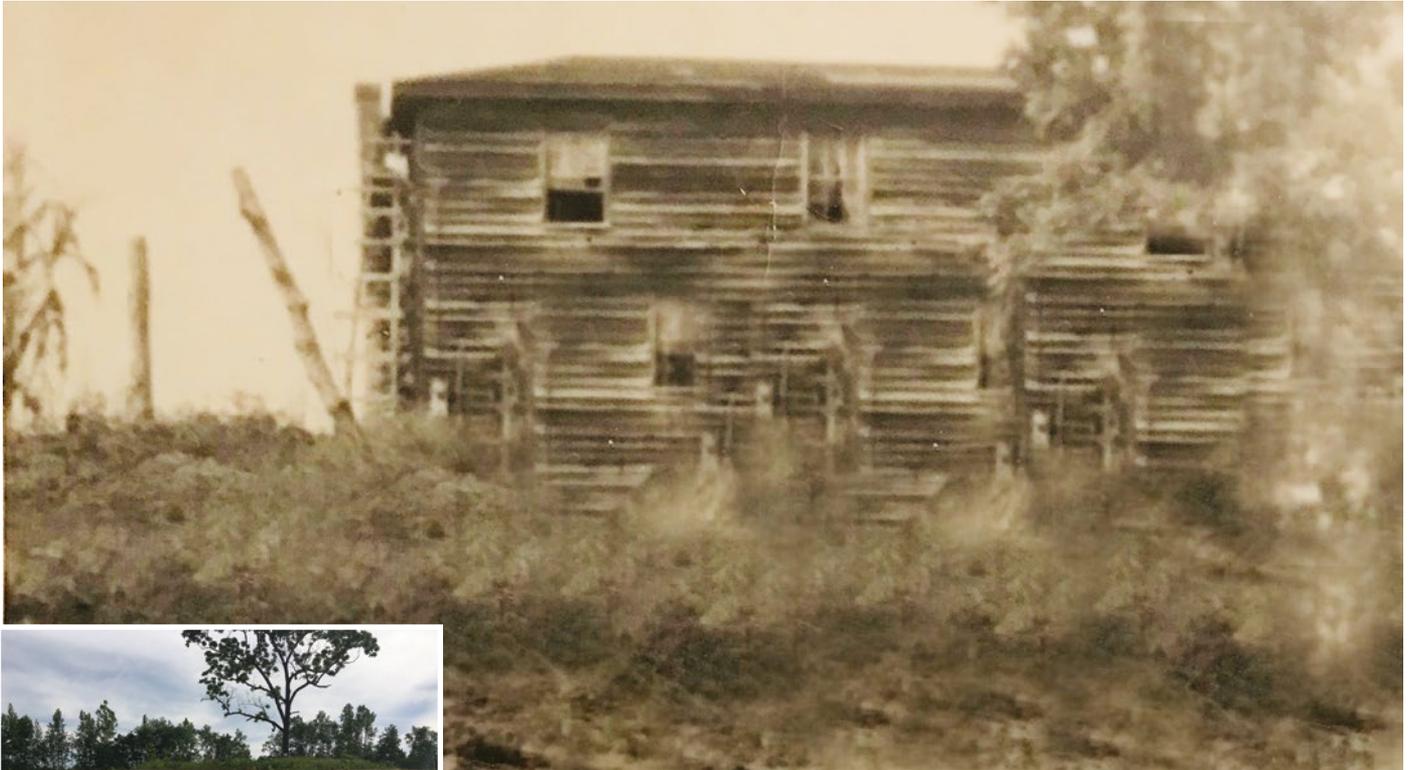


Back to the Land: Nonprofit Wants to Connect Black Landowners to Lawyers

by Jackie Kruszewski



The farmhouse that once stood on Thomas Dillard's family's farm in Dinwiddie County. Dillard's great-grandparents, Trial and Mary Anne Gholson, bought the land in 1894. The land where the farmhouse once stood. (left)

Thomas Dillard remembers the succotash soup.

