



**New York State Office of the Attorney General
Letitia James**

Testimony Before the

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

October 27, 2022

Chair: Senator Brian Kavanagh

Public Hearing: To examine the practice of deed theft in New York State

Good morning and thank you for the opportunity to address this Committee today. My name is Meghan Faux, I am the Chief Deputy Attorney General for Social Justice at the Office of New York State Attorney General Letitia James (OAG). I am joined today by my colleague, Rod Murphy, the chief of the AG's Public Integrity Bureau and Real Estate Enforcement Unit who will also speak to our work in this area.

We would first like to thank the members of this Committee and your colleagues in the Legislature for the partnership and support you have provided the OAG in the past several years. We appreciate our strong working relationship and look forward to another productive legislative session in 2023.

We would also like to thank you, Chair Kavanagh and the rest of this committee, for convening a deed theft hearing. Preventing deed theft has long been a priority of AG James, going back to her time as a member of the New York City Council. Our office devotes significant resources to addressing deed theft both from the criminal and civil side.

We hope to use our time today to detail some of our office's work in this area, to describe the problems we've seen on the ground, and to share some ideas on how to strengthen our state laws to prevent against deed theft.

Deed theft is an especially troubling form of theft because it has consequences so much greater than the theft of a mere object – it is the loss of a family's home, the deprivation of a person's most significant financial asset, and it causes victims to be displaced from their communities. Deed theft is repugnant because its victims tend to be the most vulnerable among us who either due to age, financial desperation, or other factors are in a position to be taken advantage of. It is a feature of gentrification but cruelly strips victims of their homes without any financial benefit as the homes in their communities increase in value.

The Role of the OAG

Since 2019, the Attorney General's office has received several hundred complaints of deed theft. This number is unacceptably high but would be even higher if the government had not halted foreclosures for homeowners experiencing financial hardship during the COVID-19 pandemic. Since the foreclosure moratorium expired at the beginning of the year, foreclosure filings and judgments have increased, thereby increasing homeowner vulnerability to deed theft scams.

The two primary ways that deed theft occurs is through forgery, where thieves falsify a homeowner's signature without their knowledge, or through fraud, where fraudsters deceive a homeowner into signing away title without realizing what they've done. The perpetrators of deed theft schemes are often sophisticated operations.

Deed thieves tend to target specific neighborhoods and victims for their scams. Many are residents in gentrifying neighborhoods who live in homes that have significantly increased in value over the years. More often than not, the targeted homeowners face some type of financial hardship, like foreclosure, or tax or water liens. Most of our deed theft complaints and investigations are in Brooklyn and Queens and we have seen an influx of cases Harlem, the Bronx, and Upstate New York.

To combat deed theft cases, our office uses both criminal and civil law. While criminal charges are generally our preferred response because of the value of the homes in question and the impact that these crimes have on victims, civil law is a valuable tool where the statute of limitations or other requirements prevent our office from bringing criminal charges.

Cooperation and Coordination with Local Partners

The OAG regularly works with our partners in local law enforcement, local government, and legal services organizations to coordinate our response to deed theft. Since the fourth quarter of 2019, the OAG has chaired the Deed Theft Task Force, which is comprised of members of the OAG, District Attorney's Offices within and outside of New York City, Sheriff's Office, Department of Finance, Legal Aid and other law enforcement and civil enforcement agencies. We discuss current trends in detecting, investigating and prosecuting deed theft, share research and analytics, and exchange ideas on how to prosecute these complex crimes more effectively.

Non-Enforcement-Based Programs

Before we discuss our recommended changes to the law, we would be remiss not to mention the programs that exist to help homeowners in financial distress to stay in their homes. These programs highlight ways to protect homeowners without resorting to prosecutions or enforcement actions.

