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Testimony for Deed Theft Hearing

250 Broadway, New York, NY

October 27, 2022

My name is Scott Kohanowski. I'm an attorney and direct the Homeowner Stability Project at the City Bar Justice Center, a nonprofit civil legal services affiliate of the NYC Bar Association. We provide free legal services to low and moderate income New Yorkers facing threats to homeownership, whether foreclosure due to hardship or as targets of predatory real estate investment practices and fraud. The City Bar Justice Center operates one of the largest free civil legal services hotlines in New York City and we operate in all five boroughs. We work closely with law enforcement, other legal services providers and housing counseling agencies, and participate in the New York City Deed Theft Task Force. We regularly receive referrals from the NYC Sheriff, the various county DA's, the Office of the Attorney General and our legal services and housing counselor colleagues when a case involves deed theft or some other form of predatory real estate practice. We will provide direct representation or place the civil case with one of our pro bono partners to provide free legal services to thwart these practices. The City Bar Justice Center is on the frontlines of combatting these practices and see trends as they arise and do our best to address them. For example, I recently worked on revising the Uniform Partition of Heirs Property Act and getting it passed into law as RPAPL 993 when we saw real estate speculators aggressively targeting heir-occupied family homes to appropriate high-valued homes in historically Black neighborhoods, reaping huge profits while displacing generations of families of color from their homes and communities.

As a preliminary matter, we cannot have a full discussion of deed theft and other similar practices in NYC without acknowledging the racial equity implications as these practices disproportionality target and affect Black and other individuals and communities of color. This is partly due to historic racist governmental policies and regulations that often barred African-Americans from securing financing or even purchasing homes in certain communities as well as access to legal services and estate planning to preserve those homes once acquired. The former contributed to concentrations of racial minorities in areas that have now rapidly gentrified resulting in incredibly valuable homes in neighborhoods like Harlem and Bed Stuy that are often unmortgaged and ripe for exploitation to tap the significant accumulated intergenerational wealth held in those homes. We see how this plays out in our NYC neighborhoods by the sorts of case referrals and requests for legal services that the City Bar Justice Center receives. Approximately two-thirds of our clients self-identify as Black or African American, a number that far out paces the 24% of NYC residents of that demographic.

What is deed theft? There is no exact definition but I consider it a wide-range of unscrupulous, predatory, deceptive, fraudulent and out-right criminal practices that result in the transfer of title from the target, whether the living person on title or the heirs who acquired their interests in the home by operation of law.

One of the top issues we see is the lack of sufficient mechanisms and tools for law enforcement to investigate and prosecute these cases. Much of the predatory activity is not clearly criminal or too difficult to prove. Efforts should be made to clarify and expand the range of criminal activities and penalties that can be triggered by these types of practices. For example, we have seen what appears to be collusive practices among appraisers, real estate brokers, attorneys, and other actors who are participating or facilitating the scheme. Any individual who knowingly participates in these schemes or makes false or misleading representations to homeowners and heirs should be considered a part of the problem. Law enforcement should have the tools it needs to fully investigate how the schemes are carried out, and by whom.

An immediate fix that would reduce some of the predation that we witness is to tighten up the sorts of land documents that can be submitted recordation, specifically recordation of memos of contract and nondescript UCC financing statements on ACRIS. I've only seen them in the context of unscrupulous investors targeting distressed homeowners. The investor will often arrange for an unrepresented homeowner to sign a memo of contract that is void of any terms of sale but seemingly obligates the homeowner to some future sale of the home. There is often no underlying contract and the homeowner is unaware of what they are signing and that it will be recorded. The memo of contract creates a cloud on title complicating the homeowner's efforts to preserve their home by resolving a mortgage default or tax lien through a loan modification, refinance or some other means. The investor will often use the memo of contract as leverage to pressure the homeowner to pay to have it canceled or as an initial means to divest the property from the homeowner. The City Register or other local recording officer needs statutory authority to reject the recording of non-conveyance real property interests such as executory contracts.

Thank you for your time.

K. Scott Kohanowski
Director, Homeowner Stability Project
City Bar justice Center