

**TESTIMONY OF LEGAL SERVICES NYC  
CONCERNING THE PRACTICE OF DEED THEFT**

*Senate Standing Committee on Housing, Construction and Community Development  
October 27, 2022 10:00 am*

Good morning. My name is Arthur Burkle, I am a senior staff attorney in the Neighborhood Economic Justice Project (the “NEJP”) at Brooklyn Legal Services, a program of Legal Services NYC, the nation’s largest provider of free legal services to those in need. To keep homeowners in their homes, the NEJP uses all tools available at its disposal, including complex federal and state litigation, anti-discrimination actions, policy advocacy and community education.

Since 2009, LSNYC’s foreclosure prevention projects, with offices in Brooklyn, the Bronx, Queens and Staten Island have represented thousands of families across the city at risk of losing their homes to foreclosure and real estate fraud. Over the years, we have become experienced at investigating and litigating all types of property fraud scams. Our work has given us a unique insight into how to combat the fraudulent practices scammers use to ensnare homeowners and take away their homes.

I am here today to speak to you about the deed theft and property fraud we see in our practice, and the devastating impact these predatory practices have on homeowners and their families. I will also touch on the limited tools available to homeowners and their advocates, which rarely offer any avenues for relief, and about the impact of possible legislative measures. My colleague Jenny Eisenberg previously provided testimony to the New York City Council on this topic in 2020 and in 2016, and I attach her detailed testimony on this subject for your information.

My experience as an advocate on behalf of homeowners is that deed theft and other varieties of scams targeting distressed homeowners seeking to retain their homes are commonplace. Cases involving deed theft are a regular part of our unit’s practice: in our office alone, we meet with multiple homeowners every year who have been victims of one fraudulent deed theft scam or another. There has been recent media coverage of fraudulent deed theft scams, reflecting the proliferation of scams as well as increased public attention to the problem.<sup>1</sup> Yet, scams continue to proliferate unabated, as do their victims.

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<sup>1</sup> Stefanos Chen, Ted Clifford, and Camellia Burris, He Runs a New York Real Estate Empire. Did He Steal it? N.Y. Times (July 6, 2022) <https://www.nytimes.com/2022/07/24/us/deed-theft-ny.html>. Chau Lam, Legal Aid asks financial institution to help Queens deed theft victim, Gothamist (August 29, 2022) <https://gothamist.com/news/legal-aid-asks-financial-institution-to-help-queens-deed-theft-victim>. Chau Lam, Homeowner of more than 50 years faces eviction from his own house, Gothamist (June 27, 2022) <https://gothamist.com/news/homeowner-of-more-than-50-years-faces-eviction-from-his-own-house>. Kimiko de

Deed theft scams appear to be an ordinary aspect of our city’s real estate market. Though scams vary in form—from modification rescue scams, to short sale scams, property partition scams, and scams involving the estate administration of the deceased homeowner and their heirs, to say nothing of the all-too-common distressed property consulting scammers charging homeowners for worthless services—at the heart of all scams is a form of deception, exploitation, and intimidation. The result is the loss of significant equity or the divestment of title of long-standing homeowners. Yet, criminal prosecutions for deed theft scams are exceedingly rare, while homeowners are hampered by a legal framework for real estate that is not designed to protect them, or to help its victims regain their homes but simply to facilitate the transfer of properties.

To get away with deed theft, often, a scammer need only possess a deed allegedly signed by the homeowner. Following a questionable transaction, a subsequent buyer need only claim that they are a bona fide purchaser for value and deny knowledge of the fraudulent nature of the transaction of by any predecessor.

Of course, deed theft scammers target the most vulnerable residents, focusing on largely immigrant, and Black and brown communities. These residents, who have previously been victimized by predatory lending and redlining, rendering them financially distressed, have now become targets for deed theft scams due to the skyrocketing property values in rapidly-gentrifying neighborhoods. Prime targets for scammers are the elderly, disabled, and financially distressed homeowners, those who have limited resources and face housing instability due to property tax, utility or mortgage arrears.

### **A Homeowner Victim in Brownsville**

For over a year I’ve been working with a homeowner who lost his home to a deed theft scam. He and his family had owned their home in Brownsville for sixty years. He had lived there his entire life, and owned it free and clear of any mortgages. He also provided affordable rental housing to several tenants, who had occupied the property long-term. Following a complicated deed theft scam, he and his family—including his son, niece and her toddler—were evicted earlier this year.