There were always homemade soups at the Sunday afternoon meal at his grandmother's clapboard farmhouse surrounded by 50 acres of land in Dinwiddie County. Dillard's grandmother died when he was six or seven years old, and she was buried on the farm, not far from the leafy rows of tobacco. His mother passed away in 2002.

"The way she said it before she stopped talking was, 'Don't let them sell my mother in her grave,'" says Dillard, 71. The land, he knew, was sacred.

That dying wish from his mother would lead him on a 13-year journey

through deeds, records, and the family tree in an attempt to save the farm that, it turns out, his great-grandparents, Trial and Mary Anne Gholson, bought in 1894. Their names were still on the deed with the county.

Dillard chased down over 200 descendants of his ancestors — each call to a distant cousin in another state leading to another branch — and eventually he and four of his siblings bought the land from the rest of the descendants. The judge, Dillard says, thankfully required most of the legal fees to come from the sale proceeds.

Dillard was lucky, in a sense, to have the motivation, the time, and access to legal counsel to complete such a task.

In 1910, African Americans owned more than 15 million acres of land in the United States, mostly in the South. Over 900,000 black-owned farms comprised 14 percent of all farms in the U.S. in 1920. But, by 1975, just 45,000 black-owned farms remained, and today black farmers make up less than two percent of the nation's growers and one percent of rural landowners. Millions of farmers of all races were pushed off their land at the beginning of the 20th century, but systematic discrimination played a large role in the disproportionate loss of black land.¹

The lack of legal access for early black landowners meant that the majority of property was passed down as heirs' property, without a clear title.² Over the years, that designation limited what heirs could do with their land to build wealth or credit: no mortgages or loans for home repairs, no eligibility for state or federal housing aid, and no loans or grants from the U.S. Department of Agriculture for farming — practically a requirement for any American farmer.³

The Black Family Land Trust, a nonprofit originally founded to serve the Carolinas in 2004 to halt the drain of black families' land wealth, began working on cases in Virginia a few years ago.

"We see land owned by African Americans and other historically underserved populations as a family asset that should be nurtured, protected and passed on for future generations," says Ebonie Alexander, the executive director. "So, our work in many respects is economic development — keeping that land in the family, making sure that that land asset is a performing asset, whether it's used for rental income, or agricultural production, or forestry."

The trust's Wealth Retention and Asset Protection program seeks to resolve lingering heirs' property and title issues, break the cycle with wills and estate planning, create conservation easements, and teach rural financial literacy.

"I always say, 'It's not your granddaddy's farm,'" says Alexander of

brainstorming with landowners about modern ways to build wealth from the land — sustainable forestry, farm-raised seafood, modern greenhouse technology, etc.

The Black Family Land Trust helped Thomas Dillard and his siblings set up a corporation for another 90 acres of their father's Brunswick County land and has helped Thomas with an adjacent 25 acres he bought in the 1970s.

"[Alexander] came in and gave us a family briefing, told us what we needed to do, helped us write the bylaws," Dillard says. "She put us in contact with the lawyer out of North Carolina. She started us off on the right path, where we had been flailing for almost 10 years."

Alexander says it's not just about convincing landowners to keep land together and find value in it: they also need to trust the attorneys that will help them do that. She says she deals with a lot of skepticism from black landowners about engaging lawyers. But Alexander sees her role as bridging that divide — between the families and lawyers that are sensitive to historical context. The new trust grew out of a project by students at the North Carolina Central University School of Law in Durham, and lawyers have been instrumental in resolving cases since then.

"To me, African American land ownership has a distinct place in the history of our country," says Andrew Branan, a North Carolina-based



Ebonie Alexander

Andrew Branan

an increasing number of African American families did gain ownership of farmland in the decades after the Civil War, through the 20th century that land ownership declined under a variety of pressures."

The traditional land trust community may have overlooked black landowners in the past, he says, and funding opportunities have been lost. Branan says that taking cases and working with the trust has given him a chance to participate in a family's personal history for the better — to contribute in preserving land that someone's ancestor might have acquired during Reconstruction.