HOPP

The clearest example of this is the Home Owner Protection Program, or HOPP. When faced with the understandingly frightening prospect of losing their home, many people are unsure of where to turn or even embarrassed about asking for help. The best protection against this threat is making sure homeowners can identify and access trustworthy organizations that can help them confront and resolve the legal and financial challenges they face. In 2012, the OAG created HOPP, a network of over 80 housing counselors and legal services organizations across New York State who provide guidance to homeowners in financial distress and facing potential foreclosure. Since 2012, the OAG has dedicated over \$140 million in settlement funds to this program. As our office's settlement funds unfortunately dried up, this Legislature has stepped in to

fully fund and support HOPP including allocating \$35 million to HOPP in in this year's enacted budget. This support is vital to protecting homeowners and homeownership in New York State and I thank you for prioritizing this program. In its ten years of existence, HOPP has helped over 100,000 families statewide avoid foreclosure by providing free, high-quality assistance.

Protect Our Homes Campaign

Beyond general assistance for homeowners in distress, we need to continue to be creative and find ways to reach especially vulnerable homeowners to advise them about how they can protect themselves and their homes. In 2020, Attorney General James launched the Protect our Homes campaign. At an outreach event co-hosted by Senator Myrie, the AG, Senator Myrie, and hundreds of volunteers knocked on over 3,000 Brooklyn homes and left materials to advise homeowners about avoiding deed theft scams. Following this event, our office worked with the New York City Department of Housing Preservation and Development (HPD) and several of our non-profit partners who provide services through HOPP to target vulnerable homeowners in Brooklyn, Queens and the Bronx. Through this program, we reached more than thirty thousand homeowners in vulnerable neighborhoods, including more than two thousand homeowners who attended specific Anti-Scam legal assistance workshops and an additional one thousand five hundred who completed a wellness check survey to identify their most pressing issues. Our partners at HPD assisted by facilitating widespread advertising for the program including through bus ads, LinkNYC kiosks, 311, and radio and billboard ads. This program provides a great example of how elected leaders, government agencies, and community-based organizations can work creatively to reach homeowners in need.

Strengthening Non-Solicitation Zones

AG James supports the establishment of a broad non-solicitation zone within Brooklyn to prevent homeowners from receiving aggressive, unwelcome solicitations by individuals seeking to purchase their homes. Our office testified in favor of such a zone at a hearing in June convened by the New York State Department of State in connection with its investigation into whether a broader cease and desist zone in Brooklyn is warranted. We encourage residents or other impacted individuals to submit complaints about unwanted or aggressive solicitations to the Department of State.

Recommendations

We would now like to discuss several possible legislative solutions to address deed theft. We welcome the opportunity to work together with the legislature to develop and advance these recommendations, along with the ideas put forward by our colleagues from other agencies and organizations, in the coming legislative session.

Deed theft takes many forms, some of which are still evolving. As such, the solutions we recommend are diverse and aim to create several tools for law enforcement and safeguards within the system to guard against this form of theft.

Prohibiting Unfair Business Practices

Strengthening protections against unfair and deceptive business practices would provide our office with a valuable tool for combatting deed theft. New York law currently prohibits deceptive business practices; amending this law through the Consumer and Small Business Protection Act (S.6414-Comrie/A.2495-Niou) would enable the Attorney General to also seek damages or enjoin business practices that are so unfair or abusive as to cause substantial injury to consumers. Predatory schemes take many forms and evolve in response to changing real estate markets. Strengthening our consumer protection laws will ensure

that the Attorney General has the necessary tools to protect homeowners and stamp out these abhorrent practices.

Voiding Title

In 2019, the legislature took an important step by passing the “Deed Theft Bill” which provided new tools to fight deed theft. At that time, a new provision was added to the Criminal Procedure Law (420.45) setting out a process for DAs to void title when there are convictions or guilty pleas for the crime of offering a false instrument for filing. As noted earlier, because deed theft happens in a variety of ways and, the crimes enumerated in the law that allow a DA to void the false filings are too narrow. Our office could charge a number of different crimes other than filing of a false instrument including grand larceny, scheme to defraud, criminal possession of stolen property, and potentially others. We think the law should be expanded to include the other crimes that DAs or the AG are likely to charge for deed theft.