My client was vulnerable to the scam that preyed on him because his property had unpaid property tax liens for which he could not find a legitimate solution. Indeed, New York City publishes a list of properties at risk of being subject to the annual tax lien sale, effectively providing scammers a road map for locating vulnerable homeowners. Due to limited credit history, my client could not get traditional financing to pay off the tax liens encumbering the property. Lacking access to trusted advisors, he was persuaded by a real estate operator to transfer his property’s title to an LLC, which would make him a member (ostensibly to preserve his interest and equity in the property) and transfer the title back to him

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Freytas-Tamura, Why Black Homeowners in Brooklyn Are Being Victimized by Fraud, N.Y. Times (October 21, 2019) <https://www.nytimes.com/2019/10/21/nyregion/deed-theft-brooklyn.html>.

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once his credit improved. The transfer to the LLC was papered as a sale, memorialized in a contract of sale prepared by an attorney that was listed as the seller's—my client's—attorney, whom my client had never met. The reconveyance agreement was memorialized in a contract, but my client was never given a copy.

On the date of the closing, the LLC took out a mortgage for a portion of the purchase price, and did not pay the balance to my client under the pretext that he could not be trusted with the funds. My client received a fraction of the property's value.

A few months after the closing, he was told by the scammers that he had lost his interest in the property. He then received an eviction notice purporting to terminate his "tenancy" at the property from an entity that he had never heard of which claimed to own the property.

Before reaching out to my office, he contacted a private attorney, who charged him nearly fifteen thousand dollars and filed a quiet title action, replete with defects and sloppy lawyering. Inexplicably, in the complaint, the attorney stated that the entity claiming ownership could not have had knowledge of the initial fraud, which completely and irrevocably undermined his claim to recover title to the property from this owner.

My client has sought representation from other private attorneys in vain. He cannot afford their fees. Although his chances of recovering his property are slim because of the limited tools at his disposal to undo the harms perpetrated on him and his family, we continue to provide him with assistance.

### **Need for Increased Funding for Legal Services and Housing Counseling**

As my client's experience shows, several attorneys facilitated the deed fraud—the first attorney failed to protect him in the fraudulent transaction, while the second one severely mismanaged his quiet title case. Subsequently, my client has been unable to find a private attorney that will take his case—they say it is too complex, the legal issues too difficult to untangle. The very complexity of deed theft cases shields the scammers from accountability: attorneys know that these cases entail years of litigation with no certain outcome, and financially distressed homeowners that have been dispossessed of their homes, and robbed of their equity, usually cannot afford the legal fees to start a case, let alone fees for years of litigation.

Our office has been able to assist my client, albeit in a limited capacity with the preparation of *pro se* papers. We, too, must make difficult decisions about how and where to allocate our own limited resources. The truth is that if a homeowner has no black and white path to recovering the title to their home, such as a forged deed or written record of the deception, our assistance may be limited.

Accordingly, the single most important tool homeowners have against deed theft scams is a dedicated advocate on their side. Whether providing information to arm them against potential future

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scams, or assistance in resolving mortgage or property tax arrears, or representation in litigation against scammers, advocates—attorneys and housing counselors—funded by the Attorney General’s Homeowner Protection Program (HOPP) are an essential partner in safeguarding homeowners from deed theft scams. Virtually every homeowner who is victimized by a deed theft or other scam was in that position because they did not reach a trusted, free civil legal services provider or housing counselor before the scammers reached them.

HOPP funding must be made a permanent part of the New York State budget, not a line item vulnerable to political winds or at risk of reduction during budget shortfalls. Further, HOPP funding should increase, and dedicated funding should be apportioned specifically for complex cases, involving our most historically-disadvantaged homeowners, where the chances of recovering their title are remote. By funding legal services and housing counseling, the legislature is investing in protecting our most vulnerable homeowners, and in fighting the scammers. In addition to a stable source of funding for the HOPP network, the network should be better publicized so that struggling homeowners have a better shot at reaching trusted, free help from the HOPP network’s subject matter experts *before* the scammers reach them.

### **Legislative Measures to Combat Deed Theft**

Aside from increasing funding for advocates and housing counselors, the legislature has considered several measures that can help curb deed theft scams.

- **The Consumer Small Business Protection Act (Senate Bill S6414, 2021-22 Legislative Session)**

The Consumer Small Business Protection Act (the “CSPA”), Senate Bill S6414, among other things, expands the existing General Business Law 349’s prohibition of unlawful conduct from merely deceptive to include unfair and abusive conduct. New York’s Deceptive Practices Act is an outlier in this country, failing to prohibit unfair and abusive conduct—it only prohibits deceptive conduct—and with weak penalties compared to those enacted in most other states. Because scammers’ strategies evolve to evade specific prohibitions (such as those New York has enacted in the Home Equity Theft Prevention Act which was specifically enacted to attack deed thefts), having a strong general consumer protection statute could permit many homeowners to seek redress in the courts who currently lack the ability to do so.

