



**STATEMENT BY YOLANDE I. NICHOLSON, ESQ.**  
**-- OCTOBER 27, 2022--**  
**TO NEW YORK STATE SENATE COMMITTEE ON HOUSING,  
CONSTRUCTION AND COMMUNITY DEVELOPMENT**

Good afternoon, my name is Yolande Nicholson, and I am an attorney in private practice. First, I'd like to extend my sincere appreciation to Chair Brian Kavanagh, Senator Zelnor Myrie, and the additional members of the New York State Senate's Housing, Construction and Community Development Committee for addressing deed theft at this public hearing, on this date, and at this time, in 2022.

Second, I am respectfully requesting that this Committee investigate the subject of deed theft – which the Committee describes as title fraud -- through a broader spectrum or set of lens; lens that would bring to the fore that the fraudulent conveyance of title of a home, or forgery of a deed, is actually equity theft; that it is, in fact, the historic crime known as thievery; that the deed is merely the instrument through which the perpetrator steals the brick and mortar, value and equity, legacy and promise, of an individual's property or a family's home. When a deed is stolen, with the deed goes that family's primary or sole financial investment and asset, along with their memories, place of quiet enjoyment and security; with the deed goes their good will in the community, their long-time friendships and familial relationships with neighbors; with the deed goes, some would say most importantly, their inter-generational wealth. The time is here for this Committee and the New York State Legislature to address deed and equity theft for the extent of the crimes that they are.

This Senate Committee's assessment is spot on – the predatory practice of deed theft is now prevalent in rapidly gentrifying communities. But let's call a spade a spade – the predatory practice is ongoing in Black communities in Brooklyn especially. What is going on is not merely the stealing of title to Black owned properties; what is really going on is the illicit transfer of the monetary value of the equity and inter-generational wealth in those properties to private-equity investors and fraudsters, masked by limited liability companies and shell corporations; investors and fraudsters who are from outside of the communities, with the aim of aggressively evicting Black families from their communities utilizing forged or fraudulent deeds.

The theft of a property owner's equity in their home should thus not be legislated as simply a fraudulent act or a misdemeanor; it should be prohibited, policed and prosecuted against everyone involved as the high criminal act that it is; as a felony. When a perpetrator forges a property owner's signature onto a deed, or a notary public permits his or her stamp to be used unlawfully, or a fraudster deceives a property owner into conveying title as part of a foreclosure rescue scam, or an investor lures a homeowner into pursuing a fictitious loan modification or mortgage refinancing, or a title company participates in the illegal recording of a forged or fraudulent deed, what is always taken is the precious, real property asset that is a home, with its hundreds of thousands of dollars, and, in some historic communities in Brooklyn, millions of dollars, in value. Governmental agencies should now be given the mandate by the legislature to police and remedy these acts expeditiously.

Property ownership, and homeownership in particular, along with the inherent value therein to pass on to one's heirs, is a fundamental right promised to most Americans. I say most, because it's a fundamental right that Americans of African descent have had to fight for and acquire historically without any supportive programs or financing from federal, state and local governments, and continue to strive to protect with only a modicum of support from the courts and law enforcement. As Dr. John Flateau of the DuBois Bunche Center at Medgar Evers College reported at the hearing of the joint committee of the New York State Legislature, at Brooklyn Borough Hall on March 15, 2019, U.S. Census Bureau data indicate that homeownership among African Americans in Brooklyn and Southeast Queens dropped precipitously, by at least fifty percent, since 2010. Currently and long term, Black families are being displaced from their familial neighborhoods and their primary or only means to long-term financial security is being wiped out. Today, I implore Chair Kavanaugh and this Committee to legislate its support for all property owners who are victims of equity theft with an unapologetic recognition that Black property owners are among the most targeted and victimized; that they should be protected.

As many of you may know or recall, more than a decade ago, the country was in the midst of the Great Recession, and Black and brown borrowers and communities bore the brunt of the prior-decade's excessive origination of predatory, high-cost, subprime and non-traditional mortgage loans, following the targeting of Black borrowers and property owners in communities that were historically redlined

to fill the mortgage securitization pipeline for such loans. By 2011, the scandal of fraudulent foreclosure practices by national mortgage loan servicers rose to the level of a U.S. Justice Department investigation, and a subsequent settlement by the major U.S. national banks with attorneys generals across the country, including New York State. What, you may ask, does this have to do with the subject matter of today's hearing – deed theft, or what I prefer to flag as excessive, unconscionable, flagrant theft of equity value built up by Black families in particular in New York City, in the now close to 60 years after the passage of the Civil Rights Act of 1964 and the Fair Housing Act of 1968?