"I also look at it as serving a broader public purpose — clearing title to real property, securing farming tenure and helping families move forward," Branan says. "I believe that's what leads to its best use."

Branan admits they're complex cases, and a lot of what he does is disabusing family members of preconceived notions — for example, that someone who lives on the land has a greater interest in it — that might be holding up

We see land owned by African Americans and other historically underserved populations as a family asset that should be nurtured, protected and passed on for future generations ...

attorney who recently left full-time private practice to be an extension assistant professor at North Carolina State University. "It was something that was, of course, generally forbidden in southern states before 1865. Though

the process of reconciliation on the title. Branan, who is licensed in Virginia, too, has helped families narrow the number of owners by creating controlled mecha-

Black Family Land *continued on page 48*

2018 Pro Bono Conference October 17, 2018

Waterside Marriott in Norfolk

The 2018 Pro Bono Conference is scheduled for October 17, 2018, from 1:15 to 5:30 p.m. at the Waterside Marriott in Norfolk. Three CLE presentations will be offered this year, including a session outlining recent rule changes impacting pro bono and opportunities for members to get involved in local initiatives. Ross Hart will be presenting “Death and Dying,” a session on end of life and burial issues. The conference will be followed by the Annual Pro Bono Awards Dinner & Celebration at 6:30 p.m. honoring the recipients of the Lewis F. Powell Jr. Pro Bono Award and Frankie Muse Freeman Organizational Pro Bono Award. More information: www.vsb.org/site/events/item/2018_pro_bono_conference or contact Crista Gantz at cgantz@vsb.org.

Black Family Land *continued from page 47*

nisms — appraisal and payment procedures — for buy-outs and inheritance, as well as structures for co-ownership, like tenancy-in-common agreements or an LLC operating agreement.

“There’s value in the land, but the legacy itself has no market value,” Branán says. “It has a cultural value, a family value, and there’s only a certain number people involved in the ownership mix that place value on that. What I’m trying to do is provide a mechanism to exercise that value to what they want to achieve.”

Branán says it’s low bono. These aren’t profitable cases from a private practice standpoint, but ones he hopes more lawyers will get involved with.

“The only way that [a lawyer] can learn about it is to pick a case up and get a minimum amount of fees that they feel like they can afford to work the project for,” Branán says. Even if the lawyer can’t take the case all the way through, it moves the conversation along for that family. “Legwork by the family is critical,” he adds.

Alexander says she needs lawyers with business and trusts and estates experience, who can offer legal advice and representation on options for

protecting and preserving land, or helping to make it a wealth producing, self-sustaining asset for families.

with the educational program, clinic, or advisory board should email Gantz at cgantz@vsb.org.

Even if the lawyer can’t take the case all the way through, it moves the conversation along for that family.

The Black Family Land Trust, working with Crista Gantz, pro bono / access to legal services director at the Virginia State Bar, hopes to develop a CLE or training event to educate lawyers about the history of black land loss and ways that attorneys can help preserve and protect these underserved landowner assets. Down the road, Alexander also wants to organize a clinic in Virginia’s Southside to bring together landowners and lawyers for a day of collaboration.

Gantz is forming a legal advisory board to determine the best structure for a Black Family Land Trust pro bono program. Subject matter expertise isn’t required. Lawyers or associations interested in getting involved

Endnotes:

- 1 Pete Daniel. *Dispossession: Discrimination against African American Farmers in the Age of Civil Rights* (Chapel Hill: University of North Carolina Press, 2013)
- 2 This 2017 article in *The Nation* details a case on Hilton Head Island in South Carolina: <https://www.thenation.com/article/african-americans-have-lost-acres/>
- 3 The USDA’s history of discrimination against black farmers, even those who did have clear title to their land, led to a successful class action lawsuit against it in 1999 (*Pigford v. Glickman*). Read about a Virginia farmer who received a *Pigford* settlement here: <https://grist.org/food/what-happened-to-americas-black-farmers/>