

# A Legislative Report on the Hearing Regarding The Crisis Facing Homeowners in Brooklyn and throughout New York City

Dear Neighbor,

On March 15, 2019, I joined **Brooklyn Borough President Eric Adams** and **Assemblymember Tremaine Wright**, Chair of the NYS Black, Puerto Rican, Hispanic & Asian Legislative Caucus to host a Joint Legislative Hearing to Examine the Crisis Facing Homeowners in Brooklyn and throughout New York City.

**The hearing was co-sponsored in partnership with State Senator Brad Hoylman**, Chairman of the Senate Committee on Judiciary, **State Senator Robert Jackson**, Chairman of the Senate Committee on Cities, **State Senator Kevin Parker**, Chairman of the Senate Committee on Energy & Telecommunications, **State Senator Brian A. Benjamin**, Chairman of the Senate Committee on Revenue and Budget, **State Senator Brian Kavanagh**, Chairman of the Senate Committee on Housing, Construction & Community Development and **Assemblymember Al Taylor**, Chairman - Assembly Subcommittee on Regulated Mortgage Lenders.

Over **300 attendees** heard testimony from homeowners, legal experts, foreclosure prevention advocates and stakeholders on issues such as the New York City Department of Housing Preservation and Development's Third Party Transfer (TPT) Program and its impact on Housing Development Fund Corporations (HDFCs), redlining and predatory lending practices, deed theft and equity fraud, the devastating impact of municipal water and sewer liens, and the court system.

#### At the hearing, testimony was provided by:

- Office of the NYS Attorney General
- New York State Foreclosure Defense Bar
- DuBois Bunche Center for Public Policy at Medgar Evers College
- New Economy Project
- Brooklyn Legal Services
- Center for NYC Neighborhoods
- New York Legal Assistance Group
- Mobilization for Justice
- Brooklyn Queens Land Trust
- Center for Law & Social Justice at Medgar Evers College
- Brooklyn HDFC Coalition
- 111 Linden Street HDFC
- LES HDFC Alliance
- Community Board 17
- Brooklyn Homeowners
- Community Board 3
- Brooklyn Bar Association Volunteer Lawyers Project
- CAMBA Legal Services
- City Bar Justice Center

To learn more about the testimonies submitted, please visit: <https://www.nysenate.gov/senators/velmanette-montgomery>

This report summarizes the testimonies and recommendations, provides an update on what we have accomplished so far and what we will continue to work on.

Thank you to all those who took the time to testify and submit testimony. I look forward to our continued partnership to protect homeowners throughout our City.

Sincerely,



State Senator Velmanette Montgomery  
25th Senate District



## Predatory Practices

More **deed theft** complaints come to the New York State Attorney General's office from Brooklyn than the other four boroughs combined. They are concentrated in the neighborhoods of Bedford Stuyvesant, Crown Heights, Flatbush, and Brownsville. Deed theft can range from outright forgery of documents to intricate scam operations. (*Michael Barbosa, Assistant Attorney General, Brooklyn Regional Office, NY Attorney General*).

When a **property has multiple owners, generally any owner can force its sale by filing a "partition action" in court**. A growing number of investors are using partition actions to prey on homeowners by purchasing a stake in a home that, through inheritances, are owned by multiple family members. They then use that ownership stake to file a partition action to strip the remaining owners of the property through a forced sale, often for pennies on the dollar relative to the actual value of the property. Lower- and middle-class families are particularly susceptible because it requires sophisticated estate planning to prevent these schemes.

### Recommendations submitted by Richard Fleteau, Chair of Community Board 3:

- **Mandate Notification of Recorded Property Documents**  
Notification of property owners whenever documents are recorded against their property should be required statewide.

- **Enhance the Security of Notary Information**

It is very easy to get someone's notary identification number online. Omit most of the license number online and only list the last four digits.

- **Increase Penalties for Fraud involving notaries**

The state legislature should consider increasing the civil and criminal penalties for fraud involving notaries.

- **Enhance the Security and Integrity of the Recording Process**

Title companies are involved in the vast majority of real estate transactions. Extra scrutiny should be placed on any documents not recorded by title companies. Increased training of workers in local county clerks' office to become better at spotting unusual transactions.

