



New York County District Attorney's Office
Testimony before City Council Finance and Housing and Buildings Committees
Oversight Hearing on Examining the City's Deed Theft and Deed Fraud Crisis
October 13, 2020

Chairs Dromm and Cornegy Jr., and members of the Committees on Finance and Housing and Buildings, thank you for the opportunity to testify on behalf of the Manhattan District Attorney's Office at this oversight hearing on the City's deed theft and deed fraud crisis. My name is Gilda Mariani, and I serve as Senior Investigative Counsel in the Rackets Bureau. I am also a member of the New York State Attorney General's Task Force on Deed Fraud, and serve on its Subcommittee on Legislation and Policy.

There are few greater threats than being displaced from one's home. Shockingly, that can happen through *property title theft*, or deed fraud, with the stroke of a pen or the click of a mouse. Deed fraud is not only harrowing to the victim, but it also affects the integrity of real estate ownership, and real estate taxes are a substantial source of New York City revenues. Notaries public are the gatekeepers that can thwart this criminal activity.

This crime happens when fraudsters discover prized parcels by scouring obituaries for recently deceased owners, canvassing neighborhoods for unoccupied or dilapidated residences, and locating publicly filed deeds of property owned by older individuals. The fraudster then gets control of the property through criminal means, including forging the owner's signature on the deed, tricking the owner to sign the property over, masquerading as a legal distributee, and transferring the property to a limited liability corporation, a series of shell entities, or a totally fictitious person. The fraudsters are then able to use the property as collateral for mortgages and loans, make renovations, or extract cash for personal benefit. They can also sell the property to a *bona fide* purchaser.

The notary public is the gatekeeper poised to avert this most dastardly fraud.

Every document associated with a real estate transaction requires a notarization, which requires the notary public to positively identify the signer of the document by obtaining proper identification from that person. Sometimes, the notary public also administers an oral oath or affirmation. Virtually every fraudulent transfer involves a faulty notarization, either by a willing, or an unwitting notary public. For example, the notary public may affix his or her signature and seal to documents even though the signer does not appear before the notary; or be persuaded to dispense with lawful protocol when someone is regarded as a respectable member of the community; or may even sign and notarize a blank grantee or grantor signature line.

More brazen perpetrators affix a fake notary public signature themselves by stealing and using a valid notary public stamp, lifting valid notary commission information from public documents and photo-shopping the notarization onto the new documents, or using information about a notary public that is contained in public filings, such as the license number, expiration date, and county of issue, to purchase a phony notary public seal from a retail vendor of notary paraphernalia – who are

not required to verify the notary public commission of purchasers. To test the laxity in the industry, one law enforcement official, acting in an undercover capacity, purchased a fake New York notary seal from an out-of-state online vendor. The officer simply provided the vendor with a fake notary public registration number, county of issuance, and commission expiration date. Upon payment of a modest fee the notary seal was created. The vendor did not verify the notary public's commission.

A New York County Grand Jury, empaneled upon the application of Manhattan District Attorney Cyrus R. Vance, Jr., responded to the wave of deed fraud by issuing a first-of-its-kind Grand Jury Report in December 2018, setting forth simple recommendations to combat this problem. Of note, the Grand Jury urged the New York State Legislature to do the following:

- To require all notary public applicants to be fingerprinted as part of the background check and to file an official bond, which would establish the applicant's true identity, disclose if the applicant has been convicted of a disqualifying crime, and provide victims some measure of recovery for damages in cases of misconduct.
- To increase the applicants' required education, mandate a designed course on notary public law prior to the written examination, and require continuing education course prior to reappointment.
- To institute new procedures that a notary public should follow in the exercise of official acts, including keeping a chronological and contemporaneous *journal* of all notarial acts, as is the required or recommended practice in nearly every jurisdiction in the United States. Journals can be used to refresh a notary's memory years after the fact, establish the signer's identity and corroborate the integrity of notarization, and are valuable investigative tools that have enabled New York City law enforcement to prosecute a person engaged in deed fraud in instances where the notary public voluntarily kept such journal.

The Manhattan District Attorney's Office has written draft bill language to amend the Penal Law to attack this problem. If adopted, the draft language would amend Articles 170 and 175 of the Penal Law, related to offenses involving fraud and offenses involving false written statements, to specifically account for crimes involving false "real property instruments," including adding a Class D felony for presenting such, and expanding the class C felonies of Forgery and Criminal Possession of a Forged Instrument to include such false instruments in the First-Degree classification. The draft language also suggests adding a Notarial Offenses article to the Penal Law that provides consequences for notaries public who flout procedures to notarize false real property instruments, making deed fraud easier to detect and prosecute, and for individuals who tamper with notarial journals as well as those who impersonate notaries public.

Since 2018, the Manhattan DA's Office has had a dedicated attorney focusing on issues of real estate, housing, and deed scams and fraud. We encourage members of the public who would like to report alleged deed fraud in Manhattan to call the District Attorney's Financial Frauds hotline at (212) 335-8900. Help is available.

In closing, the notary public stands in a pivotal position to thwart real estate conveyance fraud and to assist in bringing scammers to justice. With Notary Public Day being celebrated each November 7th in the United States, it is an appropriate time to call for legislative revision. The notary public must be the gatekeeper.

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**New York State Office of the Attorney General
Letitia James**

Testimony Submitted to the

**New York City Council
Committee on Housing and Buildings
Chair: Council Member Robert E. Cornegy, Jr.
&
Committee on Finance
Chair: Council Member Daniel Dromm**

Oversight: Examining the City's Deed Theft and Deed Fraud Crisis

October 13, 2020

Good afternoon Chair Cornegy, Chair Dromm and committee members. We would like to thank you and your committees on behalf of AG James for holding today's hearing on such an important and impactful topic and allowing us the opportunity to submit testimony.

As most of you already know, deed theft is an extraordinarily cruel form of theft used by bad-faith actors that takes advantage of homeowners, usually in gentrifying neighborhoods, by depriving them of their single most valuable asset while, at the same time, forcing them out of their homes. Deed theft usually happens when scammers forge deeds to look like they purchased the home, or when they trick homeowners into unwittingly signing over the right to their homes. Scammers then seek to sell the house to a third party while attempting to evict the actual homeowner. These illegal schemes disproportionately affect people of color and the elderly and prey upon homeowners experiencing financial distress.

The Office of the Attorney General receives 2-3 reports of deed theft a week, predominantly from Brooklyn, Queens, Northern Manhattan, and The Bronx. Since 2014, the office has been investigating these issues stemming from complaints about the rising numbers of deed theft and mortgage rescue scams.

Since Attorney General James came into office, stamping out deed fraud has been one of our office's top priorities. We are committed to working with our law enforcement and community partners to use a combination of education and enforcement action to help our neighbors protect

their homes. This year alone, the AG's office launched a number of new initiatives to combat deed scammers and empower homeowners to protect their homes.

In January, we launched the "Protect Our Homes" initiative with a day of action to inform homeowners in Brooklyn about deed theft and other housing-related scams. Attorney General James, along with 250 volunteers, AARP of New York, elected officials, and others, walked the streets of Bedford-Stuyvesant, Prospect Lefferts Gardens, and Flatbush knocking on doors and sharing informational materials about deed theft, how to spot it, and what to do if you think you've been a victim.

Also in January, in order to improve the coordination and communication between law enforcement agencies in response to deed theft schemes, our office formed an interagency deed theft task force with District Attorneys in New York City and the New York City Sheriff's Office. The task force meets regularly to coordinate the law enforcement response to deed theft and other issues pertaining to real estate fraud by sharing leads, making speedy referrals, and developing data analysis tools to help spot patterns of deed fraud.

To streamline the filing of complaints, our office created a dedicated complaint process for homeowners and concerned neighbors to report deed crimes. Those who believe they have experienced deed theft are encouraged to call the help line at 1-800-771-7755, email deedtheft@ag.ny.gov, or fill out the online complaint form. Our constituent services staff are trained to intake complaints, perform initial research, and make referrals as needed.

In order to facilitate deed theft prosecutions and to make it easier for victims to reclaim their homes, our office is developing a state legislative package to reform the laws as they relate to deed theft. As of now, there is no crime of "deed theft" on the books in New York State. We are seeking to clarify and streamline the criminal statutes so that judges and prosecutors have more certainty about the intent of the law and can bring fraudsters to justice. And we are seeking to reform court procedures to allow victims to have fraudulent deeds nullified, and to protect victims from being evicted from their own homes.

Finally, our office is developing a program, in partnership with New York City's Department of Housing Preservation and Development, which would build upon our outreach efforts of this past January. The program will use a data-driven approach to identify the neighborhoods and homeowners at most risk of deed fraud. Through targeted mailings and partnerships with local service providers, houses of worship, local merchants, and grassroots organizations, we will work to educate and empower whole communities about the danger of deed scammers and how to recognize indicators of fraud and distress. Through safe, socially distanced practices, we will host virtual town halls, distribute educational materials, and hand out lawn signs that will tell scammers that they are not welcome. We will utilize digital and radio advertising to reach as many homeowners as possible, and will partner with housing counselors and legal service providers to bring assistance to homeowners.

