



**Testimony at Joint Hearing to Examine the Crisis Facing Homeowners in Brooklyn
New York Legal Assistance Group (NYLAG)
March 15, 2019**

Good afternoon. My name is Julie Anne Howe, and I am a Senior Attorney at the New York Legal Assistance Group (NYLAG).

I would like to thank Senator Montgomery, Borough President Adams, and Assemblymember Wright for holding today's hearing.

About the New York Legal Assistance Group (NYLAG)

NYLAG is a non-profit legal services provider based in New York City. NYLAG uses the power of the law to help New Yorkers combat social and economic injustice. We address emerging and urgent legal needs with comprehensive, free civil legal services, impact litigation, policy advocacy, and community education. NYLAG has 150+ community offices located in courts, hospitals, and community based organizations in all five boroughs of New York City as well as Westchester County and Long Island. Last year, NYLAG directly served over 88,000 vulnerable New Yorkers.¹

At NYLAG, the Foreclosure Prevention Project advocates every day to keep people in their homes through litigation and zealous advocacy. We represent homeowners throughout their foreclosure cases and negotiate with mortgage servicers and debt buyers that are more and more reluctant to offer affordable modifications. We also provide outreach and education to ensure communities know their rights and avoid fraudulent practices. When unscrupulous real estate investors prey upon seniors and communities of color, NYLAG has successfully partnered with law enforcement to redress schemes that target and displace vulnerable populations and erode affordable housing.

NYLAG's Work in Protecting Brooklyn Homeowners from Foreclosure Rescue Scams

In Brooklyn, foreclosure auctions remain at their highest level since the crisis in 2009.² Fewer homeowners are able to resolve their foreclosure cases with traditional loan modifications, in part due to the high property values in Brooklyn, and as a result, homeowners become desperate for assistance. It is this desperation that leaves individuals vulnerable to scam companies unless they have access to high quality, free legal services.

¹ See <https://www.nylag.org> for additional information

² <https://www.propertyshark.com/Real-Estate-Reports/NYC-Foreclosure-Report-Q1-2018>

Companies that target unsophisticated homeowners – often for whom English is not their primary language – affiliate themselves with seemingly reputable law firms and lawyers in order to establish false credibility. As such, these scam companies often seek to exploit a loophole in the law that protects attorneys and law firms from prosecution under the Distressed Property Consultant Law.³ Scam companies are thereby able to avoid legal repercussions simply by having an attorney agree to affiliate his/her name with the company, even if the attorney does nothing on the homeowner’s case.⁴

For example, NYLAG worked with a client from East New York who paid a company approximately \$14,000 for assistance applying for a loan modification. The client trusted this company because they claimed that an attorney would be negotiating with his mortgage lender. The company even put their contracts on law firm letterhead. However, the company did absolutely nothing for this client, and the client never met with or spoke with any attorney. Worse, the company told the homeowner that he had to cease making mortgage payments, and as a result the client found himself facing foreclosure. Even so, the company refused to return the client’s money because they were able to claim that they were protected from the Distressed Property Consultant Law due to their affiliation with an attorney. Ultimately, this client was able to remain in his home after NYLAG helped him obtain a loan modification. The client decided not to sue the scam company because it would have required extensive litigation to overcome the attorney loophole.

In other cases that NYLAG has litigated against similar scam companies, courts have inconsistently applied the attorney loophole. Courts have sometimes found that the mere fact of affiliating with an attorney protects the scam company from prosecution under the Distressed Property Consultant Law. NYLAG is currently waiting for the appellate court to review one such decision.

The existence of this loophole allows unscrupulous companies to prey upon vulnerable homeowners without repercussions. In order to obtain redress, homeowners currently must be able to access legal representation and endure the cost and time of a lawsuit. During this time, many homeowners are in foreclosure proceedings. This is particularly devastating in Brooklyn where foreclosures tend to be more difficult to resolve, as discussed above.

NYLAG and some of our partner organizations have supported efforts to close this attorney loophole and protect homeowners by changing the language of RPL §265-b so that only attorneys who provide legal representation in a foreclosure proceeding are protected from prosecution. NYLAG urges the legislature to consider amending RPL § 265-b to deter “law firms” from evading prosecution through this loophole.

³ RPL § 265-b(1)(e)(i)

⁴ <http://cnycn.org/wp-content/uploads/2014/12/Who-Can-You-Trust.pdf>

In addition to closing the attorney loophole, your continued support allows us to engage in significant outreach to Brooklyn communities to educate homeowners about the resources available to them and to prevent homeowners from falling prey to foreclosure rescue scams.

I'd like to thank Senator Montgomery, Assemblymember Wright, and their colleagues for including funding for Communities First in the legislative budget. Thank you for the opportunity to testify and for your support of our work.