

2025 HAWAI‘I ACCESS TO JUSTICE CONFERENCE
“CHARTING THE COURSE TOWARD CIVIL ACCESS TO JUSTICE FOR ALL”
Friday, June 16, 2025
William S. Richardson School of Law, University of Hawai‘i

12:45 – 2:00 p.m.

“Building Disaster Resilience by Addressing Heirs’ Property”
Sharla Manley, Keoni Shultz, Debbie Tanakaya, moderated by Devon Haia

Heirs’ property is family-owned land that is jointly owned by descendants of a deceased person whose estate did not clear probate. The descendants, or heirs, have the right to use the property, but they do not have a clear or marketable title to the property since the estate issues remain unresolved. Heirs’ property can create clouded title, prevent the ability to secure a loan, and even expose the property to a forced sale.

Heirs’ property is not an issue unique to Hawai‘i – many families across the continental United States face heirs’ property issues. However, the laws regarding heirs’ property in Hawai‘i vary slightly and some issues surrounding heirs’ property may be unique to Hawai‘i. Heirs’ property issues on the continent focus on the loss of intergenerational wealth. In Hawai‘i, to many, land is priceless because it is sovereignty. Thus, the stakes are much different because instead of considering the dollar figure for a piece of property, some people are facing total displacement from their ancestral homeland.

The panelists for this topic were brought together to showcase their unique perspective and experiences on heirs’ property issues in Hawai‘i.

Keoni Schultz, a partition action and quiet title attorney, provided background information on how heirs’ property can lead to complicated, expensive litigation and forced judicial sales. For partition actions in Hawai‘i, the sales prices of property in a partition action generally go for less than market price, and since reasonable attorneys’ fees and costs are traditionally awardable from the sale proceeds of the subject property, a lawsuit is categorically “self-cannibalizing” as to a property’s equity. In order for owners of heirs’ property to retain their family land, they usually must have cash to buy the other heirs’ interests because it is almost impossible to obtain financing to buy heirs’ property.

Keoni also covered key legal principles and rulings related to litigating heirs’ property, including the high burden to prove adverse possession among cotenants, the due process and diligence required to identify and serve cotenants, and the limits on partition in kind. Panelists received a question and some lamented on the most recent ruling from the Hawai‘i Supreme

Court, *Robinson v. Zarko*, 565 P. 3d 735, SCAP-23-0000297 (Haw. Feb. 19 2025), where the Court held that Hawaii's partition statute does not authorize courts to divide land by way of the condominium property regime (CPR) to resolve heirs' property issues .

Sharla Manley, a Native Hawaiian rights attorney and Equal Justice Disaster Resilience Fellow with Native Hawaiian Legal Corporation, discussed heirs' property in the context of disaster recovery and response. Sharla defended Hawaiian families from quiet title and partition lawsuits for several years at NHLC before turning to focus on families affected by the 2023 Maui wildfires. Title and heirs' property issues quickly arise after a disaster. When survivors of a disaster do not have paper title to their family land, they experience hardship dealing with mortgages, insurance policies, authorizing debris removal on property, and long-term recovery assistance programs for disaster survivors.

Sharla posited that we must start to view addressing heirs property before disaster strikes as a form of disaster resilience and preparedness on par with a grab and go emergency kit. She identified concrete legal instruments that lawyers can prepare to foster the disaster resilience of communities and families, including:

1. Family land trusts;
2. Community land trusts;
3. Transfer on death deeds which allow individuals to pass on their interest in land to their descendants without probate;
4. Power of attorney for heirs to consolidate authority to act in the wake of a disaster.

These efforts are critical for Native Hawaiian communities especially due to the tendency of disasters to result in land grabs and gentrification, which threaten place-based traditional and cultural practices. Native Hawaiian well-being and self-determination are undermined by disaster capitalism and displacement.

Debbie Tanakaya, an estate planning attorney, rounded out the discussion offering ways to prevent heirs' property. Even the most basic estate plan ensures that a homeowner can decide what happens to assets after death instead of allowing the state intestate succession laws to dictate the fate of those assets. An estate plan that addresses heirs' property issues could include revocable living trusts, a power of attorney, or transfer on death deeds. If a homeowner has a well-drafted estate plan in place, it is ensured that the estate passes to whomever is chosen, when, and the manner it is carried out. The estate plan should do much more than simply determine what happens to estate assets after death, including protection if incapacity strikes and ensuring loved ones are provided for. A homeowner can rest assured that family will not have to endure the public process and costly matter of probate. An estate plan will likely be one of the most important set of legal documents created over the course of a lifetime.

Estate planning can be expensive and time-consuming. However, the cost of planning for death pales into comparison to the costs and consequences associated with heirs' property. Since heirs' property issues are exacerbated when a disaster hits, it is increasingly important to raise awareness as these catastrophes become more prevalent. Access to justice means educating the community on heirs' property and the issues that can arise, offering affordable legal services to prevent it, and ultimately advocating for a justice system that does not result in the loss of ancestral homeland.