Deed fraud is just one of several threats facing vulnerable homeowners today. The Attorney General's office is committed to addressing the multitude of factors that destabilize neighborhoods in New York City and across New York State. As always, we appreciate the

strong relationship and continued partnership with the City Council on this and a host of other issues. We look forward to working with you to identify more solutions to preserve our neighborhoods, protect homeownership, and put an end to the scourge of deed theft in New York.

Thank you again for the opportunity to testify today.



Testimony by the New York Legal Assistance Group (NYLAG)

Oversight – Examining the City’s Deed Theft and Deed Fraud Crisis

Before the New York City Council Committees on Finance and Housing & Buildings

October 13, 2020

Chairs Dromm and Cornegy, Council Members, and staff, good afternoon and thank you for the opportunity to speak to the Committees on Finance and Housing & Buildings about deed theft and the deed fraud crisis. My name is Rose Marie Cantanno, and I am the Associate Director of the Consumer Protection Unit at the New York Legal Assistance Group (NYLAG), where I supervise NYLAG’s Foreclosure Prevention Program. NYLAG uses the power of the law to help New Yorkers in need 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 serves immigrants, seniors, the homebound, families facing foreclosure, renters facing eviction, low-income consumers, those in need of government assistance, children in need of special education, survivors of intimate partner violence, people with disabilities, patients with chronic illness or disease, low-wage workers, veterans, low-income members of the LGBTQ community, Holocaust survivors, as well as others in need of free civil legal services.

At NYLAG, our 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.

Deed theft has been a persistent problem in New York City, and the COVID-19 crisis only exacerbates the situation. Homeowners desperate to keep their homes or to sell them to provide financial stability for their families become the perfect target for unscrupulous real estate investors, attorneys, and notaries. It is often said that crises bring out the best in people, but unfortunately they can also bring out the worst. The opportunity to exploit those in dire straits grows exponentially during these times. The justifiable fear of the virus is being twisted by these charlatans for profit. For example, realtors are using the fear individuals have of living in cities to push them into acting against their own interest. Realtors knock on people's doors talking about how much safer they would be if they only moved to the suburbs. At the same time, they offer to handle everything for the client including finding a buyer who does not need to come into the home before purchasing it. Playing on the fear of having strangers traipsing through their homes during a pandemic, the realtor directs the property to its their own investor at a highly discounted price, thus robbing people of the equity they have spent their whole lives accumulating. The house is not advertised on the multiple listing service, nor to the community as a whole, so that there is not a competitive bidding process for the home. In many cases, the difference in price can be hundreds of thousands of dollars.

Other practices rise to the level of deed theft. For example, a broker will have the homeowner sign a deed in advance of closing so they can “expedite” the closing. One scam is to tell the homeowner that they need the house free of all tenants. They offer to handle the eviction proceeding but explain that to do so they must be the legal owners of the home. Once the deed is signed, it often turns out that it is the homeowner being evicted in Housing Court. In the same manner, these LLCs will claim they can save the house through either a supposed short sale or by paying owed real estate taxes. They claim they will deed the house back to the homeowner once the homeowner obtains a new mortgage. They claim they can get financing for these individuals afterwards even though no legitimate lender is going to lend to an individual who just faced foreclosure. They may let them stay for a few months during massive construction, but will then evict them when the house is ready to be sold.

One other form of deed theft uses a fraudulent closing. This story of a former NYLAG client illustrates this trick. An elderly woman in the Bronx came to us completely confused about a foreclosure complaint she received in the mail. She was 82 years old, and her husband of the same age had been diagnosed two years prior with dementia. At that time, she knew she could not upkeep the home, so she decided to sell. She listed it with someone she thought was a reputable broker who found a buyer for market value. She attended a closing with attorneys and a title closer who acted as the notary. This was the person responsible for paying off the mortgage. She saw a copy of the payoff check to her lender at the table and assumed all was being paid off as expected. She moved out and went about her life. Now, two years later, she receives foreclosure papers. It turns out the mortgage was never paid off at the closing. The buyer LLC collected rent from the house for two years and

then just fled when it realized the bank was looking to foreclose, leaving this elderly couple still responsible for the mortgage. None of this could occur unless everyone, including the notary public was involved in the fraud.

It is for clients such as these that we support the City Council in all efforts to protect homeowners. There needs to be more accountability from those involved in these transactions. Two examples of such protection are Res No 1427 and Res No 1429. Scammers have long used names that would lead a homeowner to believe they were affiliated with governmental agencies to lend themselves credibility. COVID-19 will undoubtedly spur these scammers to use names which will make it appear as they are there to provide much needed relief to homeowners both during and after the pandemic. It also has the chilling effect of causing the homeowner not to reach out to legitimate government services. In addition, the stricter regulation of notary publics will add an additional layer of protection for homeowners. We encourage the City Council to pass these resolutions to call upon the State Legislature to make these necessary changes.

Thank you for the opportunity to testify today on this important topic. We hope we can be a resource for you going forward.

Respectfully submitted,

New York Legal Assistance Group



**Testimony Before the Committee on Housing & Buildings and the Committee on Finance
Regarding the City's Deed Theft and Deed Fraud Crisis**

October 13, 2020

Good morning. My name is Joseph Sant, and I am the Deputy General Counsel at the Center for NYC Neighborhoods.

About the Center for NYC Neighborhoods

The Center promotes and protects affordable homeownership in New York so that middle- and working-class communities are able to live in strong, thriving communities. Established by public and private partners, the Center meets the diverse needs of homeowners throughout New York state by offering free, high-quality housing services. Since our founding in 2008, our network has assisted over 74,000 homeowners. Major funding sources for this work include the New York City Council, the New York City Department of Housing Preservation and Development, and the New York State Office of the Attorney General, along with other public and private funders. The Center's work has become even more important during the pandemic, providing much-needed support to homeowners, their tenants, and their communities.

The Connection Between Deed Theft Scams and Foreclosures

The rise of deed theft in New York City is fueled by rapidly increasing home values, and by the fact that tens of thousands of New Yorkers are struggling to avoid foreclosure. The negative effects of the foreclosure crisis are felt citywide, but are seen particularly in communities of color, which were disproportionately targeted and harmed by the predatory lending that caused the financial crisis a decade ago. Nationally, half of the collective wealth of Black families was lost during the Great Recession because of how much home equity contributed to their total net worth and because predatory loans targeted these communities. Likewise, the Latino community lost an astounding 67% of its total wealth during the housing collapse.¹

Today, the COVID-19 pandemic is pushing another wave of homeowners into financial danger. Ten percent (10%) of New York borrowers are not current on their mortgages, an increase of over 120% compared to this time last year. We now have one of highest mortgage delinquency rates in the nation.²

¹ Institute on Assets and Social Policy, Brandeis University, *The Roots of the Widening Racial Wealth Gap: Explaining the BlackWhite Economic Divide*, 2013, at 4. Available at <http://iasp.brandeis.edu/pdfs/Author/shapirothomasm/racialwealthgapbrief.pdf>.

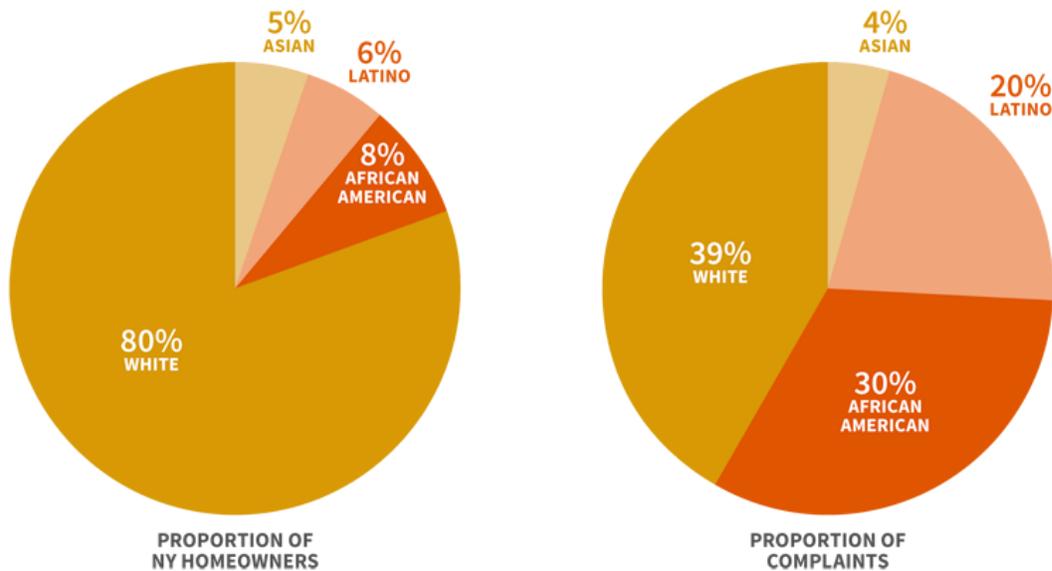
² BlackKnight August 2020 Mortgage Data, <https://www.blackknightinc.com/black-knights-first-look-at-august-2020-mortgage-data/>.