The answer lies in the fact that fraud in lending practices and in foreclosure proceedings continue to go unchecked across New York State and City's courts and law enforcement agencies – especially particular when the targets and victims are Black, had the misfortune of falling on hard economic times from loss of employment, death of a family member, unexpected weather damage, or failed to secure a refinancing from a conventional lender even when he or she qualified for a conventional loan. This is what I call the cool cloud of fraud and deception that is condoned or sanctioned when the victim is a Black or brown property owner.

This cool cloud continuously sends a signal, or some would say, a clear message, to private equity investors, deed and equity theft fraudsters, perpetrators and their cohorts that it is open season in Brooklyn, New York, especially, to swindle homes and inter-generational wealth away from Black families, since few, if any of

them would be prosecuted or sanctioned. The message, more often than not, is that the forged deed or illegal recording of the deed can most likely be laundered from bad paper to good paper with the stroke of a judge's pen or the stamp of the Court's Clerk.

What most people don't know, and few recall, is that the New York State Legislature aimed to prevent abusive and fraudulent practices against homeowners who were facing foreclosure or falling behind on their mortgage payments as early as 2006, by enacting the Home Equity Theft Prevention Act (HETPA). Admittedly, the reach of the act was narrow, but the message should have been heard by the New York State courts, by district attorneys and law enforcement across the state. However, in my experience, they have either refused to listen to the message or have found it convenient to disregard it. For example, the Clerk of one particular county court remains hesitant to record the property owners' notices of rescission of stolen deeds against the property records, even though required to do so by law.

I'd like to take the opportunity to present you with a few case studies, of which I am counsel or co-counsel to the victims in state court proceedings. In each case, the outstanding mortgage debt at the time of the fraudulent conveyance of title to the subject property was significantly less than the property's current and long-term market value. In each case, a significant amount of short- and long-term equity inherent in the property's value at the time of the fraudulent scheme or scam was imputed to the fraudster and his or her cohorts, with the recording of a forged deed.

In each case, the homeowner has yet to find recourse in the criminal justice system.

There is the case involving Mr. A, who was named a defendant in a 2010 foreclosure action that has the indicia of fraud, whose signature was apparently forged onto a deed by individuals or their cohorts on a date in February 2013, who claimed to have been in direct contact with the mortgage loan servicer, and who Mr. A alleges defrauded him into believing they could assist him with securing a loan modification; the forged/fraudulent deed transfer was timely rescinded in accordance with the Home Equity Theft Prevention Act; but Mr. A continues to be caught in a web of extensive litigation with deep-pocket defendants nine years later, as the New York State Court has yet to order the perpetrators to reconvey title to his property to him. The matter is pending before the U.S. Bankruptcy Court for a reorganization of the mortgage debt with the actual creditor, if one were to present itself.

And there is the case of Mr. B, a senior citizen resident of a three-story brownstone in Prospect Heights, Brooklyn, where he has lived since childhood, who was first named a defendant in a 2009 foreclosure action and then a second 2014 foreclosure action, each of which has the indicia of fraud; Mr. B's signature was apparently forged onto a deed sometime in July 2021 – during the Pandemic – by individuals or their cohorts who Mr. B alleges defrauded him months earlier into believing that they would purchase his home for fair market value; the forged/fraudulent deed transfer was timely rescinded in accordance with the Home Equity Theft Prevention Act, but Mr. B is now caught in a web of extensive litigation

with deep-pocket defendants to have the New York State Court order the perpetrators to reconvey title to his property (a right he clearly has under the Home Equity Theft Prevention Act). In less than 12 months, the fraudsters have encumbered Mr. B's property with additional mortgages.

