<u>Testimony Before the New York State Senate Standing Committee on Housing, Construction, and Community Development</u>

October 27, 2022

My name is Samantha R. Axberg, and I am an attorney at the Western New York Law Center. I thank the members of the Standing Committee on Housing, Construction, and Community Development for allowing us to submit this written testimony concerning deed theft in the real estate industry.

The Western New York Law Center ("WNYLC") is a non-profit legal services agency in Buffalo, New York. We advocate on behalf of low-income and underserved Western New Yorkers on matters including housing, access to credit, consumer debt, and more. WNYLC is also a member of New Yorkers for Responsible Lending ("NYRL"), a state-wide coalition that promotes access to fair and affordable financial services throughout the State of New York. I personally serve on the Mortgage Working Group, which advocates for fair housing and lending practices.

Roughly half of WNYLC's focus is on housing, and we have three Housing departments: Foreclosure Defense, Eviction Defense, and Vacant and Abandoned Properties. As such, we have a breadth of knowledge and experience in real estate issues. Our primary goal is to keep people living in safe, affordable housing. We've helped thousands of clients avoid loss of home, we connect homeowners to housing rehab programs, we help neighborhoods fight the blight of vacancy and we return those homes to the housing supply, and we advise heirs on how to handle estate property. There is a lot of help needed in our communities, and daily we witness the ways in which unsavory actors use that need to their advantage. Those tactics are outlined below, including some examples of clients who have been harmed by these unsavory actors.

The Perils of Foreclosure: Making Decisions Under Duress

The first means of deed theft is the one with which most in this industry are familiar. A homeowner in foreclosure is a human being experiencing one of the worst times of his or her life. The trauma associated with even the concept of loss of home is immense. Most of the time, this trauma follows a hardship event, which caused the foreclosure in the first place. Whether that hardship was the death of someone who was helping to make mortgage payments, or due to the loss of a job or income due to layoffs, injury, or illness, a subsequent foreclosure only adds to the stress a family is going through.

As a result, most families are desperate for solutions. Many will take the quick, easy-sounding solution over the risk of a foreclosure judgment. It has reached the point that our office has been working with the Erie County Clerk's Office on a Stay in Your Home Campaign to educate homeowners on the benefits of staying in the home versus falling victim to deed theft scams.

The most common scam is deed theft in the form of foreclosure bailouts. An investor will approach a homeowner in distress and offer to make the foreclosure problem go away. Whether that initial contact be via mail, telephone, radio advertisement, signs on telephone poles, or in person, the homeowners find themselves on the receiving end of what sounds like a tempting offer: the homeowner can stay in the home, the foreclosure will go away, and the homeowners will pay the investor an affordable rate instead. The homeowner just has to sign some paperwork to get it done!

The reality is that the investor's "paperwork" is really a deed, whether the homeowner realizes it or not. The homeowner is not encouraged to seek legal counsel, as the investor will take care of everything for them. There is no safeguard. No protection. The investor pays off the mortgage company. In this real estate market, investors go for houses that are valued far beyond the amount owed to the banks. Then the investor begins charging rent to the homeowner. Only now the situation is more accurately the landlord charging rent to the tenant. The homeowner is no longer in control, and no longer a homeowner. The landlord-investor is free to raise rents, sell the property, evict the residents. The resident never sees a cent of the difference between the home's value and the amount the investor paid the mortgage company. The equity is completely gone. This is equity and deed theft via duress and misrepresentation.

Equity and deed theft are only going to continue to be an issue with rising housing prices and low housing stock. WNYLC is happy to see the Standing Committee on Housing, Construction, and Community Development taking steps to address these predatory practices in the real estate industry.

Homes in Need of Rehab: Housing Court Poachers

Deed thieves do not only prey on folks facing foreclosure. They prey on anyone facing issues with the home. WNYLC attends the City of Buffalo Housing Court every Thursday – the day new cases are brought forward. We represent homeowners and act as resources for homeowners who are looking for rehab programs and estates help. With the rise in lumber costs, out of control inflation, and the ever-higher cost of living, homeowners are struggling to keep their properties safe and maintained.