Homeowners do have protections thanks to the federal CARES Act and State Banking Law 9-x, which allow them to forbear their mortgage payments. But forbearance periods for homeowners will begin to expire soon, with thousands ending in the spring of next year. When that happens, we anticipate an increase in mortgage distress and foreclosure activity, especially if no further relief comes from the federal government.

Deed thieves and mortgage rescue scammers multiply in these conditions, targeting homeowners in financial distress. They offer help and position themselves on the homeowner's side, often misleading people into believing they are agents of government programs. But they leave homeowners in the dark about their real options, and steer them into disastrous ones. In too many cases, homeowners that could have saved their homes through free and trustworthy services from the Homeowner Protection Program (HOPP) are instead induced to leave or to sell their homes through misinformation, and outright fraud and deception.

We have seen that deed thieves follow mortgage distress, and they target communities of color. As you can see in the chart below, minority homeowners are much more likely to have been scammed compared to White homeowners in New York.

Racial Disparity of Scam Victims, by Scams Reported to the National Loan Modification Scam Database



A map of complaints to the Sheriff's office presented in a grand jury report to the Manhattan DA in 2018 further illustrates the concentration of deed theft activities in communities of color.³

³ <https://www.manhattanda.org/wp-content/uploads/2018/12/Deed-Fraud-Grand-Jury-Report.pdf>

Deed Fraud Complaints 2014-2018



Because communities of color are hurting the most during this pandemic, we expect homeowners of color will continue to be disproportionately targeted by scammers.

We have been encouraged by the launch of the NY Attorney General’s Protect Our Homes initiative, which protects homeowners from scams through increased outreach as well as improved enforcement, and passage of the Uniform Partition of Heirs Property Act. Yet, there is more that the City can do to address deed theft.

Foreclosure Prevention is an Effective Tool

The most effective way to address deed theft is through prevention. Since deed thieves target homeowners in distress on their mortgage, we need to make trustworthy foreclosure prevention services available first, before scammers strike. When homeowners reach non-profit or pro bono legal services providers before scammers, they are put on track for a mortgage modification or other home-saving intervention and warned away from scams. The good news is that there are high-quality housing counseling and foreclosure prevention legal services available free-of-charge to all New Yorkers

through the Homeowner Protection Program, for which the Center serves as the New York City Anchor Partner. Homeowners can access these services through 311 or by calling the Homeowner Protection Program Hotline at 855-HOME-456 or by visiting HomeownerHelpNY.com. The program is made up of 85 community-based organizations that provide free housing counseling and legal services across the state.

In addition to preventing deed theft before it happens, the HOPP network has played a critical role in identifying deed thefts and working to restore the ownership of victims in some cases. The work of the network has helped to produce indictments by the Southern District of New York⁴, Eastern District of New York⁵ and the Queens District Attorney.⁶ I should note that not every case is solvable through litigation after the fact, and unwinding deed theft through civil litigation is never easy; it can take years of work from a highly skilled team of litigators to restore ownership. This makes preventive measures to thwart scams in advance all the more important.

The Council's support for foreclosure prevention services has been essential to preserving New York City's network of advocates. Funding for HOPP expires this spring, and we will look for the City Council and Mayor to support our efforts in continuing the program. With the end of forbearance periods on the horizon for so many homeowners, this would be a disastrous moment to lose our foreclosure prevention infrastructure.

We also believe that leveraging the Homeowner HelpDesk, an existing resource, could help spread information to counter scams. The Help Desk is a four-year-old outreach tool launched by HPD, Council Member Espinal, and the Center, and local community partners. It is used during community events that draws a wide variety of community members, where the Center and local partners provide holistic assistance to homeowners in financial distress. The HelpDesk could be augmented to target the 16,000 homeowners threatened by scams, using a virtual meeting room format to safely help homeowners during the COVID-19 pandemic.

Estate Planning is a Tool for Combating Deed Theft

Recently, New York City legal services providers have been countering an increasing number of deed thefts stemming from exploitation of the inheritance process. In these "partition scams," which mimic land theft schemes that have stripped people of their homes in the American South, bad actors target homes that were not formally probated. They track down relatives who might have a claim to inherit a slice of the property rights in the home, and they buy those theoretical rights. Predators then use the complex machinery of the courts to try to force sales of homes. These cruel acts displace homeowners, steal equity, and thwart the ability of families to pass down wealth through housing. The State took action by adopting the Uniform Partition of Heirs Property Act, giving heirs critical defenses against these predatory actors. Heirs who find themselves in court fighting for homes that their parents and grandparents owned, facing off against people they have never met, must have advocates available to help them assert defenses in court.

⁴ <https://www.justice.gov/usao-sdny/pr/father-and-son-plead-guilty-mortgage-fraud-scheme>

⁵ <https://www.justice.gov/usao-edny/pr/five-defendants-indicted-mortgage-fraud-scheme>

⁶ <https://newyork.cbslocal.com/2017/03/01/queens-deed-fraud/>

A proactive approach to this challenge is to increase awareness of, and promote free access to, estate planning services. A well planned estate is shielded from partition scams and ensures that family wealth stays intact. Unfortunately, low-income homeowners do not have easy access to affordable estate planning resources. While Grow Brooklyn, the City Bar Justice Center, and other nonprofits do critical work to help homeowners in dire situations, there are not enough resources to assist all the low-income homeowners who would benefit from proactive estate planning. Furthermore, not enough homeowners know how important estate planning is and public education is critical.

We encourage the Council to support these services and engage their constituents in order to mitigate scams that strip wealth from our neighborhoods and which increase, rather than decrease, the racial wealth gap.

Aggressive Speculation Fuels Deed Theft

The City Council and the State Legislature can also address the market dynamics that make deed theft so lucrative.

Investors are increasingly targeting small homes, buying and flipping, or converting them into rentals. Over 40% of all homes sales in the City over the last decade were to cash buyers.⁷ Use of small homes as investment vehicles rather than for sheltering families creates immense profits for investors at the expense of neighborhoods. It also incentivizes bad actors to source homes on the cheap through deed theft and short sale schemes.

The Small Homes Anti-Speculation Act (A5375A/S3060E) would impose a higher Real Property Transfer Tax rate on New York City sales of 1-5 unit homes that occur in rapid succession. Proceeds would support affordable housing preservation. We call on the Council to call for the passage of the Act, which would reduce incentives for the actors committing deed theft in our neighborhoods.

Cease and desist zones are another promising way to stem real estate behaviours that sometimes result in deed theft. It is key to note that the creation of the zone by itself has little effect. Homeowners must opt-in to receive protections, and violations of the zone must be reported to the Department of State. Support from the Council will be critical to ensure that homeowners are made aware of cease and desist zones and are empowered to report violations.

Stronger Regulations can Help

Resolutions supporting the regulation of notaries public (Res. 1427) and corporate names mimicking government agencies (Res. 1429) would be helpful measures to better protect our city's homeowners. In our assessment of fraudulent real estate practices, too often entities clearly attempting to deceive homeowners are able to remain on the right side of the law. Reforms such as these would help shine a light on bad actors.

⁷ <https://cnycn.org/the-outsized-power-of-cash-buyers-in-new-york-citys-housing-market/>

More transparency about the extent of deed theft and other property fraud (Intro 1913) would help non-profits target outreach and legal assistance to the hardest hit neighborhoods. As is, we are highly reliant on anecdotal information to assess changing trends in real estate scams and deed fraud. Information on complaints can help guide our response in a more systematic way.

Information on how to report the recording of fraudulent documents would help homeowners who are unsure of how to act (Intro 1919). We commend DOF for strengthening their notification system and encourage the inclusion of more information to assist homeowners we think may be subject to fraud.

Finally we support the creation of cease and desist zones throughout New York City. Paired with outreach and enforcement, cease and desist zones can be a useful tool to fight predatory speculation and fraud.

Thank you for the opportunity to testify today, and for your commitment to fighting deed theft. We look forward to working with you to advance the recommendations made here.



**Testimony of
Beth Finkel, AARP New York**

**New York City Council
Committee on Buildings and Housing**

OCTOBER 13, 2020

**City Hall
New York, New York**

Contact: Kevin Jones | kjones@aarp.org | 212-407-3737

Good afternoon Chair Cornegy and members of the Committee on Housing and Buildings. My name is Beth Finkel, and I am the State Director of AARP New York, which includes about 750,000 members age 50 and older in New York City. I want to thank you for the opportunity to testify today about the deed theft crisis in New York City, particularly since this crime overwhelmingly impacts older New Yorkers and New Yorkers of color.

It is well-established that deed thieves prey on older New Yorkers, particularly people of color in gentrifying areas, such as parts of Queens and Brooklyn.

The news headlines tell these stories too often.

