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**New York State Legislature
Senate Standing Committee on Housing, Construction and Community
Development**

Public Hearing on Deed Theft

**October 27, 2022
Senate Hearing Room
250 Broadway, 19th Floor
New York, New York**

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Introduction

Thank you for the opportunity to submit and present testimony for the Senate Standing Committee on Housing, Construction and Community Development for the Public Hearing on Deed Theft. Empire Justice Center is a statewide legal services organization with offices in Albany, Rochester, Westchester, Yonkers and Central Islip on Long Island. Empire Justice provides support and training to legal services and other community-based organizations, undertakes policy research and analysis, and engages in legislative and administrative advocacy. We also represent low-income individuals, as well as classes of New Yorkers, in a wide range of poverty law areas including consumer law and mortgage foreclosure defense.

Empire Justice has been working on homeownership and predatory mortgage lending issues since the 1990's. We work on behalf of homeowners who stand very little chance of winning their battles without professional assistance against the big banks and mortgage servicers who own the majority of mortgage loans in this country. We also work on tax foreclosure, deed theft and foreclosure rescue scams, and neighborhood blight issues. This testimony focuses on the need for resources for homeowners across the state to prevent them from falling prey to deed theft and foreclosure rescue scams, and on increased consumer protections to combat deed theft and the myriad of scams targeted at New York homeowners.

Prevention is the Best Protection

The most effective way to combat deed theft and foreclosure rescue scams in New York State is to ensure to the greatest extent possible that homeowners do not fall prey to these scams. The New York State Legislature has passed into law two very important laws that inhibit scammers. First, the Home Equity Theft Prevention Act (HETPA) (NY RPL sec. 265-a) which became law in 2006 and was subsequently strengthened. The law addresses scenarios where someone intends to transfer a deed of a homeowner in default into their name to avoid the foreclosure with the promise to sell the property back to the original homeowner once they are able to obtain financing. Many New York homeowners at that time were losing hard-earned equity in their homes to these scams when the scammers either evicted the homeowner after the transfer of the deed, or took out a mortgage for the full value of the home leaving the homeowner with a loan they could never afford and the loss of all equity. In 2008, the Legislature passed a second historic bill establishing criteria for profiteers offering to help homeowners work with their mortgage loan servicers to cure a default for a fee, termed in the law as "Distressed Property Consultants." (NY RPL sec. 265-b) We still see these scammers reaching into New York State but their numbers are diminished because of the law and efforts by the state to divert homeowners to other resources.

The biggest of those resources is the New York State Office of the Attorney General's Homeowner Protection Program (HOPP) which provides annual grants to eighty-nine non-profit housing counseling and legal services program to provide direct assistance to homeowners in default and foreclosure. Empire Justice Center is one of two Anchor Partners contracted by the Office of the Attorney General (OAG) to provide oversight and technical assistance to grantees under HOPP. (The Center for New York City Neighborhoods is the Anchor Partner overseeing grants in New York City.) In that capacity, we oversee sixty non-profit housing counseling and legal services programs providing services in every county outside of New York City. HOPP has been in place since 2012, though prior to that, New York State provided funding for these services through the New York State Homes and Community Renewal starting around 2007.

Through our work with this vast network, we regularly hear from advocates about scammers who target homeowners on a daily basis. Companies comb through county foreclosure and *lis pendens* filings in and sell the data with the names and addresses of homeowners in foreclosure to folks looking to profit off of vulnerable homeowners in desperate situations. Solicitations come through the mail directly to these homeowners but you can also see ads on television, on the radio, on telephone poles or posted elsewhere in our communities.

But for the HOPP network of eighty-nine non-profit housing counseling and legal services statewide (including New York City), thousands more New York homeowners would turn to these scammers for assistance, and millions of dollars in equity that should remain in the hands of our citizens would be lost to this bottom-feeding industry. Falling behind on a mortgage is not only incredibly distressing, but it also throws the homeowner into a complicated process of having to work with their mortgage servicer to find a resolution. There are programs and potentially workable solutions available to assist homeowners but they often differ depending on the type of mortgage loan one has (whether it be FHA, VA, SONYMA, a loan held by Fannie Mae or Freddie Mac, a reverse mortgage or a conventional mortgage) or who one's mortgage servicer is. On top of the confusion, working with a loan servicer requires some level of expertise and is typically time-consuming and frustrating. If the loan goes into foreclosure, the process becomes even more complicated and confusing having to navigate the lawsuit and court processes.

