

October 27, 2022

**New York State Senate
Committee on Housing, Construction & Community Development
2022 Deed Theft Hearing**

My name is Noelle Eberts. I am a Supervising Attorney at New York Legal Assistance Group (NYLAG), and I submit this testimony regarding the practice of deed theft and other real estate scams.

Founded in 1990, New York Legal Assistance Group (NYLAG) is a leading civil legal services organization that combats economic, racial, and social injustice by advocating for New Yorkers experiencing poverty or in crisis. Our work includes comprehensive free civil legal services, financial empowerment, impact litigation, policy advocacy, and community partnerships. NYLAG exists because wealth should not determine who has access to justice. We aim to disrupt systemic racism by serving individuals and families whose legal and financial crises are often rooted in racial inequality. NYLAG goes to where the need is, providing services in more than 150 community sites in New York, such as courts, hospitals, libraries, and on our Mobile Legal Help Center. NYLAG's staff of 350 impacted the lives of nearly 90,000 people last year.

NYLAG's Foreclosure Prevention Project, part of NYLAG's Consumer Protection Unit, is a part of the Home Ownership Protection Program (HOPP), which is the statewide network of housing counseling and legal services agencies providing foreclosure prevention services to New York's low and moderate income (LMI) homeowners. We help New York homeowners, coop owners and condo owners avert homelessness and displacement by preventing avoidable foreclosures, combating mortgage fraud, deed theft, loan modification and partition scams, and challenging predatory and discriminatory lending and abusive mortgage servicing practices that disproportionately affect New York's most vulnerable communities—seniors and people of color. Through our foreclosure prevention work we encounter allegations of deed theft and other real estate scams on a regular basis.

Currently, New York is seeing the highest mortgage delinquency rate ever. According to US Census Household Pulse Survey data, between July and October 2021, 10.75% (433,423) of New York homeowners were delinquent on their mortgage and the economic pain has been felt more acutely among black and brown New Yorkers. On average, 19.8% of homeowners of color in NY are delinquent compared to 6.6% of white homeowners (US Census Pulse Survey data).

A complicated patchwork of federal and state relief programs have been developed, but many homeowners are ill equipped to navigate such relief on their own. The complexity of the relief and homeowner's desperation to resolve their mortgage delinquency make them particularly vulnerable to deed theft and other real estate scams. Overwhelmed and confused, homeowners are easy targets for fast-

talking, experienced scammers full of false promises and misinformation. For this reason, community education is an essential part of our work and an area ripe for additional resources. Homeowners who understand the basic rights and obligations associated with homeownership are far less likely to be scammed.

While education protects many homeowners, scammers continue to defraud many others. For homeowners who lose title to their property, justice can be elusive. Legislative reforms provide paths to title restoration but the process is onerous and confusing to the average homeowner. Victims and advocates alike are often surprised to learn that a criminal conviction does not guarantee a return of title to the victim. Criminal Procedures Law § 420.45, allows the district attorney to file a motion to void a fraudulent deed if a defendant has been convicted of or pleads guilty to false instrument charges involving the deed. However, the statute is merely permissive and does not mandate district attorneys to restore title to victims. Federal victims must petition the Department of Justice's Asset Forfeiture Program or the Office of Victims of Crime for restitution, remission, or both. These proceedings require victims to monitor lengthy criminal dockets to insure they do not miss critical deadlines to assert their ownership claim. Failure to properly appear puts victims at risk of losing their home to the government, a bona fide purchaser, or an encumbrancer. To get their homes back, victims must prove their claim is superior to all others. In criminal cases involving dozens of homes, the court and the government can take months or years to properly address all of the filings from victims, creditors, and bona fide purchasers before homes can be returned to the victims, if they can be returned at all. This is hardly an easy remedy for an unrepresented homeowner. In the case of one client, it took six years to get her deed back in a criminal forfeiture proceeding.

Outside of criminal court, New York's Home Equity Theft Protection Act (RPL § 265-a), provides a civil cause of action to reclaim the deed but the cost to litigate these claims is often prohibitive. These cases require intensive factual investigation and discovery, and they rely heavily on witness credibility. Additionally, the rampant use of limited liability corporations can mask patterns of fraud and shield the identity of the scammer. Victims may also find their efforts frustrated or delayed by defendants invoking the Fifth Amendment to shield themselves from disclosure obligations. The vulnerabilities that make homeowners susceptible to deed theft often hinder their ability to effectively explain what happened to them and prosecute their case. Deed theft victims are often seniors whose memories are fading or heirs who have never purchased a property on their own, and thus they don't know what a legitimate real estate transaction entails.

Legislative reforms and zealous law enforcement have undoubtedly made an impact in combatting deed theft but law enforcement need more tools to identify and prosecute these cases. For homeowners who do fall prey to scammers, I ask you to consider ways to expand services offered to victims so they can effectively navigate a complex legal system and more easily regain title to their property.