In my client’s case, the CSPA could have provided him with additional claims against the scammers. But it would be of greater help to potential homeowner victims of future deed theft scams. The many forms deed theft scams can take—including those that we have not yet seen—make it exceedingly difficult to design a specific legislative solution. Yet, all are likely to involve deceptive and

unfair and abusive conduct. To that end, the Consumer Small Business Protection Act could be a powerful tool for homeowners and their advocates, regardless of what shape the scams take.

The CSPA empowers homeowners who have been taken advantage of for their lack of understanding of the underlying transaction, or for relying on a person who was supposed to act in the homeowner's interest. The law's additional protections would benefit homeowners that have been victims of a deed theft scam while deterring future scammers.

- **Amendment of Real Property Law 266 (A06111, 2019-2020 Legislative Session)**

Proposed bill A06111, which amends Real Property Law 266 to provide that a bona fide purchaser must show it did not have actual or constructive notice of a potential fraudulent transfer, would be a powerful tool against scams like those affecting my client.

Currently, purchasers for value need only show that they lacked actual notice of a fraud involving the property transferred to them, in order to qualify as a bona fide purchaser and defeat any claim by the homeowner for fraud.

A purchaser need only point to the property's transaction history, and the absence of any potential red flags, to secure status as a bona fide purchaser for value. Yet, in reality, when acquiring a property, a purchaser's due diligence likely involves additional investigation, which may suggest that a prior long-term owner could have an interest.

In my client's case, the entity that evicted him would have seen that he was the prior grantor in the chain of title. The entity may have likely known that my client's occupancy in the property, and extensive repairs to the property, suggest more than a mere tenancy. Had this statute been in effect at the time of the scam that divested my client of his home, the outcome may have been different in his case.

This statute would create a greater burden on purchasers to investigate the background of a property they seek to acquire, and finding that there are facts suggesting a prior fraud, prevent them from attaining bona fide purchaser status.

- **Amendment of Home Equity Theft Prevention Act (GBL 265-a)**

The legislature enacted the Home Equity Theft Prevention Act (General Business Law 265-a and b) in February 2007 to protect vulnerable homeowners who are in default on their mortgages or facing foreclosure from fraud, deception and unfair dealing. It allows the homeowner to rescind the transaction within two years of the date of the recording of the conveyance if the law is violated. The legislature also enacted significant improvements to this law in 2019. While this statute provides powerful protections to homeowners, it could not help my client because he did not have a mortgage at the time. He faced property tax arrears, which are not covered under the statute. Since he did not have a mortgage, he could not benefit from the Home Equity Theft Prevention Act's protections. If the Home Equity Theft



Prevention Act’s definition of vulnerable homeowners included those in arrears for property taxes—not just those with mortgage arrears—many homeowners would secure protection against scammers that they currently lack. This is especially the case because information about homeowners facing property tax arrears is readily available to the public, making them easy targets for scammers.

## **Conclusion**

I would like to thank the Assembly for soliciting input from the community and from advocates like us as you grapple with solutions to the pervasive and devastating problem of deed theft scams. Homeowners like my client and his family deserve secure, affordable housing, and the best way to ensure this is to protect them from scammers who are bent on stripping the equity from vulnerable homeowners, who are desperately seeking to avert the loss of their homes to foreclosure. Every home lost to a scammer represents equity stripped from the community, the displacement of longstanding community members, and the loss of affordable housing. It is also important to remember that deed thefts are but one of myriad scams perpetrated against struggling homeowners, such as partition scams preying on heirs jointly holding property inherited from their families, which have been on the upswing in the last few years.

Thank you for your attention today.

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**TESTIMONY OF LEGAL SERVICES NYC  
CONCERNING THE CITY’S EFFORTS TO COMBAT  
DEED THEFT AND DEED FRAUD**

*New York City Council  
Committee on Housing and Buildings & Committee on Finance  
October 13, 2020 1:00 pm*

Good afternoon. My name is Jenny Eisenberg, and I am a senior staff attorney in the Foreclosure Prevention Project at Brooklyn Legal Services, a program of Legal Services NYC. I present testimony today on behalf of Legal Services NYC, which is the nation’s largest provider of free legal services to poor people. Since 2009, our foreclosure prevention projects have represented thousands of families across Brooklyn, Queens, the Bronx and Staten Island at risk of losing their homes to foreclosure and real estate frauds and scams. We have substantial experience investigating and litigating a wide range of deed frauds, and have unique insight into the kinds of measures that could be helpful to homeowners.

I appreciate the invitation to speak today about the City’s deed theft crisis and the proposed legislation. I previously testified in 2016 before the Finance Committee about many of these issues and I’ve attached that detailed testimony for the Council’s benefit in this hearing. The legislative proposals and committee report cite a number of facts presented in that prior testimony. We’d like to thank the City Council for its thoughtful engagement with the problems facing our clients and their communities.