To explain how deed theft works in this context, let's discuss **Dave**:

We met Dave at Housing Court one summer morning. He was almost in tears, telling the Court officer that he was afraid to attend his hearing with "him." "He" turned out to be his fellow property owner, Frank. The hearing did not go well, with Dave struggling to tell his story, and Frank flatly denying responsibility for anything. Dave came to speak with us later and we got the full story, with supporting evidence.

Dave has mental health concerns. He is both developmentally disabled as well as mentally ill. He was given his house by his parents, who wanted to care for him after they were gone. He has no other family. When he got in trouble with code violations, he was scared. He didn't know who to turn to or what to do.

Frank showed up in the nick of time – shortly after the code violations became public. His manner of dress was professional, but not stuffy. Beige pants and a button-down shirt. He looked presentable and trustworthy. Better yet, he had answers to Dave's problems.

Frank offered help to Dave. He said he would help him out with his code enforcement problems – attend court, talk to contractors, and save Dave from fines or jail time. Dave said he felt like the luckiest man on Earth that day – what a coincidence that Frank would appear in his time of need! All Dave had to do was sign some paperwork and make affordable payments to Frank.

What Dave did not know what that he had signed a deed, and those payments were rent. Luckily, Frank was not the best con artist, and he kept Dave on the deed as well. Frank did turn out to be a bully though. He came to Dave's house whenever he wanted. He threatened Dave and pushed him around. He made Dave afraid to confront him. He made Dave even more afraid to tell someone what was happening. In Housing Court, Frank blamed Dave for everything.

Frank was and is a frequent defendant in Housing Court. He has properties still in Court today that have had issues for 7-9 years. He will likely keep Dave's house in Housing Court for just as long; perhaps waiting to outlive Dave before putting the real work into the house. We cannot be certain what his plans are, but we have helped Dave and connected him with the police and other resources that can help.

The important takeaways of Dave's story are twofold: 1. We cannot be sure what the end goals or plans of equity thieves are. Their methods change as the wind does, and legislation can often have trouble catching up. Any solution would have to be watertight and would need to anticipate the next moves of con artists like Frank. 2. Rehab issues will continue to rise as housing stock ages, and more older and disabled folks like Dave will be targeted by people like Frank.

Homeowner Benefit Agreements

Another method of targeting people in need of smaller amounts of money are Homeowner Benefit Agreements. They are small payments issued by LLCs to cover costs like home repair and loan modification down-payments or balloon payments. They could theoretically cover any variety of services and goods – but at the cost of filing a memorandum in the Clerk's Office tied to one's house and restricting the homeowner's right to sell.

Joan took out a Homeowner Benefit Agreement to help secure a loan modification. The LLC promised quick payment, no obligation for Joan to sell her home, no payments, no lien, and no credit check. The agreement did, however, state that if Joan ever wanted to sell her home, she would absolutely have to list the home with the LLC and could not use any other company for forty (40) years. This agreement not only binds Joan, her heirs, and her beneficiaries, but also has covenant language requiring that the agreement run with the land. For only $300-5,000 in cash. If she ever sold her home, she would be required to pay back the initial money.

The agreement as written, and the promises made on the website Joan visited were not the same. Many representations were made on the website, but the actual contract was silent on those issues. Issues such as how long the agreement lasts, and a bit on the website about how the LLC will actively market Joan's property for the first six months (but Joan has no obligation to sell during that time).

Joan thought she was getting quick and easy help, but she did so by signing away 40 years of opportunity to react to market changes under her own agency. WNYLC sees this as a form of equity theft, as now control of Joan's equity is not guided by her own hand. The LLC also gets to charge commission at whatever rate it wants to, as no rate was ever determined, and Joan must exclusively use the LLC as listing agent.

Joan's story is an example of how equity theft can come in many forms. Some may seem innocuous but may have unseen ramifications that the average homeowner or consumer cannot foresee.

Desperate Heirs and Downsizers: When the Deal Looks Too Good Not To

Another common predatory tactic is for investors to contact long-term homeowners who may not be aware of the true value of their property. These properties tend to be under-assessed and worth far more than the homeowners realize. Investors will send out letters, post notices on houses, post ads on telephone poles, and even leave voicemails for homeowners, urging them to sell their properties. These solicitations tend to promise fast transactions, minimal closing costs, and cash payments.