And there is the case of Mrs. C, the now 98 year old owner of the landmarked brownstone in Crown Heights Brooklyn, who, with her family, sought a cash-out refinancing of their then existing mortgage in 2015, whose signature was apparently then forged onto a deed months later, in a scheme to fraudulently convey Mrs. C's title to a limited liability company formed by the individual who presented himself as the mortgage lender; Mrs. C has commenced an action against her alleged perpetrators for a declaration that she is the lawful owner of her property, while she, along with her family, continue to face numerous eviction proceedings by the individual who now claims title to the property. Mrs. C's property title was then transferred a number of additional times, and an additional mortgage now encumbers the property.

What most law enforcement officials have reported out is that even in the instances where some level of wrong doing is clearly evident on the part of the perpetrators – or when forgery is clearly evident in the documents utilized for the deed and equity theft – your legislative body has given them neither the basis nor the tools to prosecute, indict and convict the perpetrators. On the civil side, although there have been some decisions upholding the principles and remedies of the Home Equity Theft Prevention Act, and although it has been the law of the land since the

founding that a forged deed is a nullity, as you will most likely hear today from the victims of deed and equity theft, their pleas for help fall on deaf ears, and their cries for support fall on blank faces in many courtrooms and law enforcement offices across the Downstate.

When people ask me what area of law I practice, my response is that I consider myself a civil rights and consumer protection attorney. I am a founding member of the New York State Foreclosure Defense Bar, an organization of attorneys in the private bar that represent working-family homeowners in the efforts to defend their homes from fraudulent or illegal foreclosures, and to secure loan modifications or other workouts whenever possible. I can report with confidence that my colleagues in the private bar have high regard for the fact that the New York State Legislature and this New York State Senate Committee have continuously recognized the need to support these and other working-family, tax-paying communities. I and many of my colleagues in the private bar continue to champion the application of the due process and equal protection clauses of the New York State and U.S. Constitution.

My practice's focus since 2010 has been advancing the intent of laws the New York State Legislature enacted in 2006, 2008 and 2009 to save the precious asset that is homeownership whenever possible for all New Yorkers, or preserve the equity in such homes for its original owners (owners of *the equity of redemption*). As I reported to you on March 15, 2019, the New York State Legislature's intent has been met, in my humble opinion, with disdain by the New York State Courts, with few exceptions. In



recent years, I have been called upon by my community and clients to attend to the growing epidemic of deed and equity theft, and come before you today to ask for heightened legislation to address, curb and remedy what is truly an egregious and heinous crime – the perpetration of thievery of someone’s home or property.

Chair Kavanagh and Senator Myrie, I applaud you and your colleagues in this Committee for continuously embarking on legislation that aims to address the challenges facing property owners, families, consumers and historically marginalized communities across New York City. Therefore, I implore this Committee to adopt the recommendations in the 2018 Report of the Grand Jury of the Supreme Court of the State of New York, First Judicial District, Issued Pursuant to Criminal Procedure Law Section 190.85, Subdivision (1)(c), by Cyrus R. Vance, Jr., District Attorney, New York County. I have previously submitted the report to Senator Myrie for this Committee review. The report is publicly available at <https://www.manhattanda.org/wp-content/uploads/2018/12/Deed-Fraud-Grand-Jury-Report.pdf>. I have summarized its key recommendations in the endnote 1 hereto<sup>1</sup>.

Thank you for providing me with the opportunity to present this testimony to you this day, October 27, 2022.



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**I. RECOMMENDATION ONE IN THE VANCE REPORT (starting at page 13) - IMPOSE NEW REQUIREMENTS ON LICENSED NOTARIES PUBLIC (with respect to all real estate transactions, not only those captured by RPL 265-a) ("establish stricter requirements for the appointment of notaries public, commissioned by the New York State Secretary of State, and for the recordings of their notarial acts.")**

- Create a new offense in Penal Law Article 175 (Offenses Involving False Written Instruments) making it a felony for notaries public to notarize a signature in the absence of the signer on a document involved in a residential real estate transaction that is proven to be false.
- This statute would criminalize the pre- and/or post-notarized signatures.

**II. RECOMMENDATION TWO IN THE VANCE REPORT (starting at page 21) -- IMPLEMENT NEW PROCEDURES TO CURB AND DETECT FRAUD INVOLVING RESIDENTIAL REAL PROPERTY ("[Address] the means to increase protections for homeowners and to improve law enforcement's search capability to uncover and gather evidence necessary for the prosecution of fraudulent residential real estate transactions").**

(a) Amend the New York Limited Liability Law to define a "beneficial owner" as a natural person who directly or indirectly holds, or has been assigned, a membership interest in a limited liability company, and to further require an LLC to include in its articles of organization a list of the beneficial owners along with addresses and a unique identifying number from a government issued identification.