Jordan Horsford was recently convicted after he convinced an 85-year-old neighbor to sign away the deed to his East New York home.

Winston Gregory Hall was convicted for forging documents naming himself a trustee of an 84-year-old woman and signing over her East Flatbush home to himself.

Craig Hecht was sentenced to prison for forging the deed to steal the home of an 80-year-old Bedford-Stuyvesant woman.

In all, there have been about 3,000 deed fraud complaints recorded by the city since 2014. It is a crisis. We are concerned, and more must be done to address and prevent deed theft - which just might be the most harmful type of scam perpetrated against older New Yorkers of color.

We made significant progress last year when Governor Cuomo signed a new law to strengthen consumer protections for vulnerable homeowners.

Earlier this year, we were happy to join Attorney General James to launch the Homeowners Protection Program (HOPP), a new initiative to educate potentially vulnerable homeowners about deed theft and ensure strong enforcement of this and other consumer protection laws, particularly in Brooklyn, which unfortunately has become the geographic target of choice for scammers. Approximately 45% of deed fraud complaints made to the city were from residents of Brooklyn.

Deed theft scam prevention was one of the areas covered in our Disrupting Disparities report, which focuses on addressing disparities among our Black/African American, Hispanic/Latino and Asian American older neighbors.

Specifically, the report pointed out that distressed homeowners victimized by deed fraud are dependent on the HOPP network of legal services providers in order to secure redress.

The HOPP network is the strongest way to prevent homeowners from turning to scammers. Homeowners are routinely referred to HOPP agencies by state agencies, elected officials and the courts. Without the network, homeowners will be even more vulnerable to scammers.

The State Attorney General's Office, Department of Financial Services (DFS), Division of Housing and Community Renewal and local law enforcement look to and depend upon information from HOPP agencies to bring enforcement actions against bad actors. Members of HOPP agencies have recently been asked by DFS to participate in a task force convened at the Governor's direction to discuss additional action to address deed theft.

Today, AARP is pleased to offer its support for the Chairs resolutions 1429 and 1430 which, respectively, call on the State to pass and sign legislation adopting more stringent standards around corporations' names that mimic those of government agencies, and pass and sign A.6775/S.1253, designating the county of Kings a cease and desist zone, providing homeowners with a means to effectively express their wish not to be solicited by real estate brokers or agents.

There is much work to be done in ensuring New Yorkers are protected by deed thefts. We are working with the State Attorney General to inform residents in Brooklyn and stand ready to do more.

Thank you for giving me the opportunity to testify today. I am happy to provide additional information.

**TESTIMONY OF LEGAL SERVICES NYC
CONCERNING THE CITY’S EFFORTS TO COMBAT
DEED THEFT AND DEED FRAUD**

*New York City Council
Committee on Housing and Buildings & Committee on Finance
October 13, 2020 1:00 pm*

Good afternoon. My name is Jenny Eisenberg, and I am a senior staff attorney in the Foreclosure Prevention Project at Brooklyn Legal Services, a program of Legal Services NYC. I present testimony today on behalf of Legal Services NYC, which is the nation’s largest provider of free legal services to poor people. Since 2009, our foreclosure prevention projects have represented thousands of families across Brooklyn, Queens, the Bronx and Staten Island at risk of losing their homes to foreclosure and real estate frauds and scams. We have substantial experience investigating and litigating a wide range of deed frauds, and have unique insight into the kinds of measures that could be helpful to homeowners.

I appreciate the invitation to speak today about the City’s deed theft crisis and the proposed legislation. I previously testified in 2016 before the Finance Committee about many of these issues and I’ve attached that detailed testimony for the Council’s benefit in this hearing. The legislative proposals and committee report cite a number of facts presented in that prior testimony. We’d like to thank the City Council for its thoughtful engagement with the problems facing our clients and their communities.

Response to Proposed Legislation

I understand that there are three proposed resolutions aimed at encouraging state legislation, and two proposed revisions to the City administrative code. The short response to all of these proposals is yes, they would all likely aid – incrementally -- in the goal of reducing deed fraud and deed theft. Reforming notary laws, tightening standards for naming of corporate entities, and designating Kings County in particular as a “cease and desist zone” for real estate solicitation would likely discourage the fraudulent appropriation of legal processes that we’ve seen all too often in our cases. A notification system for document recording would also be helpful for earlier discovery of real estate fraud, and we are always eager for the Sheriff’s office to adopt a more proactive role in this space.

The longer response to these proposals is that deed fraud in New York City is complex and persistent, and there are broader measures that the Council could also take to address the problem. Before I describe those measures, it is critically important to highlight **who** deed fraud primarily affects in this City. The people who are most vulnerable to title scams on their property have already been victimized by redlining, predatory lending, foreclosure, and now deed fraud. We represent as many of these vulnerable homeowners as we can in our practice, and we have seen how institutionalized racism and discrimination in mortgage lending, tax policy, foreclosure laws, court rules, and administrative regulations operate in their lives as property holders. These are Black, brown, and immigrant homeowners, elderly and disabled homeowners, working class homeowners, for whom title to a house is much more than just a piece of property. It represents shelter for multigenerational families, affordable housing for low-income tenants, a stake in the ground sustaining neighborhoods for decades, and the opportunity to build wealth across generations.

And now, in the midst of a global pandemic and resulting economic crisis, owning a home for these families is even more essential to survival. Now, more than ever, our city should be doing everything in its power to protect and preserve stable housing. Our clients are essential workers – they are home health aides, teachers, grocery store workers, and city employees. They are mainly people of color – and we know the pandemic disproportionately affected communities of color particularly in New York, as did the foreclosure crisis that followed the last recession, from which NYC has yet to fully recover. They are elderly and disabled – again, uniquely vulnerable to Covid-19. Many are geographically isolated from courts and city resources, and now that isolation is compounded by the need to quarantine against coronavirus. And they are primarily low-income – without the ability to simply hire a private lawyer if something suspicious happens with their property.

Need for Increased Funding for Legal Services/Housing Counseling

As helpful as the proposed legislation might be, virtually none of it matters if vulnerable homeowners do not have comprehensive access to free legal services and trained housing counselors. The homeowners who are defrauded out of their deeds by scammers were susceptible to these frauds because they were already at risk of foreclosure and lacked access to trustworthy advocates able to help them. The single most important thing that can be done to prevent homeowners from being vulnerable to deed theft scammers is to ensure that the network of non-profit agencies providing free legal services and housing counseling services to distressed homeowners remains adequately funded.

Furthermore, the network is needed to help those who have already been victimized by deed fraud. Knowing that fraudulent documents have been filed against your property, or that the people knocking on your door offering “help” are not supposed to be bothering you, or that the LLC sending you letters about your foreclosure case may not be an arm of the government – none of these problems are solvable without help. We litigate for years on behalf of our clients. These cases take time, staff, and resources.

As an example, in my 2016 testimony I described a scam outfit called Homeowner Assistance Services of New York (“HASNY”), a criminal organization that defrauded numerous homeowners out of their deeds. At the time, my office was in the midst of litigating several cases in state court against HASNY, and they had also been targeted by federal law enforcement for investigation and prosecution. It is now 2020 and we are still fighting to get these titles back. Almost every lawyer in my unit represents a homeowner scammed by these people. We have numerous pending cases. People went to jail. Even with criminal convictions, it remains an uphill battle to recover these deeds. And this is what we might call the “best case scenario,” because we could draw upon all the resources the FBI devoted to investigating these criminals.

Now imagine a situation where no law enforcement entities are interested in what happened to our clients. Where no offices are raided, no documents seized, no suspects become government informants. Our clients may believe they were defrauded, but how do they unwind what happened to them? How do they protect their homes? The answer is that they cannot fix what happened without skilled advocates available to investigate and litigate on their behalf. We know the City is strapped for cash, but dollar for dollar, the resources allocated to free legal services pay dividends far beyond their budget line items. Every house lost to deed theft is a source of affordable housing that is permanently gone. This is true both for the homeowners and their tenants, since most of our clients’ homes are also sources of affordable rental housing. Those properties fall into the hands of predatory real estate investors whose only interest is maximizing profit, not sustaining neighborhoods. Fully funding free legal services is an investment not only in the individual cases that come through our offices – it radiates outward through the communities we serve.

I give every client of mine what we call the “scam talk,” and I tell them to share my advice with their friends and neighbors. I tell them to be wary of people cold calling them, knocking on their doors, offering help they did not seek out. I tell them to show me their mail when they get letters that look official, call me with questions if they get contacted by the City or other entities. It is great if people sign up for notifications from

the Department of Finance, but what do they do with that notification if they lack access to help in addressing the problem? Any notifications that go to homeowners would be significantly more helpful if there were accompanying information about free legal services, especially during the pandemic, where other access points to help are greatly curtailed. The more funding and outreach the City provides for legal services and community-based housing counselors, the more likely it is that the measures being discussed today will bear fruit in terms of detection and deterrence of deed fraud in the future.