People who are particularly susceptible to selling include older folks looking to downsize houses that are too big now that their kids have grown up, or heirs with little experience in marketing a home. Investors are able to get more equity out of these properties by taking advantage of people not knowing their options by approaching them before anyone has tried selling the property on the open market. The emphasis on avoiding a real estate agent, avoiding hiring an attorney, waiving inspections, and offering cash serve to push people towards selling faster and for a lower price than they otherwise would have.

One method are **assignment contracts**, in which and LLC offers to buy a contract from the homeowner for a low value and then takes over marking the house itself. This allegedly saves the homeowner the pains of having to market the house themselves. However, these LLCs are not real estate agents, though they are acting as such.

One local real estate agent, who we'll call **Amy**, says she's received 45 emails about houses sold via assignment contracts since June 2022. She is concerned about these LLCs illegally acting as real estate agents, despite following no ethics, standards of practice, or fees rules.

A real estate agent typically takes 6% in commission from the sale of a house. Some of that commission goes to the listing company, some to the real estate firm, some to the agent herself. However, in assignment contracts, the LLC takes the full difference between its initial cash offer and the actual selling price. This can, and does, result in commissions of 50% or more. The Committee should consider this practice both equity theft and the illegal practice of unlicensed real estate agents.

We urge the Standing Committee on Housing, Construction, and Community Development to take action against assignment contracts. Homeowners are facing unprecedented levels of inflation and looking for ways to liquidate assets in preparation for an impending recession.

Assignment contract LLCs are taking advantage of high market rates, panicking consumers, and low financial literacy rates for their own gain. They are sucking wealth out of our communities and contributing to the lack of affordable housing in the process by prohibiting these properties from entering the open market and by taking enormous commissions in the process.

Predation Starts Early: Why New Owners are at Risk Too

Lastly, it is not only long-term homeowners who are at risk of financial predators. A Niagara County couple, **Kyle and Amanda**, recently filed a life estate deed with Kyle's parents as life estate holders and Kyle and Amanda as remainderman.

Within a week, both Kyle and Amanda received official-looking letters in the mail, stamped with a warning promising "$2,000 fine, 5 years imprisonment, or both for any person interfering or obstructing with deliver of this letter." The return address said only "Property Records," and the envelope stated, "important property information respond promptly." In every regard, these letters looked very official.

Inside was a long paper with official-looking information about the couple's recently filed deed. At the bottom was a payment slip requesting a response within about a month's time and explaining how to fill out the check. For anyone intimidated by legalese and government mandates, this letter seems serious, and the letter explains that the organization will provide a copy of your deed for your records. It is important to note that this letter arrived at Kyle and Amanda well before their actual original returned deed arrived. Anyone who did not know better would presume they needed to complete this form to receive that deed. The fine print, written in all capital letters that are notoriously difficult for people to read from a graphic design standpoint, states the company is not affiliated with the County nor any government agency.

Amanda and Kyle have also received several letters from investors seeking to buy their property for cash, as described above. It is clear the predation starts early.

Recommendations

The Law Center recommends that the Standing Committee on Housing, Construction, and Community Development consider several reforms which we believe would protect vulnerable low-income consumers facing predatory solicitations and practices.

First, there needs to be more focus on community education and reporting. The Attorney General's Office collects information on deed theft, but the website's description is narrow and does not encompass the myriad methods of deed and equity theft described above. Consumers will not know what to look for or watch out for if they are not educated on the methods of deed and equity theft in use today.

Second, as the issue of deed and equity theft interferes with property real estate transactions and marketing, real estate agents should be considered allies in the fight against predation. The legal real estate industry is a direct competitor to unlicensed brokers, assignment contractors, and deed and equity thieves. Thus, real estate professionals have a direct incentive to be allies in reporting malicious practices. A communication channel should be opened between agents and the government to help with industry regulation, and to incentivize proper ethical home marketing services.

Third, there should be a "cool-off" period for homeowners in cash deals that would allow the homeowner to back out of the deal within a set number of days or weeks. In tandem, homeowners should not be prohibited from marketing properties themselves, as assignment contracts and homeowner benefit agreements mandate. Inequality in knowledge of comparable properties and market rates leaves homeowners vulnerable to those investors who actively follow the housing market. This inequality needs to be addressed and equalized.

These are merely a few preliminary suggestions of reforms that we believe would make a difference to the homeowners that we routinely help in Western New York. We are happy to work with the Committee to develop these suggestions into specific legislative proposals.