- Mandate that this information is maintained by the New York State Secretary of State in a database that is available to the Department of Finance and to law enforcement
- The New York State Secretary of State in a database that is available to the Department of Finance and to law enforcement.

**RELATED PROPOSAL BY YOLANDE I. NICHOLSON, ESQ.**

(b) Amend the New York Corporation Law to capture or extend this requirement to corporate entities as well |-- corporations are also utilized to orchestrate or effectuate forge or fraudulent deed transfers.

**III. RECOMMENDATION THREE IN THE VANCE REPORT (starting at page 27) - RAISE THE FELONY CLASSIFICATION FOR OFFENSES RELATED TO FRAUD INVOLVING RESIDENTIAL REAL PROPERTY ("We urge the Legislature to amend the Penal Law to increase the felony classification of certain offenses applicable to the fraudulent conveyance of residential real estate to reflect the severity of this criminal conduct")**

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### A. Penalties for Offering a False Instrument for Filing

- Reserve the offense of “Offering a False Instrument for Filing in the First Degree” for all false written instruments involved in the conveyance of residential real property. The new offense should identify the applicable written instruments to include all types of deeds, and related documents, such as mortgages, assignments of mortgages, satisfaction of mortgages, and contracts of sale, as well as any supporting documents required for the recording of a deed with the City Register or other government office.
- Apply the revised offense of “Offering a False for Filing in the First Degree” to “an attempt” to offer or present a false written instrument, and be accorded equivalent treatment as the completed filing.
- Set forth a definition of written instrument in a new subdivision of the new Penal Law offense (*“the rampant incidence of “identity theft of property title” is such conduct that qualifies for similar treatment”*)
- Elevate the classification of this offense from the lowest level felony to the next level, a class D felony (*“increase the maximum term of incarceration from four years to seven years” - capture he severity of the crime*).
- Recast the existing offenses of Offering a False Instrument for Filing in the First and Second Degrees from as second degree and third degree offenses, respectively, and retain their designations as a class E felony, and a class A misdemeanor, respectively.

### B. Forgery/Criminal Possession of a Forged Instrument - the Vance report urges the Legislature to:

- Amend the crime of Forgery in the First Degree (a class C felony) to elevate the corresponding criminal conduct of the “possession” of such a forged written instrument to the higher offense of Criminal Possession of a Forged Instrument in the First Degree, also a class C felony.
- Add a new provision in the definition of “written instrument,” Penal Law § 170.15(3), to include “a deed or a part of any type of a deed or other instrument that transfers or otherwise affects residential real property, including a mortgage, an assignment of mortgage, a satisfaction of mortgage, a contract of sale, and any document that is required for recording a deed with a governmental agency” (in order to address the fact that “[c]urrently, a forged “deed” or “other instrument which does or may evidence, create, transfer, terminate or otherwise affect a legal right, interest, obligation or status” qualifies as a written instrument for the lower classification of Forgery in the Second Degree, and the companion offense of Criminal Possession of a Forged Instrument in the Second Degree, both class D felonies [under] Penal Law § 170.10(1) and Penal Law § 170.25, respectively).
- This amendment would also elevate the corresponding criminal conduct of the “possession” of such a forged written instrument to the higher offense of Criminal Possession of a Forged Instrument in the First Degree, also a class C

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felony. See Penal Law § 170.30 (in order that "a fraudster who cheats a homeowner, even with cavalier filings rejected by government agencies, would risk the commission of more serious felonies that impose tougher penalties for these criminal acts")

**IV. RECOMMENDATION FOUR IN THE VANCE REPORT (*starting at page 31*) - ESTABLISH PROCEDURES TO RESTORE OWNERSHIP MORE EXPEDITIOUSLY**  
*("encourages the Legislature to establish a procedure for the expeditious return of residential real property to the true owner, or to his or her legal distributees or legatees")*

***A. RELATED PROPOSAL BY YOLANDE I. NICHOLSON, ESQ., in keeping with the findings and recommendation in the Vance Report.***