Abolition of Lien Sale for Small Residential Properties

Another, broader measure that the City Council could take against future deed theft is the removal of 1-4 family residential properties from the city's annual tax lien sale. My colleague Jacquelyn Griffin testified about this specific issue before the Finance Committee several weeks ago, and I want to amplify the points she raised about how damaging the lien sale is for homeowners. Many people who fall behind on property taxes or water bills are older people who own their homes outright after a lifetime of dutifully paying their mortgages. Because mortgage lenders typically pay these bills out of escrow when there is a loan on the property, once the mortgage is paid, many of these homeowners have not budgeted or anticipated the need to keep paying the tax and water bill. When the City publishes the lien sale list, scam artists get a target list, knowing they will find vulnerable homeowners desperate for help and advice.

Aside from how regressive it is to threaten foreclosure for low-level debts, the practical effect of publicizing the lien sale is to throw these people to the wolves. While there is typically some outreach by the City and nonprofits, including my office, there is obviously far less outreach happening right now because of the pandemic – and ultimately any efforts are limited by the fact that these homeowners are simultaneously solicited by fraudsters offering help. There is no good reason for a city full of multimillion dollar homes to claw this kind of revenue from some of its most vulnerable residents. Without the sale of residential tax liens, there would be fewer distressed properties, and fewer potential victims of deed fraud.

Reallocation of Criminal Justice Resources toward Real Property Crimes

A third area for the Council to explore in combatting deed theft is the reallocation of criminal justice resources toward investigation and enforcement of real property fraud. This is a timely discussion to have for many reasons, especially in the wake of ongoing

protests against police brutality. When we talk about defunding the police and reforming law enforcement, we should also talk about what kinds of crime we want to prosecute as a city. At Legal Services NYC, we have had many conversations with local law enforcement over the years, and it is always difficult to persuade officials to devote the resources needed to properly investigate and prosecute these complex cases. If government prioritizes addressing this problem, and redirects funding to these efforts, law enforcement will be forced to shift its priorities and start taking these cases seriously.

I have clients who owned houses worth hundreds of thousands of dollars, and lost title to those properties through trickery and deceptive business practices. But we do not see these cases getting prosecuted by the District Attorneys' offices. We know from experience that these cases are complicated, but we also know from experience that the damage caused by the theft of a family home is catastrophic. Certainly no less consequential than the petty thefts that police and district attorneys' offices often pursue energetically. Many of our clients live in communities that are aggressively policed for street crime, yet when they need the assistance of law enforcement because they were victimized out of their homes, help is not forthcoming. If these crimes are too complex to investigate, police and prosecutors can be trained in these areas. If the laws are too imprecise to enforce, their language can be clarified and strengthened so that relevant statutes are actually useful. Scams are ever evolving, so our responses need to evolve as well.

Conclusion

I want to acknowledge the hard work of the Council in seeking to make New York City a safer place to own a home, no matter your skin color, age, or zip code. Homeowners like our clients make New York the kind of place that people want to live, even in a pandemic, and they are a source of naturally-occurring affordable rental housing. We look forward to further collaboration with the City on these issues, and we are always available to answer questions about our work in this area. Thank you.

Jenny Eisenberg
Senior Staff Attorney, Foreclosure Prevention Project
Brooklyn Legal Services
Legal Services NYC



**TESTIMONY OF LEGAL SERVICES NYC CONCERNING THE CITY'S
EFFORTS TO COMBAT REAL PROPERTY DEED FRAUD**

City Counsel Hearing
Committee on Finance

February 1, 2016

We present this testimony on behalf of Legal Services NYC (LS-NYC), which is the nation's largest provider of free legal services to the poor. For nearly 40 years, Legal Services NYC has provided critical legal help to low-income residents of New York City. The neighborhood offices of Legal Services NYC operate in diverse communities throughout the city, representing over 25,000 clients each year in each of the five boroughs.

Over the last ten years, Legal Services NYC has vastly expanded services in areas of need critical to the communities that we serve, including unemployment, language access, disability, education, immigration, bankruptcy, consumer issues, and foreclosure prevention. LS-NYC is also the oldest and largest provider of foreclosure prevention legal services in New York with four dedicated foreclosure prevention units consisting of approximately 40 attorneys and paralegals that have, since 2009, assisted more than 10,000 families at risk of losing their homes to foreclosure in neighborhoods across

Legal Services NYC
40 Worth Street, Suite 606, New York, NY 10013
Phone: 646-442-3600 Fax: 646-442-3601 www.LegalServicesNYC.org
Raun J. Rasmussen, Executive Director
Michael D. Young, Board Chair



Brooklyn, Queens, Staten Island, and the Bronx. We therefore have an informed perspective on the challenges homeowners face, and have seen first-hand the recent havoc caused by increasing instances of deed fraud in diverse homeowner communities throughout the City.

South Brooklyn Legal Services, one of our neighborhood offices, has many years of experience litigating deed theft actions and is now litigating several recent deed theft cases in Kings County Supreme Court on behalf of homeowner victims. Across the city, we have also spoken with many more homeowners in the communities we serve about the ways they are being targeted by scammers who want to acquire their properties. Our testimony will draw upon what we are seeing as legal services providers on the ground, and what we have learned from litigating these cases. Specifically, we will focus on how scammers are able to appropriate legal processes to defraud homeowners, what legislators and law enforcement can be doing to address the problem, and why free legal services are so critical for homeowners in these situations.

What We Are Seeing In Our Practice

Throughout the city, we have seen scores of homeowners who have been subjected to deed theft scams. Most of these clients are seniors. Most are people of color. All are low-income. Many are immigrants. Several are disabled or suffering serious health problems. Most importantly, none of them intended to sign away their only asset and source of wealth to a scammer. Yet when they found themselves in trouble with their mortgages, unable to modify their loans or otherwise save their properties, they were easy targets for these fraudsters. They started getting cold calls at home, visits from sales agents offering help, and—with no other viable options—all too

many of our clients fell victim to unscrupulous actors who literally stole their houses out from underneath them.

South Brooklyn Legal Services represents several homeowners who were tricked into signing away the deeds to their houses by a group of scam artists calling themselves Homeowner Assistance Services of New York. Our other offices have also advised additional homeowners who have been harmed or solicited by this nefarious group. Notably, this group has targeted a diverse array of neighborhoods—ranging from gentrifying areas of Brooklyn where property values have skyrocketed, to modest neighborhoods in southeast Queens that have been among the slowest to recover from the foreclosure crisis. Regardless of neighborhood, Homeowner Assistance Services almost exclusively target communities of color. We've attached a map of Brooklyn foreclosures in 2014 as a way of illustrating where distressed homeowners are located, since those are the people who get targeted by these scams.

Agents from Homeowner Assistance Services would sometimes use affinity marketing, sending sales agents of similar racial and ethnic backgrounds to gain our clients' trust. They would build relationships with our clients over the course of many months, gathering confidential financial information. They would get our clients to let them communicate directly with their lenders, and would tell clients in foreclosure not to show up to their own court dates. They would often seek out our clients after filing a phony lien against the property. Such aggressive solicitation has paid off time and again for these scammers, as they work their way through communities of color throughout New York City. If this kind of marketing were prohibited or at least regulated, our clients might never have answered the cold calls that led to these frauds.

After months of gaining trust and access, Homeowner Assistance Services would then tell our clients that their credit was shot, they couldn't refinance, and the only way for them to save their house would be to do a short sale "on paper only." They would bring our clients to their offices – often in a Town Car – and put them in a room with an individual claiming to be acting as their attorney. That attorney would hand them a stack of papers to sign, promising that it was all part of the process of saving the home. Trusting the attorney, and the agents at Homeowner Assistance Services, these vulnerable homeowners would unwittingly sign over the deeds to their homes. Who would they sign the deeds over to? An LLC they had never heard of before, whose principals just happened to be affiliated with Homeowner Assistance Services. Frequently it was an LLC called Launch Development, but we've also seen entities such as Martin Development & Management and CNM Analytics, Inc., which appear to also share the same principals. In the course of investigating these actors, we've actually identified many more LLCs – often named after the address of a given property – that appear to be affiliated with these principals.

What's happened to our clients in the wake of these deceptive transactions has been nothing short of traumatic. In one Queens case, where a homeowner had been renovating one unit of a two-family home, unfamiliar workers showed up the day after the "closing" and began ripping out the work the homeowner had authorized. Within days, a stranger simply moved into the unit, claiming he had rented it, and the homeowner was powerless to stop him. In other cases, after these fraudulent closings, homeowners started getting surprise visits at their home from strangers claiming to be the "new owners" of their property. People demanding to come inside and get a look at the house they "just bought." Phone calls demanding that our clients vacate the

premises. Knocking on doors and windows at all hours. Sitting in parked cars on the street, just watching our clients' houses. Breaking the locks on our clients' doors. Sneaking around in our clients' back yards. And finally, serving our clients with eviction papers and forcing them into Housing Court proceedings, as if they were unlawful tenants in their own homes.