### Legislative Response

- **Deed Theft Bill (S1688 – Montgomery / A5615 – Weinstein)**

**\* SIGNED INTO LAW, CHAP. 167 \***

- Prohibits abusive and deceptive behaviors such as pretending to be law enforcement or government representatives, taking temporary ownership of a deed, or engaging in harassment of the homeowner or the homeowner's family
- Eliminates the requirement that a homeowner post a bond in order to file a lawsuit to stop a deed transfer.

- Prohibits loan modification consultants from requiring upfront fees for services.
- Extends the amount of time a homeowner has to rescind transactions with distressed property consultants from 5 days to 14 days.
- Provides a clear legal path to restore the title of a property when there has been a criminal conviction based on fraudulent actions concerning a property transfer.
- **Uniform Partition of Heirs Property Act (S4865A – Hoylman / A7058-A – Dinowitz)**  
\* Passed Legislature and waits to be signed by Governor \*  
Forces sales to take place through brokers, on the open market, not at auction. The homes cannot be sold at a bargain price, which will deter speculators. The uniform act has been adopted by 11 states and introduced in 9 others, but not New York.

## Foreclosure

The efforts to improve efficiency in foreclosure proceedings and eliminate massive backlogs have had unintended consequences on homeowners' due process. Foreclosure judgements have been awarded to parties without credible documentation to prove they are the noteholder. Many plaintiffs seeking judgements are distressed mortgage loan buyers or servicers for residential mortgage backed security investors who may not have the necessary evidence to prove they own the mortgage loans. In Brooklyn, efforts to reduce backlogs have resulted in a handful of judges overseeing foreclosure proceedings. This undermines the right of homeowners to question who owns their mortgage loans. (Yolande Nicholson, President, NYS Foreclosure Defense Bar)

## Recommendations

- **Fund The Mortgage Assistance Program (MAP)**  
MAP provides 0% interest mortgage loans to eligible New York State homeowners at risk of foreclosure, to help them pay off debts that are barriers to mortgage modifications. MAP has been the most helpful, reliable, and flexible source of mortgage rescue funds. It allows homeowners to reinstate their loans, pay off municipal tax and water liens, and eliminate unaffordable home equity loans. (Robert McCool, Director of Homeownership Programs, Neighbors Helping Neighbors).
- **Establish a Good Neighbor Tax Credit**  
This tax credit would provide a tax abatement to owner-occupants of two-to-four family homes who rent apartments to low- and moderate- income tenants at below market rates. This would help stabilize homeowners who have been the backbone of Brooklyn neighborhoods while preserving much-needed affordable rental units (Albert Scott, homeowner, co-chair of The Homeowners Association in East New York).

## Legislative & Budget Response

- **Settlement Conference Procedures & Pre Foreclosure Notices Made Permanent in 2019 NYS Budget**  
First enacted in 2008, the pre-foreclosure notices and settlement conferences were required only for high-cost and subprime loans. In response to the severity of the mortgage crisis, the Legislature in 2010 temporarily extended these protections to all home loans and were set to expire in February 2020. They streamline the foreclosure process by providing a standardized method for homeowners, banks, judges, and court personnel to communicate with each other and evaluate options other than auctioning off someone's home. The settlement conference law also allows homeowners to preserve their legal defenses by extending the window for answering a foreclosure complaint. (Ali Naini, Senior Staff Attorney, Mobilization for Justice)
- **S5160 – Kavanagh /A5619 – Weinstein**  
\* Passed Legislature and waits to be signed by Governor \*  
Would place the burden of proving the right to foreclose

on banks and investors by allowing homeowners to raise the issue of who owns their loan throughout the foreclosure process. Currently, this defense is waived if not brought in a pre-answer motion or responsive pleading.

- **\$20 million was allocated in the 2019 budget for "Communities First" to provide free nonprofit housing counseling and legal services to New Yorkers at risk of losing their homes**

## Banking and Lending Practices

Homeowners of color who were targeted by predatory subprime lending practices a decade ago are still having difficulties being approved for loan modifications today. The 2009 federal Home Affordable Modification Program (HAMP) standardized loan modification qualification requirements. Its expiration led to a return to in-house modifications with criteria that varies across institutions, making it harder to qualify for affordable modifications and leading to arbitrary denials. There is no longer any legal standard for judges in state and federal courts to require banks, investors and servicers to submit credible basis for the denials. This makes it difficult to navigate the changing standards set by banks, investors and private equity firms (Ndukwe Agwu, Deputy Director of Consumer Economic & Advocacy Program, Bklyn Legal Services Corporation A).