1. Create a summary civil procedure for the expeditious return of residential real property to the true owner, or to his or her legal distributees or legatees, in all cases, not just RPL 265-a cases; for example:
  - Amend the Civil Practice Law and Rules and/or the Real Property Actions and Proceedings Law to classify proceedings to reverse forged or fraudulent deeds or other instruments as special proceedings by petition that can be brought under Article 4 of the CPLR - and adopt rules and procedures therefor, including that the Court shall treat every petitioner as having deemed to have made a motion to proceed as a poor person under section eleven hundred and one of the CPLR, if the property at issue is a one- to four-family home, cooperative, or condominium.
  - The instrument should be defined -- as recommended in the Vance Report - as "a deed or a part of any type of a deed or other instrument that transfers or otherwise affects residential real property, including a mortgage, an assignment of mortgage, a satisfaction of mortgage, a contract of sale, and any document that is required for recording a deed with a governmental agency" (*as described in Vance Report*)
  - Specify any "interested party" in real property whose rights or interest or title therein was affected or prejudiced or compromised by the offering of a false instrument for filing, or by allegations of forgery of a deed or other instrument relating the to transfer or one or more ownership interests in such real property or the title of real property causes of action involving real property, may commence a special proceeding against an adverse party to determine such interested party's rights to the real property, or to challenge the rights of being asserted by claimants to the property who are adverse to such interested party's rights

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## **B. PROPOSAL IN RECOMMENDATION FOUR OF THE VANCE REPORT**

- A. Create a procedure for the return of residential real property to the true owner, or to his or her legal distributees or legatees, in all cases, not just RPL 265-a cases; for example:
1. Empower the County District Attorneys and the New York Attorney General to assist victimized homeowners.
  2. Adopt Tools for Prosecutors
    - 1. Lis Pendens - Amend § 6501 of the Civil Procedure Law and Rules to authorize any local or state prosecutor to file a notice of pendency, or lis pendens, upon the filing of an indictment or superior court information charging a felony level offense of Offering a False Instrument for Filing, Forgery, or Criminal Possession of a Forged Instrument, in which residential real property is the corpus of the crime; and require the prosecutor to serve notice of the lis pendens on the Public Administrator of the appropriate county and the Department of Finance.
    - 2. Summary Procedure to Void Title - create a summary procedure through a new post-conviction motion, added to Article 460 of the Criminal Procedure Law, authorizing the prosecutor to move, upon conviction after trial or upon a plea of guilty to one of the specified felony offenses discussed above, for an order declaring the fraudulent deed void ab initio.
      - The prosecutor should be required to "serve notice to all persons who have an interest in the property affected by the fraudulent deed and file a copy of the notice of motion and supporting papers in the office of the appropriate county clerk." Such a provisional remedy exists in Article 13A of the Civil Procedure Law & Rules pertaining to Proceeds of a Crime-Forfeiture.
      - The new procedure should also provide that, if after conducting a hearing and making findings of fact, the court determines that the deed is void ab initio, the court would issue an order striking the fraudulent deed from the rolls of the City Register or other appropriate government agency, and directing the Sheriff to convey the residential real property to the previous record owner, or, if the owner is deceased, to his or her legatees or distributees. A copy of the order would also be served on the Public Administrator.
    - 3. Rebuttable Presumption The Legislature should create a rebuttable presumption that when a person is convicted, after trial or upon a plea of guilty, to a felony provision of Offering a False Instrument for Filing, Criminal Possession of a Forged Instrument, or Forgery, involving the fraudulent conveyance of residential real property, the judgment of conviction is evidence that the fraudulent deed is void.

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**V. RECOMMENDATION FIVE - EXPAND THE RULES OF ADMISSIBILITY OF EVIDENCE BEFORE THE GRAND JURY**

- Amend Criminal Procedure Law § 190.30(a)(8) to permit (1) the admission of all business records in the grand jury through a sworn statement of a custodian of record attesting to the authenticity of the records, and (2) the remote video testimony before the grand jury of witnesses who are without the state of New York, or located more than 100 miles from the grand jury.

**VI. PROVIDE FOR FEE SHIFTING – THAT IS, FOR THE AWARD OF LEGAL FEES TO THE VICTIMS’ ATTORNEYS FOR THE COST OF LEGAL ACTIONS TO RETRIEVE OR RECOVER FULL AND UNENCUMBERED TITLE TO THEIR PROPERTIES.**