**Response to Proposed Legislation**

I understand that there are three proposed resolutions aimed at encouraging state legislation, and two proposed revisions to the City administrative code. The short response to all of these proposals is yes, they would all likely aid – incrementally -- in the goal of reducing deed fraud and deed theft. Reforming notary laws, tightening standards for naming of corporate entities, and designating Kings County in particular as a “cease and desist zone” for real estate solicitation would likely discourage the fraudulent appropriation of legal processes that we’ve seen all too often in our cases. A notification system for document recording would also be helpful for earlier discovery of real estate fraud, and we are always eager for the Sheriff’s office to adopt a more proactive role in this space.

The longer response to these proposals is that deed fraud in New York City is complex and persistent, and there are broader measures that the Council could also take to address the problem. Before I describe those measures, it is critically important to highlight **who** deed fraud primarily affects in this City. The people who are most vulnerable to title scams on their property have already been victimized by redlining, predatory lending, foreclosure, and now deed fraud. We represent as many of these vulnerable homeowners as we can in our practice, and we have seen how institutionalized racism and discrimination in mortgage lending, tax policy, foreclosure laws, court rules, and administrative regulations operate in their lives as property holders. These are Black, brown, and immigrant homeowners, elderly and disabled homeowners, working class homeowners, for whom title to a house is much more than just a piece of property. It represents shelter for multigenerational families, affordable housing for low-income tenants, a stake in the ground sustaining neighborhoods for decades, and the opportunity to build wealth across generations.

And now, in the midst of a global pandemic and resulting economic crisis, owning a home for these families is even more essential to survival. Now, more than ever, our city should be doing everything in its power to protect and preserve stable housing. Our clients are essential workers – they are home health aides, teachers, grocery store workers, and city employees. They are mainly people of color – and we know the pandemic disproportionately affected communities of color particularly in New York, as did the foreclosure crisis that followed the last recession, from which NYC has yet to fully recover. They are elderly and disabled – again, uniquely vulnerable to Covid-19. Many are geographically isolated from courts and city resources, and now that isolation is compounded by the need to quarantine against coronavirus. And they are primarily low-income – without the ability to simply hire a private lawyer if something suspicious happens with their property.

### **Need for Increased Funding for Legal Services/Housing Counseling**

As helpful as the proposed legislation might be, virtually none of it matters if vulnerable homeowners do not have comprehensive access to free legal services and trained housing counselors. The homeowners who are defrauded out of their deeds by scammers were susceptible to these frauds because they were already at risk of foreclosure and lacked access to trustworthy advocates able to help them. The single most important thing that can be done to prevent homeowners from being vulnerable to deed theft scammers is to ensure that the network of non-profit agencies providing free legal services and housing counseling services to distressed homeowners remains adequately funded.



Furthermore, the network is needed to help those who have already been victimized by deed fraud. Knowing that fraudulent documents have been filed against your property, or that the people knocking on your door offering “help” are not supposed to be bothering you, or that the LLC sending you letters about your foreclosure case may not be an arm of the government – none of these problems are solvable without help. We litigate for years on behalf of our clients. These cases take time, staff, and resources.

As an example, in my 2016 testimony I described a scam outfit called Homeowner Assistance Services of New York (“HASNY”), a criminal organization that defrauded numerous homeowners out of their deeds. At the time, my office was in the midst of litigating several cases in state court against HASNY, and they had also been targeted by federal law enforcement for investigation and prosecution. It is now 2020 and we are still fighting to get these titles back. Almost every lawyer in my unit represents a homeowner scammed by these people. We have numerous pending cases. People went to jail. Even with criminal convictions, it remains an uphill battle to recover these deeds. And this is what we might call the “best case scenario,” because we could draw upon all the resources the FBI devoted to investigating these criminals.

Now imagine a situation where no law enforcement entities are interested in what happened to our clients. Where no offices are raided, no documents seized, no suspects become government informants. Our clients may believe they were defrauded, but how do they unwind what happened to them? How do they protect their homes? The answer is that they cannot fix what happened without skilled advocates available to investigate and litigate on their behalf. We know the City is strapped for cash, but dollar for dollar, the resources allocated to free legal services pay dividends far beyond their budget line items. Every house lost to deed theft is a source of affordable housing that is permanently gone. This is true both for the homeowners and their tenants, since most of our clients’ homes are also sources of affordable rental housing. Those properties fall into the hands of predatory real estate investors whose only interest is maximizing profit, not sustaining neighborhoods. Fully funding free legal services is an investment not only in the individual cases that come through our offices – it radiates outward through the communities we serve.