Tactics Employed By Deed Theft Scammers

It was these experiences that brought people to South Brooklyn Legal Services, Queens Legal Services, and other legal services offices around the city. As we've investigated these transactions and others, we have learned how scammers are able to use legitimate legal processes to perpetuate frauds upon our most vulnerable homeowners. It's especially outrageous because these developers are taking aim at communities of color, where access to legitimate real estate services and legal advice is harder to come by, and people are finding themselves in desperate situations.

One of the most devious tactics Launch Development has used is the "phony lien" strategy. They've filed hundreds of what we believe are bogus liens under the Uniform Commercial Code against distressed properties around the city. Since anyone can file a lien, without proof of a *bona fide* creditor-debtor relationship, this is a canny strategy to cloud title to a given property. They file these liens and then sit on them, sometimes for a year or more, until they have the opportunity to acquire the property from the homeowner in a short sale. Generally speaking, what we've seen is that once they get the deed into their name, that phony lien miraculously disappears in ACRIS with a UCC lien termination. Our clients never knew they had liens on their property until we showed them the recorded documents, and they were mystified as to how there could be a lien without any underlying debt.

We've found over two hundred liens in favor of Launch Development in ACRIS, and who knows how many more have been filed using other LLC names we haven't discovered yet. We know from our foreclosure prevention work that having a lien against your property is problematic if you want to modify a delinquent mortgage or sell your home – so it appears that this strategy is aimed at coercing homeowners into dealing with these scammers before doing anything else with their property. If there were verification requirements for lien filers, hundreds of distressed homeowners would likely be free of these bogus liens, and free to do with their property as they wish.

Related to the phony lien strategy is the sham LLC strategy. When homeowners came to us seeking help in getting their deeds back, they brought us business cards and documents with the Homeowner Assistance Services logo. This company sounded like a legitimate business: it had a website (up until recently), a Facebook page, and nice-looking folders that they'd give to homeowners after meeting with them. They even have a bricks-and-mortar office out in Hollis, Queens, with a huge shiny logo out front. When we looked at the deeds after these short sale closings, we found that the LLC entities who were acquiring these properties shared personnel, addresses, and phone numbers with Homeowner Assistance Services. In searching for the individuals behind these LLCs, typically there's no name listed in the Department of State database. In other words, a company pretending to aid distressed property owners was masquerading as a front for real estate LLCs that were simply buying up cheap properties around the city.

The lack of transparency in LLCs has been a subject in the news quite a bit, particularly with respect to luxury apartments in Manhattan. On the other end of the housing spectrum, it's just as much of a problem. These properties are being transferred

from real people, who actually live in these communities, to faceless shell companies with no connection to the neighborhoods they're plundering. The LLCs then earn tremendous profits when they flip the house, and we have no idea where that money ends up. We know where it doesn't end up, though: in our clients' pockets, despite their decades of investment in their family homes.

When people lose their homes to these ghost companies, the communities lose something too: they lose the stability of a long-term homeowner and neighbor. A legitimate buyer shouldn't need to hide behind an LLC. There is no defensible reason to shield the identities of these developers, and yet that is precisely what they are able to do with our current laws regarding LLCs. The U.S. Treasury Department recently began a pilot program aimed at uncovering the identities of LLCs that buy luxury condos in Manhattan. If we knew the identities of the LLCs who are stealing our clients' homes, it would be far easier to hold them accountable.

What Lawmakers And Law Enforcement Can Do About These Issues

In addition to taking a close look at lien filings and LLCs, we hope that the elected officials and law enforcement will engage in community outreach around the issue of deed fraud. As legal services providers, we see homeowners walking around with tremendous shame and stigma about defaulting on their mortgages. Many of the frauds we see are the direct result of people trying to fix their problems privately, without having to reveal their struggles to others. These homeowners simply do not know what a legitimate real estate transaction should look like. In many cases, the delinquent loan itself was the product of a predatory transaction – so it's not surprising that homeowners who fell prey to bad loans or refinances are now being victimized by a new scam.

As part of a Senior Initiative funded by the Council, Legal Services NYC, in partnership with the Public Advocate and a number of other community organizations, is planning a series of outreach events in the coming months to educate people about deed fraud. We've attached a copy of the flyer to our testimony as an example of how we're trying to communicate about these issues to homeowners. We're optimistic about these efforts but we need to add more voices. There are people who will not attend our events because they don't want their neighbors to know they are in trouble with their loans. There are people who won't hear about these events, or who may not be able to attend. That is where you as Councilmembers come in. You are physically in your districts, and able to reach constituents who we may miss in our efforts. Homeowners need to know what a legitimate transaction should look like, what the red flags are for scams, and that legitimate legal and housing counseling services are available free of charge. They need to know how and why to monitor their properties in ACRIS, and where to go for advice. Public service announcements, mailings, community meetings, whatever means you have to reach your constituent homeowners in distress would make a huge difference in combatting fraud.

We also need to see more consistent and aggressive law enforcement against these rapacious developers. Defrauding people out of their homes is a crime. It's actually a lot of different crimes. Each one can and should be prosecuted. We spend millions of dollars in this city every year prosecuting petty thefts, while these fraudsters steal actual houses with impunity. The FBI and Department of Justice have been investigating Launch Development and its agents for months, and have arrested six people in connection with these scams. They face years in prison if they are convicted. We know that Attorney General Schneiderman has been looking into these frauds and

others, and has launched his own outreach program aimed at rooting out these scams. These efforts are incredibly important, and would be complemented by vigorous enforcement by our city's District Attorneys.

Not every case is the perfect crime, and not every investigation can be spearheaded by the FBI. But consistency is central to deterrence. Every forged signature, every phony lien, every broken lock is a violation of the criminal code. There is no reason to look the other way until a fraud is big enough or sinister enough. When you get away with forging one document, why not forge another? People who take advantage of vulnerable homeowners know that the odds are that they will never be arrested for the crimes they are committing. In part this is true because false filings and forgeries don't look like the crimes we typically worry about as citizens. But we should be worried about them, because street violence and drug addiction are not the only forces that destabilize our neighborhoods. Evictions of vulnerable seniors, rapidly rising property values, and the elimination of affordable housing units are equally destructive to the fabric of our city. If prosecutors aggressively targeted developers who file phony liens and forged documents, we might see fewer frauds.

We understand that law enforcement resources are always at a premium, and that these kinds of crimes can be harder to uncover. But as efforts shift away from strategies like stop-and-frisk, perhaps more creative minds in law enforcement can focus on newer kinds of crimes that victimize our most vulnerable residents. Our clients don't realize that they are victims of crimes, and don't know where to turn. The doors of police precincts and district attorneys' offices should be open to these homeowners, and staff trained to recognize the signs of property fraud. We also hope that law

enforcement will refer these cases to us as legal services providers, to ensure that homeowners' interests are protected to the greatest extent possible.

Why Free Legal Services Are Essential To Protect Vulnerable Homeowners

As the Council is well-aware, improving access to civil legal services is essential to improving the lives of low-income New Yorkers. All the outreach, deterrence, and enforcement in the world cannot prevent every fraud. And even when law enforcement does get involved, somebody still needs to step in and try to save the house. It's not a prosecutor's job to represent a victimized homeowner, and these are cases that need to be affirmatively litigated.

Unfortunately for our clients, these cases are tremendously complicated and extremely resource-intensive. Our attorneys have appeared in Housing Court to stop the evictions, appeared in Supreme Court to file lawsuits, sought injunctions, and are now being forced to defend appeals from these developers. Even when we've gotten court orders to stay the evictions and allow us to move forward with our lawsuits, judges are forcing our clients to post huge injunction bonds in order to actually secure even that temporary relief. Poor homeowners don't have thousands of dollars to buy an injunction – just like they don't have thousands of dollars to hire a private lawyer. These are issues that legal services attorneys are uniquely situated to address.

We are doing our best to use the law to fight for our clients, but these scams are unusual and they require time to investigate. Just to give the Council an idea of what these lawsuits look like, we've attached a copy of one complaint filed by South Brooklyn Legal Services against Launch Development. It is a substantial undertaking to begin this kind of litigation, and for every case we accept, we are forced to consider the clients we might have to turn away because of limitations on our time and resources. With

more funding and support for our work, we could take on more of these cases and do more outreach, to protect our most vulnerable communities from fraud.

These frauds almost exclusively target communities of color, immigrant communities, and vulnerable seniors and disabled New Yorkers. They flourish in the shadows because these neighborhoods haven't yet become glitzy and gentrified. We worry about these homeowners because they have no safety net if they lose their homes. They have no country houses upstate, no families with spare bedrooms, no savings accounts to draw upon if they need to cover rent and a security deposit on a new apartment. When these homeowners lose their houses, they don't buy new ones. These houses are generally the sole source of wealth in a family, and they represent much more than just a roof over peoples' heads. The cascade of damage that results from the loss of these properties is enormous.

