numerous approvals of HAF-Pilot applications, to our knowledge, not a single payment has been made to assist a

⁷ D.C. Access to Justice Commission and Council for Court Excellence, Strengthening Probate Administration in the District of Columbia, Recommendations of the D.C. Estate Administration Working Group (February 2022), at 6, available at <https://dcaccesstojustice.org/wp-content/uploads/2022/02/Strengthening-Probate-Administration-in-DC-Feb-2022.pdf>

homeowner. We ask the Committee and the District to provide DHCD guidance and support to eliminate the roadblocks and address the delay it currently faces with trying to get HAF-Pilot payments out the door.

Delays in Sending Payments Could Jeopardize the Success of HAF

DHCD opened the HAF-Pilot (which was not subject to Treasury approval) on October 1, 2021 but only for a very narrow set of homeowners – those with HPAP loans who own condos in four select zip codes.⁸ Approvals for the HAF-Pilot applications started going out to homeowners in November 2021. And in January 2022, the U.S. Treasury Department approved the District’s full HAF plan. At the Deputy Mayor’s Town Hall, Interim Director Hubbard said the full HAF program would open in Spring 2022. To our knowledge, 38 states have already opened their full HAF program. Even though homeowners were approved for the HAF-Pilot back in November 2021, to our knowledge, still no payments have been made.

While it is important to stand up the full HAF program as soon as possible, payment disbursement delays in the HAF-Pilot have become a major obstacle that could hinder the overall success of the full HAF program, which otherwise looks to be extremely promising.

We understand the delay is due to a new process unique to HAF that requires payees to register as vendors of the District. This delay means that homeowners’ unpaid balances are continuing to grow each month, accruing more interest and fees. In addition, homeowners’ credit reports may reflect increasing months of missed payments, which can have a variety of negative impacts, including impeding their future ability to refinance a mortgage with a high interest rate to a better one. And perhaps most importantly, homeowners continue to experience stress and anxiety relating to their home and the fear of potentially losing it, especially when mortgage companies and condo associations continue to threaten foreclosure or debt collection action despite HAF-Pilot approval. The delay in payments (and the corresponding delay in opening the full HAF program) also wastes precious time when the foreclosure moratorium is in effect. No homeowner who is eligible for HAF should be foreclosed upon while relief funds are in the pipeline, which is why the moratorium extension is so important. Payments must be disbursed efficiently after approval to make program funds go as far as possible and avoid the many negative impacts of delay.

To maximize the moratorium protection and to enable the full HAF program to open as soon as possible, we ask the Committee to guide and support DHCD in breaking through the current roadblocks that exist with issuing payments. The Committee should ask DHCD what faster alternatives to its current vendor registration process could expedite payment disbursement, and what staffing and infrastructure supports are needed and being implemented to address this issue as well as to get ready for the opening of the HAF program District-wide.

⁸ A portion, \$5 million, of the \$50 million from HAF is already currently available to the District. Eligibility for the Pilot program is narrowly limited to condo unit owners with HPAP loans who live in 20019, 20020, 20032, and 20024.

DHCD Should Prioritize Condo Arrears and Foreclosure Court Cases for HAF

The full HAF program must be fully utilized and accessible to District homeowners most at risk, specifically Black and Latinx homeowners who face a grossly disproportionate risk of losing their homes compared to White homeowners. When opening the full HAF program, DHCD should prioritize homes with overdue condo assessments, as well as homes that have open foreclosure court cases and tax sale cases.

Condo arrears should be prioritized for several reasons. In the District, foreclosures by condo associations take place entirely out-of-court and with almost no legal or procedural protections. A condo association can foreclose on a unit owner after a mere 31-day notice. Unit owners are not entitled to payment plans or even the opportunity to engage in mediation. Moreover, after a condo association refers an account to a law firm for collection, attorney's fees can skyrocket - so the sooner the assessments can be paid to the association, the less the attorney's fees will interfere with a homeowner's ability to resolve the account. Finally, unlike payments to mortgage lenders, government funds that are spent to cure condo arrears stay within the community because they go to the associations that manage and operate the condo buildings.

Homes that have open foreclosure court cases or open tax sale cases should also naturally be prioritized because they are clearly at risk of foreclosure. When court cases have been filed, the loss of homeownership is no longer theoretical. In addition, homeowners who have court cases threatening their homes are anxious and stressed through the pendency of the case. Our clients facing foreclosure court actions and the chronic stress associated with that experience regularly report having trouble sleeping, eating, working, and living their daily lives. We urge DHCD to prioritize these two groups when it opens the full HAF program.

Conclusion

We thank the Committee for the opportunity to submit this testimony. We are excited by the new funding for heirs to get financial and legal assistance to probate the estates of their deceased loved ones so that they can get on title to their family homes. This will help preserve and build generational wealth for Black and Latinx families, increase economic security and housing stability, and prevent foreclosure and displacement. In addition, the effective and timely administration of the Homeowner Assistance Fund is essential not only to preventing a new wave of foreclosures and displacement but also in addressing the racial wealth and homeownership gaps in the District. The Committee should engage with DHCD to ensure efficient payment disbursement which is critical to the success of the full HAF program. Finally, we urge DHCD to open the full HAF program as soon as it can effectively do so, and to prioritize homes with condo arrears and homes that have open foreclosure court cases and tax sale cases.