I give every client of mine what we call the “scam talk,” and I tell them to share my advice with their friends and neighbors. I tell them to be wary of people cold calling them, knocking on their doors, offering help they did not seek out. I tell them to show me their mail when they get letters that look official, call me with questions if they get contacted by the City or other entities. It is great if people sign up for notifications from

the Department of Finance, but what do they do with that notification if they lack access to help in addressing the problem? Any notifications that go to homeowners would be significantly more helpful if there were accompanying information about free legal services, especially during the pandemic, where other access points to help are greatly curtailed. The more funding and outreach the City provides for legal services and community-based housing counselors, the more likely it is that the measures being discussed today will bear fruit in terms of detection and deterrence of deed fraud in the future.

### **Abolition of Lien Sale for Small Residential Properties**

Another, broader measure that the City Council could take against future deed theft is the removal of 1-4 family residential properties from the city's annual tax lien sale. My colleague Jacquelyn Griffin testified about this specific issue before the Finance Committee several weeks ago, and I want to amplify the points she raised about how damaging the lien sale is for homeowners. Many people who fall behind on property taxes or water bills are older people who own their homes outright after a lifetime of dutifully paying their mortgages. Because mortgage lenders typically pay these bills out of escrow when there is a loan on the property, once the mortgage is paid, many of these homeowners have not budgeted or anticipated the need to keep paying the tax and water bill. When the City publishes the lien sale list, scam artists get a target list, knowing they will find vulnerable homeowners desperate for help and advice.

Aside from how regressive it is to threaten foreclosure for low-level debts, the practical effect of publicizing the lien sale is to throw these people to the wolves. While there is typically some outreach by the City and nonprofits, including my office, there is obviously far less outreach happening right now because of the pandemic – and ultimately any efforts are limited by the fact that these homeowners are simultaneously solicited by fraudsters offering help. There is no good reason for a city full of multimillion dollar homes to claw this kind of revenue from some of its most vulnerable residents. Without the sale of residential tax liens, there would be fewer distressed properties, and fewer potential victims of deed fraud.

### **Reallocation of Criminal Justice Resources toward Real Property Crimes**

A third area for the Council to explore in combatting deed theft is the reallocation of criminal justice resources toward investigation and enforcement of real property fraud. This is a timely discussion to have for many reasons, especially in the wake of ongoing

protests against police brutality. When we talk about defunding the police and reforming law enforcement, we should also talk about what kinds of crime we want to prosecute as a city. At Legal Services NYC, we have had many conversations with local law enforcement over the years, and it is always difficult to persuade officials to devote the resources needed to properly investigate and prosecute these complex cases. If government prioritizes addressing this problem, and redirects funding to these efforts, law enforcement will be forced to shift its priorities and start taking these cases seriously.

I have clients who owned houses worth hundreds of thousands of dollars, and lost title to those properties through trickery and deceptive business practices. But we do not see these cases getting prosecuted by the District Attorneys' offices. We know from experience that these cases are complicated, but we also know from experience that the damage caused by the theft of a family home is catastrophic. Certainly no less consequential than the petty thefts that police and district attorneys' offices often pursue energetically. Many of our clients live in communities that are aggressively policed for street crime, yet when they need the assistance of law enforcement because they were victimized out of their homes, help is not forthcoming. If these crimes are too complex to investigate, police and prosecutors can be trained in these areas. If the laws are too imprecise to enforce, their language can be clarified and strengthened so that relevant statutes are actually useful. Scams are ever evolving, so our responses need to evolve as well.

### **Conclusion**

I want to acknowledge the hard work of the Council in seeking to make New York City a safer place to own a home, no matter your skin color, age, or zip code. Homeowners like our clients make New York the kind of place that people want to live, even in a pandemic, and they are a source of naturally-occurring affordable rental housing. We look forward to further collaboration with the City on these issues, and we are always available to answer questions about our work in this area. Thank you.

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**TESTIMONY OF LEGAL SERVICES NYC CONCERNING THE CITY'S  
EFFORTS TO COMBAT REAL PROPERTY DEED FRAUD**

City Counsel Hearing  
Committee on Finance

February 1, 2016

We present this testimony on behalf of Legal Services NYC (LS-NYC), which is the nation's largest provider of free legal services to the poor. For nearly 40 years, Legal Services NYC has provided critical legal help to low-income residents of New York City. The neighborhood offices of Legal Services NYC operate in diverse communities throughout the city, representing over 25,000 clients each year in each of the five boroughs.