Further, even under HAMP, individuals were and continue to be denied mortgage modifications for years despite being qualified. Under the newly adopted Standard or One Mod program, all the past due payments are added to the principal and an analysis is performed that will no doubt result in a payment higher than the one that the borrower was paying before—and that is the exact reason why the modification is denied. Affordability is not considered under this program. (Yolande Nicholson, President, NYS Foreclosure Defense Bar; Thecla Mohansingh, Case Study)

## Recommendations submitted by Robert McCool, Director of Homeownership Programs, Neighbors Helping Neighbors

- More transparency to track buyers of delinquent loans
- Ability to monitor more clearly which lenders are selling these older delinquent loans and which investors are buying them, and to review more closely these investors' track record of providing loan modifications and workouts.
- Many homeowners caught in this situation may have the ability to afford a modified payment. Given the delays, run-around, and deception that they have been exposed to, these homeowners should be prioritized for principal reduction and other dynamic interventions to help them keep their homes.

## Legislative & Budget Response

- **Credit Union Bill (S727A - Montgomery/A3320-Zebrowski)**  
\* Passed Legislature and waits to be signed by Governor \*  
It would allow credit unions to receive the same economic incentives as banks to operate in underserved communities through the Banking Development District (BDD) program. Participating banks are eligible to receive up to \$10 million in subsidized deposits from the state of New York to lower financial risk and encourage lending in these communities.
- **S3216 – Comrie /A5611 – Weinstein**  
Would require that only the actual creditor of the mortgage loan can foreclose on homeowners
- **Reforming Bank Obligations During Sale of Mortgage (S5017A – Parker/ A92A - Perry)**  
\* SIGNED INTO LAW, CHAP. 166 \*  
Provides additional protections to homeowners if

their mortgage loan is sold or transferred during the modification process. If the loan is transferred during the application process for a loan modification, the original holder of the loan must provide the consumer with a list of all the application documents provided to the buyer or transferee. This bill ensures that if the loan is sold or transferred after a homeowner has been approved for a modification of their mortgage that the subsequent mortgage servicer honors the terms and conditions of the approval.

## Municipal Charges & Property Taxes

Many NYC homeowners struggle to afford property tax, water, and other municipal charges. Unaffordable tax burdens put more homeowners at risk of having their liens sold through the City's annual tax lien sale. A 2016 analysis of the tax lien sale by the Coalition for Affordable Homes found that the tax lien sale disproportionately impacts communities of color. The City is six times more likely to sell a lien in a majority African American neighborhood, and twice as likely to sell a lien in a majority Hispanic neighborhood than in a majority white neighborhood. Once liens are sold, interest rates and fees often double in a relatively short period of time. (*Ivy Perez, Senior Policy and Research Associate, Center for NYC Neighborhoods*).

### Recommendations

The Property Tax and Interest Deferral (PT AID) Program offers certain property-tax-delinquent homeowners the opportunity to roll their arrears into a payment plan. We would like to see the City build on this step by extending payment plan options to more New Yorkers and further shifting the lien sale away from penalizing low-income homeowners. (*Ivy Perez, Center for NYC Neighborhoods*)

### Legislative & Budget Response

- **S6638 (Montgomery)**  
Would exempt certain non-profit community gardens from water and sewage taxes.

## Third Party Transfer

Third Party Transfer (TPT) is a Housing Preservation and Development (HPD) program, which transfers the ownership of distressed vacant and occupied multi-family properties to designated sponsors to rehabilitate. Properties are subject to in rem foreclosures and held by Neighborhood Restore (*HPD - Office of Development, Division of Property Disposition and Finance*). Properties can be flagged for the TPT program if there are tax arrears of more than \$1000 for a year or longer.