These are the people we serve as legal services workers. We would love to serve more, if could reach them and if we had the resources to represent all of them. Most New Yorkers are worried about affordable housing, however you define "affordable." These deed fraud schemes directly impact the sustainability of affordable housing around the city. You don't have to be anti-development to combat deed theft. You just have to be anti-theft. We hope to work together with the City Council, law enforcement, and other city agencies to stop these scammers from taking advantage of vulnerable homeowners, and appreciate the opportunity to be heard today. Thank you.

Jenny Eisenberg
Staff Attorney
South Brooklyn Legal Services
105 Court Street, 4th Fl.
Brooklyn, NY 11201

Stacey Woods
Senior Staff Attorney
Queens Legal Services
89-00 Sutphin Blvd., 5th Fl.
Jamaica, NY 11435



Association for
Neighborhood
& Housing
Development

ANHD
50 Broad Street, Suite 1402
New York, NY 10004
Tel: (212) 747-1117

TESTIMONY OF LUCY BLOCK BEFORE THE NEW YORK CITY COUNCIL
REGARDING DEED FRAUD AND DEED THEFT

October 13, 2020

To Chairs Cornegy and Dromm and members of the Committee on Housing and Buildings and the Committee on Finance,

My name is Lucy Block and I'm a Research and Policy Associate at the Association for Neighborhood and Housing Development (ANHD). We're an umbrella organization of more than 80 members citywide who build community power for housing, economic, and racial justice. Many of our members work in communities where low-income Black, immigrant, and other homeowners of color as well as their tenants are at risk of losing their homes.

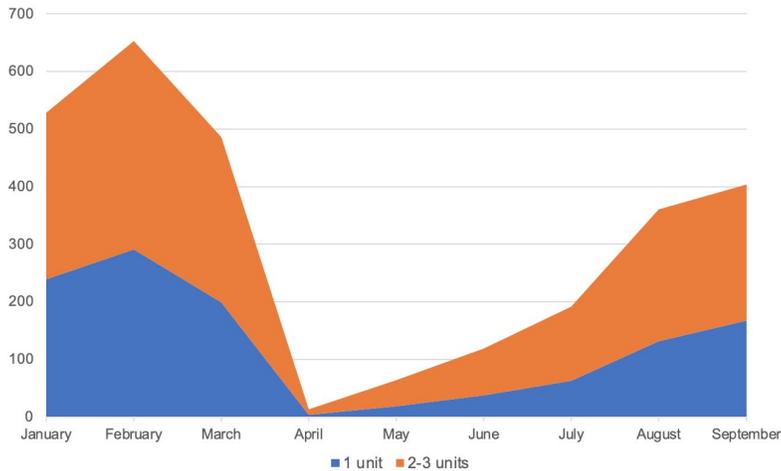
I'd like to thank the Committees for holding this hearing on the important issues of deed theft, speculation, and harassment of small homeowners in New York City. We fully support Resolutions 1429 and 1430, partially support Resolution 1427, and support Introductions 1913 and 1919 with proposed modifications.

The problems that you refer to in the proposed resolutions have been occurring for many years: aggressive and predatory solicitation to pressure seniors and homeowners to relinquish their homes, many times duplicitously, as well as outright fraud to illegally steal deeds.

Our members Cypress Hills Local Development Corporation and the Center for New York City Neighborhoods know this as they have been working for years to pass legislation that will stop it from happening. Now more than ever, we are seeing that this is an absolutely critical moment to enact these increased protections.

We used our DAP Portal tool, part of the Displacement Alert Project, to research recent foreclosure trends in small buildings. We found that *lis pendens* filings in small homes, the first step in the foreclosure process after an owner has missed three payments in a row, **are approaching pre-pandemic levels and are on a rapid rise**. Whereas the number of filings in 1-3 family homes was below 100 in April and May and below 200 in June and July, it surpassed 400 in August. There was a particularly sharp increase between July and August, when the number of foreclosure filings jumped from 192 to 360 in those small homes.

Small Buildings with Foreclosure Filings, 2020



Number of Foreclosure Filings		
Month	1 Unit Buildings	2-3 Unit Buildings
January	239	289
February	291	362
March	199	287
April	4	9
May	18	46
June	37	82
July	63	129
August	131	229
September	167	237

Source: PropertyShark, DAP Portal
<https://portal.displacementalert.org>

According to DAP Portal, which compiles data from PropertyShark, there have been 17 foreclosure auctions scheduled since April. Half of them were scheduled last month, in September. It therefore looks like actual foreclosures are seriously on the rise, in addition to the filings that start the process.

Number of Foreclosure Auctions	
Month	Total Scheduled Auctions
March	17
April	2
May	0
June	1
July	3
August	2
September	9

Source: PropertyShark, DAP Portal.

Months indicate the date that a foreclosure auction was added to PropertyShark, not the auction date. These are foreclosures of any property type, including but not limited to small homes.

The COVID-19 crisis is crippling homeowners' ability to pay their mortgages, and predatory investors will see foreclosure proceedings as nothing but dollar signs. In any depression, there is rapid speculation, and we must prepare and brace ourselves against this round of it. We thank the sponsors of all three resolutions for State action and the two sponsors of City legislation. Our comments are the following:

Resolution 1429: We strongly support the extension of the cease and desist zone in New York City to the borough of Brooklyn. Since the announcement of the first neighborhood rezoning under Mayor Bill de Blasio in East New York, our member Cypress Hills LDC saw an immediate spike in speculation and predatory activity in small homes in their neighborhood. Investors saw an opportunity to profit off of a neighborhood that was suddenly marketed as more desirable to newcomers. This has been thoroughly documented by the Center for New York City neighborhoods in their in-depth research of small home flipping and its connection to foreclosures, and one of their primary recommendations, as well as that of the East New York Coalition for Community Advancement, is the cease and desist zone.¹ We hope the

¹ Leo Goldberg and John Baker, Center for New York City Neighborhoods, June 2018. "House Flipping in NYC: How Real Estate Speculators are Targeting New York City's Most Affordable Neighborhoods." https://s28299.pcdn.co/wp-content/uploads/2018/06/CNY002-Flip-Report_June2018-1-1.pdf

State legislature will take this opportunity to move the years of work by those groups across the finish line.

Resolution 1430: We also strongly support the regulation of corporation names to prevent their imitation of government agencies and thereby trick homeowners into relinquishing their deeds without consent. The lack of transparency around property ownership that is enabled by the “LLC loophole” is an ongoing problem in holding owners accountable for bad behavior, and should be reformed in general. We see this effort as a positive step in that direction.

Resolution 1427: We support the intention of regulations to prevent notaries from participating in deed theft. We support training on recent trends in fraud and changes to the law that can help notaries remain informed of the risk of deed fraud and know how to avoid enabling it. We also think that a journal that tracks records of notarial acts is a positive measure. The other two measures of the proposal aim to stop fraud and misdoing by notaries themselves, rather than their deception by actors committing deed fraud. We are skeptical of the use of biometrics, i.e. fingerprinting, in order to do so. We are not experts in the field of notarization, and we believe that professionals in the field should be consulted to best understand how to stop the complicity of notaries in deed fraud.

Intro 1913: We support the proposal to require sheriffs to provide the Council and the public with annual reports on complaints and investigations related to recorded document fraud. Additionally, as per open data laws and standards, sheriffs should submit the data used to produce the report as an open dataset on the New York City Open Data portal. The dataset should include individual addresses, corresponding geographic identification data, and dates of each complaint and investigation.

Intro 1919: We support the proposed bill to include information on actions that interested parties can take if they suspect fraudulent activity related to a deed or mortgage. Furthermore, we believe more action should be taken by the New York City Department of Finance to advertise the availability of this service. DOF should include information about the availability of the Notice of Recorded Document service and a description of its purpose on its [ACRIS webpage](#). As per open data laws and standards, DOF should publish an open dataset to the New York City Open Data portal with the data used to produce the report that was required by Local Law 249 of 2017. This should include the individual addresses and corresponding geographic identification data for which the city register or Richmond county made referrals related to suspected fraudulent document recording, the outcomes of such referrals, and whether an investigation was commenced by the sheriff.

Thank you for the opportunity to testify. I am happy to answer any questions and can be reached at lucy.b@anhd.org or 917-796-0848.

TAKEROOT JUSTICE

Testimony to the NYC City Council

Oversight Hearing: Examining the City's Deed Theft and Deed Fraud Crisis

*Held jointly by:
Committee on Housing and Buildings
Committee on Finance*

October 13, 2020

Good afternoon. My name is Paula Segal. I am speaking today as Senior Attorney in the Equitable Neighborhoods practice of TakeRoot Justice. TakeRoot works with grassroots groups, neighborhood organizations and community coalitions to help make sure that people of color, immigrants, and other low-income residents who have built our city are not pushed out in the name of “progress.” We work together with our partners and clients to ensure that residents in historically under-resourced areas have stable housing they can afford, places where they can connect and organize, jobs to make a good living, and other opportunities that allow people to thrive.

Thank you so much to the committees for holding this joint hearing today. I will dedicate my time to elucidating the connection between New York City’s practice of selling liens on properties to a private investor-backed trust when charges to the City are past-due to the crises of deed theft and deed fraud. The City instituted the “Tax Lien Sale” practice in 1997 and uses it as a way to clear its books of all arrears: property taxes, water charges, emergency repair bills and other miscellaneous charges assessed by the City.