Over the last ten years, Legal Services NYC has vastly expanded services in areas of need critical to the communities that we serve, including unemployment, language access, disability, education, immigration, bankruptcy, consumer issues, and foreclosure prevention. LS-NYC is also the oldest and largest provider of foreclosure prevention legal services in New York with four dedicated foreclosure prevention units consisting of approximately 40 attorneys and paralegals that have, since 2009, assisted more than 10,000 families at risk of losing their homes to foreclosure in neighborhoods across

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Brooklyn, Queens, Staten Island, and the Bronx. We therefore have an informed perspective on the challenges homeowners face, and have seen first-hand the recent havoc caused by increasing instances of deed fraud in diverse homeowner communities throughout the City.

South Brooklyn Legal Services, one of our neighborhood offices, has many years of experience litigating deed theft actions and is now litigating several recent deed theft cases in Kings County Supreme Court on behalf of homeowner victims. Across the city, we have also spoken with many more homeowners in the communities we serve about the ways they are being targeted by scammers who want to acquire their properties. Our testimony will draw upon what we are seeing as legal services providers on the ground, and what we have learned from litigating these cases. Specifically, we will focus on how scammers are able to appropriate legal processes to defraud homeowners, what legislators and law enforcement can be doing to address the problem, and why free legal services are so critical for homeowners in these situations.

### **What We Are Seeing In Our Practice**

Throughout the city, we have seen scores of homeowners who have been subjected to deed theft scams. Most of these clients are seniors. Most are people of color. All are low-income. Many are immigrants. Several are disabled or suffering serious health problems. Most importantly, none of them intended to sign away their only asset and source of wealth to a scammer. Yet when they found themselves in trouble with their mortgages, unable to modify their loans or otherwise save their properties, they were easy targets for these fraudsters. They started getting cold calls at home, visits from sales agents offering help, and—with no other viable options—all too

many of our clients fell victim to unscrupulous actors who literally stole their houses out from underneath them.

South Brooklyn Legal Services represents several homeowners who were tricked into signing away the deeds to their houses by a group of scam artists calling themselves Homeowner Assistance Services of New York. Our other offices have also advised additional homeowners who have been harmed or solicited by this nefarious group. Notably, this group has targeted a diverse array of neighborhoods—ranging from gentrifying areas of Brooklyn where property values have skyrocketed, to modest neighborhoods in southeast Queens that have been among the slowest to recover from the foreclosure crisis. Regardless of neighborhood, Homeowner Assistance Services almost exclusively target communities of color. We've attached a map of Brooklyn foreclosures in 2014 as a way of illustrating where distressed homeowners are located, since those are the people who get targeted by these scams.

Agents from Homeowner Assistance Services would sometimes use affinity marketing, sending sales agents of similar racial and ethnic backgrounds to gain our clients' trust. They would build relationships with our clients over the course of many months, gathering confidential financial information. They would get our clients to let them communicate directly with their lenders, and would tell clients in foreclosure not to show up to their own court dates. They would often seek out our clients after filing a phony lien against the property. Such aggressive solicitation has paid off time and again for these scammers, as they work their way through communities of color throughout New York City. If this kind of marketing were prohibited or at least regulated, our clients might never have answered the cold calls that led to these frauds.

After months of gaining trust and access, Homeowner Assistance Services would then tell our clients that their credit was shot, they couldn't refinance, and the only way for them to save their house would be to do a short sale "on paper only." They would bring our clients to their offices – often in a Town Car – and put them in a room with an individual claiming to be acting as their attorney. That attorney would hand them a stack of papers to sign, promising that it was all part of the process of saving the home. Trusting the attorney, and the agents at Homeowner Assistance Services, these vulnerable homeowners would unwittingly sign over the deeds to their homes. Who would they sign the deeds over to? An LLC they had never heard of before, whose principals just happened to be affiliated with Homeowner Assistance Services. Frequently it was an LLC called Launch Development, but we've also seen entities such as Martin Development & Management and CNM Analytics, Inc., which appear to also share the same principals. In the course of investigating these actors, we've actually identified many more LLCs – often named after the address of a given property – that appear to be affiliated with these principals.

What's happened to our clients in the wake of these deceptive transactions has been nothing short of traumatic. In one Queens case, where a homeowner had been renovating one unit of a two-family home, unfamiliar workers showed up the day after the "closing" and began ripping out the work the homeowner had authorized. Within days, a stranger simply moved into the unit, claiming he had rented it, and the homeowner was powerless to stop him. In other cases, after these fraudulent closings, homeowners started getting surprise visits at their home from strangers claiming to be the "new owners" of their property. People demanding to come inside and get a look at the house they "just bought." Phone calls demanding that our clients vacate the

premises. Knocking on doors and windows at all hours. Sitting in parked cars on the street, just watching our clients' houses. Breaking the locks on our clients' doors. Sneaking around in our clients' back yards. And finally, serving our clients with eviction papers and forcing them into Housing Court proceedings, as if they were unlawful tenants in their own homes.