New York State has done an incredible job – the best in the country we would argue – investing in services for homeowners through HOPP that are provided by trained, trusted professionals free of charge to the homeowner. Among the sixty HOPP grantees Empire Justice oversees in all counties outside of New York City, HOPP has the equivalent of about 140 full time employees working with homeowners through the default process to avoid the loss of their homes to foreclosure. HOPP advocates are successful in many, many ways which we would welcome the opportunity to elaborate on, but for purposes of this hearing about deed theft and scams specifically, the greatest success of the HOPP network is that we prevent homeowners from falling prey to scammers. There is no question that if HOPP services did not exist, more vultures would descend upon homeowners in New York State, and more homeowners would lose thousands individually, millions collectively to these enterprises.

The HOPP network is also vital to providing assistance to homeowners when they do get scammed. HOPP provides funding to thirty-one legal services organizations, many of which have been engaged in complex cases against companies that have scammed our homeowners. These lawyers recover monetary damages for homeowners to return much needed cash to their pockets, and in the more extreme cases, they work to get the deed back into the name of the homeowner and reinstate their homeownership interest. In addition, the HOPP advocates who are on the ground are the first line of defense in identifying scammers and providing information to the OAG through its Protect Our Homes Campaign, developed in partnership with The Center for New York City Neighborhoods. We regularly feed information through this Campaign to the OAG so that it can track, investigate and prosecute bad actors. HOPP agencies have also fed cases to law enforcement for criminal prosecution when warranted.

For all these reasons, our first recommendation to the Committee is to ensure that funding is continued for HOPP in next year's budget, and to stabilize funding for HOPP for future years. HOPP had dedicated funding from settlements for the first few years but since about 2015, our funding has been uncertain from year to year and we have engaged in vigorous campaigns to ensure HOPP is included in the Budget. We are incredibly grateful on behalf of New York homeowners for the Legislature's continued commitment to ensuring these services are on the ground, and particularly grateful for the first increase in a decade to our state funding that we received this year. It is always an uncertainty,

however, takes a lot of work and time on the part of advocates to lobby each year, time that could better be spent serving more New Yorkers. This year we will be asking for \$40 million and we continue to ask that New York State identify a stable source of funding for HOPP into the future.

Ensure Existing Laws are Enforced and Promote HOPP

Our second recommendation to combat deed theft and other mortgage related scams in New York State is to ensure that two laws we have are adhered to and enforced. These laws are specifically designed to direct homeowners to the free assistance provided through the HOPP network of non-profit housing counseling and legal services providers. The first is the 90 day pre-foreclosure filing notice (NY RPAPL sec. 1304) which requires mortgage servicers to send a notice to homeowners at least 90 days prior to the initiation of a foreclosure. The notice informs the homeowner they are behind and warns of a lawsuit if the default is not cured soon but more importantly, servicers must attach a list of at least five housing counseling agencies in the homeowners' geographic region that provide free services. The list of housing counseling service providers is maintained by the NYS Department of Financial Services (DFS) on its website. Servicers often attach the statewide list of agencies, though they really should just be attaching the list of agencies serving the homeowner's region to avoid confusion for homeowners.

The second law that is the Consumer Bill of Rights (NY RPAPLL sec. 1303(3-a)) which directed DFS to promulgate a notice setting forth the rights of both parties in a foreclosure proceeding, available on their website. This notice instructs homeowners to seek the assistance of an attorney or housing counseling in the opening paragraph, and directs homeowners to DFS's website which includes links to the HOPP network of service providers. Again, under the adage that prevention is the best medicine, making sure homeowners know about the HOPP network – whether it be through these notices or investing in a greater public awareness campaign about the HOPP is the best first step to addressing deed theft and homeowner scams.