### Recommendations submitted by Allyson Martinez, Co-Chair, Community Board 17 Land Use Committee

- Provide layperson's summary of TPT regulations
- Engage residents and community organizations to provide outreach to homeowners in TPT programs re: foreclosure programs, grants and low interest loans
- Organize legal & financial professionals to provide assistance
- Conduct a study of the disparate racial impact of TPT
- Create a civilian review board in which the Mayor is limited to only appointing two members at most.
  - The Review Board would be able to reach out to the neighborhood via the block association and community board level to procure anecdotal evidence of what the property conditions are. The Board's role would not be solely advisory but have an actual voting interest in the outcome of the property as it relates to inclusion/exclusion from TPT.

## Housing Development Fund Corporations (HDFCs)

In the late 1970s, the City began turning dilapidated buildings over to tenants for a minimal price to create co-ops or Housing Development Fund Corporations (HDFC). Low and moderate-income tenants became shareholders in their buildings, flip taxes were imposed to prevent speculation and tax subsidies were put in place to keep ongoing costs low.

In recent years, the city has been foreclosing on a large number of HDFCs as shareholders fell behind on rising operating expenses. Death and illness of longtime board members left very few to keep things going. Many properties in the most recent TPT round were HDFCs. Shareholders have expressed frustration with lack of support for their unique structure. They put sweat equity and personal funds into buildings that were neglected and abandoned without receiving technical assistance or financing from the City. Shareholders lack access to low interest rate loans for capital improvements and little to no assistance to access resources to repair building infrastructure, especially in pre-war buildings (*Brenda Stokely, Co-Chair, Brooklyn HDFC Coalition*).

### Recommendations submitted by Brenda Stokely, Co-Chair, Brooklyn HDFC Coalition

- **Establish City Wide HDFC Co-op Task Force:**
  - Consist of shareholders & board members who will establish a program of foreclosure prevention and assistance.
  - Develop a meaningful assessment method to assist HDFCs in determining their needs and access to needed resources.
  - Provide point persons in government agencies.
  - Design and establish one stop service centers with qualified staff capable of assisting HDFCs, obtain appropriate resources, training and access to vetted vendors.
  - Exempt HDFCs from Third Party Transfer program.
  - Provide the same resources to HDFCs that are provided to wealthy investors and developers.
  - Exemption of HDFCs from water taxes & decouple utility arrears from foreclosure process.

### Legislative Response

- **S6637 (Montgomery)**  
Would exempt low-income HDFCs from water & sewage taxes

## Adjoining Property Damage

While properties are being bought and flipped by investors, existing homeowners are dealing with damages from adjacent construction. This problem is rampant in historically Black, Latino and immigrant neighborhoods facing significant real estate speculation, often escalated by upzoning. Developers acquire and demolish houses, sometimes through foreclosure, to build much larger market rate housing, frequently damaging adjacent longtime residents. Many homeowners cannot afford to bring litigation and feel pressured to sell while those who do sue, are wrapped up in court for years and have to rely on dwindling savings (*Enid Braun, Brooklyn homeowner*).

### Recommendations

- The cost of an attorney and a structural engineer who documents the pre-construction condition of your home can easily cost \$10,000. An escrow or bonding requirement funded by developers would allow homeowners to hire their own professionals and gain repairs if damages occur. (*Enid Braun, Brooklyn homeowner*)

### Legislative Response

- **Adjoining Construction Notification Bill (S4519A - Montgomery/A5823B - Wright)**  
**\* SIGNED INTO LAW IN 2018 \***  
Requires the New York City Department of Buildings (NYC DOB) to provide written notification to adjoining property owners when an application for approval of construction is submitted. This new law also requires NYC DOB to provide proof of such insurance and a copy of the permit to owners of adjoining property thirty days before construction, or demolition work begins except in the event that emergency work is authorized.



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Report prepared by

## State Senator Velmanette Montgomery

in Partnership with

Brooklyn Borough President Eric Adams &  
Assemblymember Tremaine Wright

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Elected officials in attendance at the March 2019 Legislative Hearing (left to right):  
Senator Brian Kavanagh, Brooklyn Borough President Eric Adams,  
Assemblyman Al Taylor, Assemblywoman Tremaine Wright, Senator Velmanette Montgomery,  
Senator Robert Jackson, Assemblyman Nick Perry and Senator Kevin Parker.