### **Tactics Employed By Deed Theft Scammers**

It was these experiences that brought people to South Brooklyn Legal Services, Queens Legal Services, and other legal services offices around the city. As we've investigated these transactions and others, we have learned how scammers are able to use legitimate legal processes to perpetuate frauds upon our most vulnerable homeowners. It's especially outrageous because these developers are taking aim at communities of color, where access to legitimate real estate services and legal advice is harder to come by, and people are finding themselves in desperate situations.

One of the most devious tactics Launch Development has used is the "phony lien" strategy. They've filed hundreds of what we believe are bogus liens under the Uniform Commercial Code against distressed properties around the city. Since anyone can file a lien, without proof of a *bona fide* creditor-debtor relationship, this is a canny strategy to cloud title to a given property. They file these liens and then sit on them, sometimes for a year or more, until they have the opportunity to acquire the property from the homeowner in a short sale. Generally speaking, what we've seen is that once they get the deed into their name, that phony lien miraculously disappears in ACRIS with a UCC lien termination. Our clients never knew they had liens on their property until we showed them the recorded documents, and they were mystified as to how there could be a lien without any underlying debt.



We've found over two hundred liens in favor of Launch Development in ACRIS, and who knows how many more have been filed using other LLC names we haven't discovered yet. We know from our foreclosure prevention work that having a lien against your property is problematic if you want to modify a delinquent mortgage or sell your home – so it appears that this strategy is aimed at coercing homeowners into dealing with these scammers before doing anything else with their property. If there were verification requirements for lien filers, hundreds of distressed homeowners would likely be free of these bogus liens, and free to do with their property as they wish.

Related to the phony lien strategy is the sham LLC strategy. When homeowners came to us seeking help in getting their deeds back, they brought us business cards and documents with the Homeowner Assistance Services logo. This company sounded like a legitimate business: it had a website (up until recently), a Facebook page, and nice-looking folders that they'd give to homeowners after meeting with them. They even have a bricks-and-mortar office out in Hollis, Queens, with a huge shiny logo out front. When we looked at the deeds after these short sale closings, we found that the LLC entities who were acquiring these properties shared personnel, addresses, and phone numbers with Homeowner Assistance Services. In searching for the individuals behind these LLCs, typically there's no name listed in the Department of State database. In other words, a company pretending to aid distressed property owners was masquerading as a front for real estate LLCs that were simply buying up cheap properties around the city.

The lack of transparency in LLCs has been a subject in the news quite a bit, particularly with respect to luxury apartments in Manhattan. On the other end of the housing spectrum, it's just as much of a problem. These properties are being transferred

from real people, who actually live in these communities, to faceless shell companies with no connection to the neighborhoods they're plundering. The LLCs then earn tremendous profits when they flip the house, and we have no idea where that money ends up. We know where it doesn't end up, though: in our clients' pockets, despite their decades of investment in their family homes.

When people lose their homes to these ghost companies, the communities lose something too: they lose the stability of a long-term homeowner and neighbor. A legitimate buyer shouldn't need to hide behind an LLC. There is no defensible reason to shield the identities of these developers, and yet that is precisely what they are able to do with our current laws regarding LLCs. The U.S. Treasury Department recently began a pilot program aimed at uncovering the identities of LLCs that buy luxury condos in Manhattan. If we knew the identities of the LLCs who are stealing our clients' homes, it would be far easier to hold them accountable.

### **What Lawmakers And Law Enforcement Can Do About These Issues**

In addition to taking a close look at lien filings and LLCs, we hope that the elected officials and law enforcement will engage in community outreach around the issue of deed fraud. As legal services providers, we see homeowners walking around with tremendous shame and stigma about defaulting on their mortgages. Many of the frauds we see are the direct result of people trying to fix their problems privately, without having to reveal their struggles to others. These homeowners simply do not know what a legitimate real estate transaction should look like. In many cases, the delinquent loan itself was the product of a predatory transaction – so it's not surprising that homeowners who fell prey to bad loans or refinances are now being victimized by a new scam.

As part of a Senior Initiative funded by the Council, Legal Services NYC, in partnership with the Public Advocate and a number of other community organizations, is planning a series of outreach events in the coming months to educate people about deed fraud. We've attached a copy of the flyer to our testimony as an example of how we're trying to communicate about these issues to homeowners. We're optimistic about these efforts but we need to add more voices. There are people who will not attend our events because they don't want their neighbors to know they are in trouble with their loans. There are people who won't hear about these events, or who may not be able to attend. That is where you as Councilmembers come in. You are physically in your districts, and able to reach constituents who we may miss in our efforts. Homeowners need to know what a legitimate transaction should look like, what the red flags are for scams, and that legitimate legal and housing counseling services are available free of charge. They need to know how and why to monitor their properties in ACRIS, and where to go for advice. Public service announcements, mailings, community meetings, whatever means you have to reach your constituent homeowners in distress would make a huge difference in combatting fraud.