New York State Needs a Strong Basic Consumer Protection Law That Covers All Scams

Our third recommendation to combat deed theft and other homeowner related scams in New York State is to pass the Consumer and Small Business Protection Act ("CSPA") (A.2495A/S.6414) early in the next legislative session. Every state has a version of what is generically called an "unfair and deceptive acts and practices" or UDAP law. These laws were specifically designed to provide a right of action against bad business practices. New York's version, however, is really just a "DAP" statute as it only prohibits deceptive acts and practices. The proposed amendment in CSPA would bring New York State in line with the vast majority of other states in the country to add prohibitions against unfair practices, as well as abusive practices.

New York State is certainly a leader in consumer protections in many areas of the law; most notably we arguably have the strongest protections for homeowners facing default and foreclosure in the nation. It is striking, then, that our most basic and overarching consumer protection law, GBL sec. 349, is among the very weakest in the nation. New York was among the first to pass a statute of this kind fifty years ago but has never revisited the statute to update its provisions or penalties. CSPA provides long overdue updates not only adding to the prohibitions "unfair, unlawful, deceptive or abusive" acts and practices by businesses, but it also improves the deceptive prong which has been limited through case law to apply only to conduct that intended to deceive more than one individual (so even if misconduct was deceptive to the individual, the current statute provides no redress for the individual who was harmed if they can't prove others were as well). The proposed legislation also increases very outdated damage awards from fifty dollars set in 1972 to two thousand dollars per violation, and mandates the award of attorneys' fees and costs to a prevailing plaintiff. (The legislation also makes

technical fixes to the current gender-specific language of the law which refers to the Attorney General as “him.”)

As noted in the first section of this testimony, New York State has a strong anti-deed theft law on the books, HETPA, as well as strong requirements for “Distressed Property Consultants” or foreclosure rescue scams. These laws have deterred much of the activity for which they were written, but they do not deter bad actors from creating work-arounds and coming up with new ways to target and scam homeowners. We support additional legislative proposals put forth by the OAG and our fellow colleagues that would continue to address issues that come up frequently in deed theft scenarios (such as issues with the notary process, criminalizing deed theft, amending HETPA to include transactions involving property tax arrears and addressing bona fide purchaser issues), but even if all these measures can be passed, the law can never keep up with the pace of innovation by bad actors. Just legislating by scam type is truly like the game Whac-A-Mole

Deed theft scams are actually a prime example why New York State needs to finally update our state UDAP statute. GBL sec. 349 is useless and lacks teeth under which to bring a claim when a homeowner is scammed by conduct that doesn’t fit under other laws. For example, one company we’ve been tracking on Long Island sends mail solicitations to homeowners in default offering free legal assistance to help them get out of foreclosure. The offer of free legal assistance is really a bait and switch because by the company’s own admission, few (if any) homeowners are able to save their homes through the legal assistance they provide. When the law firm is unable to assist the homeowner with a resolution, the company purchases a right to purchase the property from the homeowner, and then looks for a buyer for the home. They seem to only target homeowners with significant equity in the home so we believe it is a version of the “we buy houses” scenarios which steal equity from peoples’ homes. From what we can tell so far, their conduct would violate existing statutes but we have reason to believe that it is unfair if not abusive.

As noted at the beginning of this testimony, Empire Justice’s lawyers have been working with homeowners in distress for over twenty-five years. Throughout the predatory lending and subprime mortgage lending crises we saw countless scenarios of abuse and unfairness in mortgage lending, and abuses by mortgage brokers and other third parties. The conduct we witnessed usually didn’t rise to the “deceptive” standard set forth in GBL sec. 349, but it was certainly unfair and abusive. CSPA provides clear, common sense definitions for what is considered unfair, unlawful, deceptive and abusive conduct and enhances the ability of organizations to bring claims on behalf of itself or its members. Therefore, it is our recommendation that the best legislative measure to address the myriad of deed theft and related homeownership scams that exist today, and that will come to fruition into the future, is to bring New York State’s UDAP statute into the 21st Century and make it a useful cause of action.

Conclusion

Thank you again for the opportunity to provide testimony for this hearing. If you have follow-up questions, please do not hesitate to reach out to Lisa Milas at lmilas@empirejustice.org or Kirsten Keefe at kkeefe@empirejustice.org. We greatly appreciate your ongoing attention and commitment to New York State homeowners and look forward to continuing to work with you as our leaders moving forward.