

Testimony by The Legal Aid Society

Before the Standing Committee on Housing, Construction and Community Development

To Examine the Practice of Deed Theft

October 27, 2022

Founded in 1876, The Legal Aid Society is the oldest and largest provider of free direct legal services to low-income families and individuals in the United States. Operating from 26 locations in New York City with a full-time staff of over 1,900, the Society handles more than 300,000 individual cases and legal matters each year. The Society's law reform representation for clients also benefits some two million low-income families and individuals in New York City through impact litigation addressing a broad range of housing and benefit issues.

The Legal Aid Society has been at the forefront of advocating for the rights of homeowners at the City, State, and local levels since 2000 through our Foreclosure Prevention and Home Equity Preservation Project. Our mission is to preserve affordable homeownership, prevent foreclosures, and challenge abusive lending and real estate practices in state and federal court.

We appreciate the opportunity to testify today on the critical issue of deed theft and related real estate fraud.

Real estate fraud is nothing new. However, today's rising real estate values combined with the aftermath of the predatory lending wave of the 2000's have led to a new surge of real estate scams targeted primarily at communities of color, thereby not only threatening long-term homeownership but also the very fabric of the affected communities.

One of the most significant tools to combat deed theft is the Homeowner Protection Program (HOPP) administered by the Attorney General's office which provides homeowners with access to

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free legal and counselling services throughout the state. Too often we have seen homeowners who lost their homes to deed theft for lack of access to legal services or ineffective counsel. The HOPP network with the support of the Attorney General's office, has also played a vital role in the "Protect Our Home" effort which conducted an outreach campaign to educate homeowners on the dangers of scams.

Deed theft comes in many shapes: from outright deed theft to foreclosure rescue scams to phony short sales, and more recently predatory partition actions aimed at the surviving heirs of a family home.

We applaud the state legislature for having recognized the scourge of real estate fraud early on by enacting laws to curb the excesses of real estate fraud. Thus, in 2006, the Home Equity Theft Protection law (HETPA) was enacted to combat the wave of foreclosure rescue scams by which scammers tricked homeowners into transferring their deed only to allow the scammer to strip all the equity from the property. In 2008, the legislature enacted the Distressed Property Consultant Act (RPAPL 265-b) to curb loan modification scams which was further amended and strengthened in 2019. And, in 2019, the Uniform Partition of Heirs Property Act (RPAPL 993) was signed into law to address one of the latest versions of deed theft: predatory partition actions that seek to destroy long-term family ownership. We are currently litigating several such cases. Scammers typically target distressed properties—often properties with tax liens recorded--, track down surviving heirs, pressure them into selling their fractional share for far below the fair market value, only to then commence a case in court to partition the property and reap substantial profits. This scheme not only destroys intergenerational wealth but results in the potential displacement of the surviving heirs from

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their home. Among other protections, RPAPL 993 provides important safeguards to homeowners confronted with predatory partition scams.

However, despite these important advances, more is needed to prevent deed theft and related scams which are constantly evolving as scammers are very adept at circumventing existing laws.

First, we urge the passage of the Consumer and Small Business Protection Act (CSBPA), S. 6414, which has been pending in the legislature for several years. CSBPA would extend the prohibitions of the General Business Law (GBL) 349 to include unfair and abusive practices and remove the court-imposed restriction that limits transactions to those with broad consumer impact. If enacted, CSBPA would provide homeowners with an important tool to challenge deed theft and other real estate fraud.

Another area of great concern is the role that Public Notaries play in facilitating deed theft. There is currently a bill pending (S. 4292) that would require public notaries who notarize documents that convey residential real property to create a written record of the notarial act, including a statement from the grantor, affirming that he or she authorizes that transfer. Enacting such a bill into law would greatly contribute to curb many of the fraudulent deed transfers we have seen. Too often victims of deed thefts with the collusion of public notaries were duped into signing away title to their homes, misled by the scammer to believe they were merely signing an application for a loan modification or to refinance an existing loan.

Another gap is the ease by which scammers can put a cloud on a homeowner's title, by either filing and recording a UCC lien (Uniform Commercial Code) on a property or by recording a fraudulent contract of sale to facilitate deed theft. Once, a lien or contract is recorded with the City

Registry, the homeowner then has the unfair burden to clear title through litigation. A prime example of using UCC liens to steal homes was Launch Development LLC and its affiliate, Homeowner Assistance Services of New York (“HASNY”) which placed UCC liens without any legal basis on hundreds of homes whose owners sought assistance from HASNY, to save their home. Instead, the UCC lien tied up the property to enable Launch to outright steal the home. To address the misuse of UCC liens, legislation should require the Secretary of State to ensure that any UCC filing be accompanied by the actual security interest, signed by the title holder. Under current law, UCC liens can be filed without such proof.

Recording of a contract of sale is likewise another way for a scammer to tie up the property in preparation of deed theft. The only time we have witnessed the recording of a contract of sale are transactions of actual or potential fraud. We have never seen a contract of sale recorded where the deed transfer was the product of a legitimate sale.

Another area that could be strengthened is to make it harder for lenders and their assignees to claim to be good faith encumbrancers “for value.” Scams, in particular foreclosure rescue scams, were frequently financed by lenders. It is typically the victim of deed theft that would bear the burden of showing that the lender had notice and/or failed to exercise due diligence, litigation that would take years, and that many victims could not pursue. And since such fraudulent mortgages are frequently transferred from one trust to another, the trustee assignee of such a fraudulent loan can claim to be immune to any claims of fraud. A case in point is that of Mr. J. who in 2010 wanted to take out a loan for repairs only to be tricked into signing over the deed to a scammer who then encumbered the property with a new mortgage on which he immediately defaulted. The assignee

eventually was able to obtain a deed in lieu of foreclosure and is now seeking to evict Mr. J from the home he grew up in, claiming that as a trustee it bears no responsibility for the underlying fraud.

Mr. J.'s case also illustrates another gap: the disconnect between civil and criminal proceedings. In this case, a US attorney prosecuted the scammer who was ultimately convicted, leading Mr. J. to believe that the criminal prosecution would return title to Mr. J. Unfortunately, prosecutors often lack the tools to return title to the victim, except through forfeiture. At the same time, it has been a challenge to get district attorneys to prosecute white collar crime, allowing scammers to operate with impunity.

Curbing deed theft in all its forms remains a big challenge. We remain committed to work with the New York State Senate and the Assembly to promote legislative solutions, while also working with the office of the Attorney General and our partners to continue outreach and community education. In addition, by connecting homeowners in need of help to legitimate services -- free, high-quality legal services and housing counseling at non-profit organizations -- we can cut scammers out of the equation while maximizing the likelihood that a homeowner will be able to find a home-saving solution.

Respectfully submitted by

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