We also need to see more consistent and aggressive law enforcement against these rapacious developers. Defrauding people out of their homes is a crime. It's actually a lot of different crimes. Each one can and should be prosecuted. We spend millions of dollars in this city every year prosecuting petty thefts, while these fraudsters steal actual houses with impunity. The FBI and Department of Justice have been investigating Launch Development and its agents for months, and have arrested six people in connection with these scams. They face years in prison if they are convicted. We know that Attorney General Schneiderman has been looking into these frauds and

others, and has launched his own outreach program aimed at rooting out these scams. These efforts are incredibly important, and would be complemented by vigorous enforcement by our city's District Attorneys.

Not every case is the perfect crime, and not every investigation can be spearheaded by the FBI. But consistency is central to deterrence. Every forged signature, every phony lien, every broken lock is a violation of the criminal code. There is no reason to look the other way until a fraud is big enough or sinister enough. When you get away with forging one document, why not forge another? People who take advantage of vulnerable homeowners know that the odds are that they will never be arrested for the crimes they are committing. In part this is true because false filings and forgeries don't look like the crimes we typically worry about as citizens. But we should be worried about them, because street violence and drug addiction are not the only forces that destabilize our neighborhoods. Evictions of vulnerable seniors, rapidly rising property values, and the elimination of affordable housing units are equally destructive to the fabric of our city. If prosecutors aggressively targeted developers who file phony liens and forged documents, we might see fewer frauds.

We understand that law enforcement resources are always at a premium, and that these kinds of crimes can be harder to uncover. But as efforts shift away from strategies like stop-and-frisk, perhaps more creative minds in law enforcement can focus on newer kinds of crimes that victimize our most vulnerable residents. Our clients don't realize that they are victims of crimes, and don't know where to turn. The doors of police precincts and district attorneys' offices should be open to these homeowners, and staff trained to recognize the signs of property fraud. We also hope that law

enforcement will refer these cases to us as legal services providers, to ensure that homeowners' interests are protected to the greatest extent possible.

### **Why Free Legal Services Are Essential To Protect Vulnerable Homeowners**

As the Council is well-aware, improving access to civil legal services is essential to improving the lives of low-income New Yorkers. All the outreach, deterrence, and enforcement in the world cannot prevent every fraud. And even when law enforcement does get involved, somebody still needs to step in and try to save the house. It's not a prosecutor's job to represent a victimized homeowner, and these are cases that need to be affirmatively litigated.

Unfortunately for our clients, these cases are tremendously complicated and extremely resource-intensive. Our attorneys have appeared in Housing Court to stop the evictions, appeared in Supreme Court to file lawsuits, sought injunctions, and are now being forced to defend appeals from these developers. Even when we've gotten court orders to stay the evictions and allow us to move forward with our lawsuits, judges are forcing our clients to post huge injunction bonds in order to actually secure even that temporary relief. Poor homeowners don't have thousands of dollars to buy an injunction – just like they don't have thousands of dollars to hire a private lawyer. These are issues that legal services attorneys are uniquely situated to address.

We are doing our best to use the law to fight for our clients, but these scams are unusual and they require time to investigate. Just to give the Council an idea of what these lawsuits look like, we've attached a copy of one complaint filed by South Brooklyn Legal Services against Launch Development. It is a substantial undertaking to begin this kind of litigation, and for every case we accept, we are forced to consider the clients we might have to turn away because of limitations on our time and resources. With

more funding and support for our work, we could take on more of these cases and do more outreach, to protect our most vulnerable communities from fraud.

These frauds almost exclusively target communities of color, immigrant communities, and vulnerable seniors and disabled New Yorkers. They flourish in the shadows because these neighborhoods haven't yet become glitzy and gentrified. We worry about these homeowners because they have no safety net if they lose their homes. They have no country houses upstate, no families with spare bedrooms, no savings accounts to draw upon if they need to cover rent and a security deposit on a new apartment. When these homeowners lose their houses, they don't buy new ones. These houses are generally the sole source of wealth in a family, and they represent much more than just a roof over peoples' heads. The cascade of damage that results from the loss of these properties is enormous.

These are the people we serve as legal services workers. We would love to serve more, if could reach them and if we had the resources to represent all of them. Most New Yorkers are worried about affordable housing, however you define "affordable." These deed fraud schemes directly impact the sustainability of affordable housing around the city. You don't have to be anti-development to combat deed theft. You just have to be anti-theft. We hope to work together with the City Council, law enforcement, and other city agencies to stop these scammers from taking advantage of vulnerable homeowners, and appreciate the opportunity to be heard today. Thank you.

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