Lis Pendens

In addition to finding other ways to restore property to its rightful owner, we also recommend identifying ways to make it more difficult for scammers to transfer title when there are signs that a potential deed theft has occurred. This could function similar to the way that a *lis pendens* currently works.

Often when a victim of a deed theft files a complaint with our office, the first thing we recommend is that they retain a civil lawyer to file what is known as a “*lis pendens*” on the property. A *lis pendens*, or a notice of pendency, is a notice that can be filed with a county clerk giving prospective purchasers of the stolen home notice that there is a pending legal action in court that would affect the title to that property. Practically, this may halt the sale of the stolen property because it is unlikely that a good faith purchaser would risk buying a home where they would be subject to the outcome of the litigation. In certain cases, if there is no *lis pendens* filed and the stolen property is sold to a bona fide purchaser, the victim has no recourse to get the property back and may only seek damages against the thieves.

We would recommend establishing a parallel provision to allow prosecutors to file the equivalent of a *lis pendens* when a prosecutor receives a deed theft complaint and there is credible evidence that deed theft has occurred. This would help protect many vulnerable homeowners who might not have the capacity to take civil legal action.

Penal Law Changes

We recommend that the legislature consider amending the Penal Law to establish a new crime of deed theft. Establishing a specific crime of deed theft would serve two purposes. First, aggravating and mitigating factors can be based on the crime’s impact on the victim or the vulnerability of the victim. Under current law, the only factor that determines the severity of the crime is the value of the property. And although property value is important, there are other factors, such as whether the home was the victim’s primary residence, whether the victim was a vulnerable person which should decide the severity of the crime. Establishing a standalone crime of deed theft is also an important signaling device to demonstrate the legislature’s intent that this conduct be treated criminally and not hope that prosecutorial creativity will suffice.

Reforming the Role of Notaries

Notaries are often the last line of defense before title to a property is transferred. Every deed must be notarized before a transfer can take place. Deed theft often happens because homeowners put their trust in putative real estate professionals who were in fact scammers. The homeowners are induced into signing

documents with misrepresentations and false promises, only to discover later that they had unwittingly signed deeds and other related documents.

We recommend strengthening the role that notaries can play in preventing deed theft, which can happen in several different ways. There are a few existing bills in the legislature that would achieve this including S.9404/A.10516, sponsored by Senator Myrie and Assemblymember Weinstein and A.4277-A, sponsored by Assemblywoman Walker.

Several of the changes that we recommend are included in these bills. We would encourage the legislature to create the same journal requirements for deed transfers that are required by the recently-enacted electronic notarization law under Executive Law 135-C. The notarial journal requirements would have a chilling effect on scammers reluctant to provide incriminating details. The journal requirements would also allow law enforcement and prosecutors to gather better evidence during their deed theft investigations.

We also recommend amending the law to require a notary who is authenticating a signature on a deed to read a colloquy form to the homeowner or signer, much like an allocution by a judge, to make sure the homeowner understands that they are about to transfer their interest in a property. These requirements are enumerated in Senator Myrie and Assemblymember Weinstein's bill. The form read by the notary should be signed by both the homeowner and the notary and would be maintained as a record. We believe that providing this colloquy will ensure that the homeowner understands that they are selling their home.

Eviction/Partition Proceedings

In many of the cases that come before our office, we see fraudsters who quickly evict current tenants in the properties they steal, compounding the harm of their theft. Courts should be required to stay eviction or partition proceedings when there is a pending investigation or lawsuit by a relevant law enforcement office. Keeping current tenants, and even the rightful owners, in their homes must be a priority while ownership is in question. Doing so not only limits the potential damage of a deed theft, it also puts the homeowner in the better position to assert their rights and stay housed. With the homeowner and current tenants in place, the people attempting to steal the property would be unable to occupy the property, damage or remove the owner's personal property, or collect rental income from a property they don't rightfully own.

Conclusion

To conclude, the Office of Attorney General remains deeply committed to combatting deed theft and we look forward to working together moving forward to strengthening the laws that help prevent this type of theft.