As part of the process of gathering liens for the bundled sale each year, the Department of Finance publishes a list of properties with arrears that are eligible for the sale. Such publication is meant to put owners on notice in an attempt to make sure that liens are not placed when property owners are not aware of the debt they owe. While they might notify a property owner, the published lists – which appear on the Department of Finance website in the Spring of each year – also provide unscrupulous actors with information about who is behind on their bills. Speculators and thieves can use the list of lien sale eligible properties to zero in on property owners who might be in financial dire straits, or elderly, or deceased, or otherwise unable to handle their affairs. With the list as a their treasure map speculators and thieves can approach owners with offers to purchase their properties for less than they are worth, with offers to settle debts, or can simply create forgeries of deeds that, as long as they go unchallenged, functionally transfer properties from present owners to themselves and their compatriots.

Elderly homeowners are particularly vulnerable to these unscrupulous actors because they are likely to have paid off their mortgages and be in position of having to pay the City



directly for property taxes for the first time in 30 years. These same long-time owners are also more likely to be on a fixed income and unable to absorb unexpected costs and expenses.

Families with property to be inherited are likewise vulnerable. In my practice, I have encountered the worst of the deed thieves who simply wrote themselves a deed to a property in Prospect Lefferts Gardens, Brooklyn, when they found it abandoned and on the City's Tax Lien Sale list in 2003. The home that had been on the lot they thus stole had burned down several years after its owner passed away, and the City cleared the property, then sent bills for the service to the deceased owner who never got them. These unpaid bills were included on the lien sale eligible list, likely sparking the interest of those looking for properties they might be able to get for free. The thieves purported to find the children of the owner, when in reality she had no children; they wrote a deed from those fake children transferring it to their own company and transferred it again to another company they controlled several years later.

All the while, the family of the deceased owner, immigrants from Guyana, did not realize that the property had been lost. It was only when the deed thieves attempted to use the courts to clear their title by filing a "quiet title" case against their own company did their dealings come to light: I represented the occupants of the lot at the time, the Maple Street Community Garden. In 2012, at a tip from the Brooklyn District Attorney, the Garden intervened in the court case and was able to stop the judge from issuing a default judgement because it had not been served papers in the case, as occupants are entitled to be. After we stopped the quieting of title, we hired an heir locator, found the relatives of the deceased owner and helped them get their own representation so that they could oppose the court quieting title in the deed thieves name. In the intervening years, the City acquired the property for permanent preservation as a park and community garden. The money that the City paid is now with the court in escrow, awaiting the final outcome of the quiet title case. We are extremely hopeful that it will go to the family. We know that had the property not appeared a target for deed theft, they would have remained the owners of record without interruption and would have been the automatic recipients without having to battle hardened criminals in court. Over \$2 million dollars hangs in the balance.

Drawing a target on properties belonging to vulnerable owners is just one of the many harms of the Rudy Giuliani-invented tax lien sale. The sale likewise threatens low income homeownership, lets opportunities to stabilize affordable multi-family housing slip away each year, and cedes vacant land in our neighborhoods to investors. It is long past time to put an end to it: the Council should not re-authorize the City's Tax Lien sale when authorization expires this year.

I want to particularly thank Council Member Cornegy for introducing Resolution 1429 being heard today. The deed thieves I have been describing use precisely the tactic of naming their corporations and LLCs so that they sound like government agencies: the initial deed theft transferred the Prospect Lefferts property to a company called Brooklyn LLC, and the subsequent transaction they orchestrated was to Housing Urban Development LLC. The same individuals are also operating under the names H.P.D. LLC and Queens LLC.

Contact: Paula Z. Segal, Senior Staff Attorney
psegal@takerootjustice.org (646) 459-3067

The threat to the homeowner as it concerns deed theft is being aided and abetted by the court system itself. The court system is not enforcing the statutes, i.e. condition precedents – RPAPL 1304, 1306, 1320, 1303 - that were put in place as defenses to foreclosures when the Plaintiff is non-compliant. These statutes placed the burden of proof of compliance on the Plaintiff yet the courts have contorted them wherein cases that should have been dismissed due to Plaintiff's non-compliance, i.e RPAPL 1304, finds the Defendant still in the struggle to defend the foreclosure.

Newly enacted laws such as RPAPL 1302-a, are being twisted away from the intent of the statute with the result that the status quo of owners losing their home by default remains the status quo. The test of the Plaintiff having to prove standing even under default is thereby bypassed even with the new law. See the attached case of JP Morgan Chase Bank v Benjamin Carducci, Westchester County Supreme Court, Index # 70822/2017. Here the court is mandating that the Defendant show a meritorious excuse for defaulting prior to the Court reviewing the Plaintiff's standing. What is the point of RPAPL 1302-a, if the homeowner is subject to such a test? Such a requirement totally undoes the newly enacted statute.

It is well known that Plaintiffs have regular concocted documents in foreclosure proceedings and CPLR 3012-B was implemented as a result. Yet, the RPAPL 1306 statute was implemented with a clause that hinders the homeowner from verifying the authenticity of a Plaintiff's allegation that the RPAPL 1306 notice was properly filed with the Banking Department.

Why shouldn't a Pro Se homeowner be able to verify this information which should be readily viewable on the internet in a similar manner as the banks that are able to submit the required RPAPL 1306 filing via the Internet? RPAPL 1306 is a defense to foreclosure yet the laws were put in place to frustrate any comprehensive scrutiny of each Plaintiff's alleged filing.

FORECLOSURE DEFENSE ATTORNEYS SHOULD BE CERTIFIED AS SUCH

Unlike other professionals, i.e. engineers and doctors, lawyers are not required to prove the depth of their aptitude or undergo any specialty certification in a field such as foreclosure defense.

COURTS, INCLUDING THE APPELLATE, ARE NOT ENFORCING STATUTES THAT ARE RESTRICTIVE TO THE BANKS, TO THE DETRIMENT OF THE HOMEOWNER

In HSBC Bank vs Cindy Corazzini, the Appellate disregards Plaintiff's failure to timely file an RJI. A key element of the timing for the submission of the Certificate of Merit is hinged on the submission of the RJI. The Certificate of Merit was implemented to counter all of the false documents that continue to be submitted by Plaintiffs. Disregarding the failure (CPLR 2001) to timely submit an RJI as a nonprejudicial procedural error is absurd. Plaintiffs have shut down the marketability of the owner's property by filing a foreclosure action against the owner. Then Plaintiff sits down on taking actions that would start the clock that would compel them to present proof of their standing (CPLR 3012-B).

STANDING SHOULD BE JURISDICTIONAL AS WELL AS NOT WAIVABLE

Standing should not be waivable by lack of the assertion by the defendant.

Standing should be jurisdictional. The Court should have sua sponte authority to dismiss the case of a plaintiff in a foreclosure case wherein the plaintiff documents and record of assignments prima facie fail to establish its standing.

The U.S. Supreme Court has held that lack of standing is in fact a jurisdictional defect. The court in *Allen v. Wright*, 468 US 737, (1984) stated that the concept of standing goes to the very jurisdiction of a court's authority to hear a dispute.

The Second Department has also weighed in on *sua sponte* determinations of standing. In *U.S. Bank v. Emmanuel*, 83 A.D.3d 1047, 921 N.Y.S.2d 320 (2d Dep't 2011), **the court held that a party's lack of standing does not constitute a jurisdictional defect and does not warrant a *sua sponte* dismissal of the complaint by the court** (reversing dismissal where plaintiff had made ex parte motion to direct service upon the defendant by publication, but the Supreme Court, *sua sponte*, directed dismissal of the complaint with prejudice and cancelled the notice of pendency, finding that the plaintiff lacked standing).

In *Downey Savings & Loan Assoc. FA v. 162 Grand Newburgh*, 27 Misc.3d 674, 897 N.Y.S.2d 835, 2010 N.Y. Slip Op. 20076 (Sup. Ct. Kings Co. 2010), Judge Kramer, following *Mastropaolo*, held that standing was not jurisdictional, and the defense was waived when it was not raised in an answer or pre-answer motion to dismiss.

Wells Fargo Bank, N.A. v Walters, 2013 N.Y. Slip Op. 32824 (U), 2013 WL 5974395 (NY County, Madden, J. Oct. 22, 2013) (rejecting

CPLR 5015(a)(2) challenge based on lack of subject matter jurisdiction premised on defective standing, holding that by its express terms **CPLR 5015(a)(2)** applies only to provide relief from judgment after trial and that, in any event, **a party's lack of standing is not a jurisdictional defect.**

Bank of N.Y. v. Alderazi, 99 AD3d 837, 951 NYS2d 900 (2d Dep't 2012)

(**reversing order dismissing for lack of standing** and denying order of reference (reported at 31 Misc. 2d 1209(a) (p. 5 of outline), holding that court improperly exercised its discretion in denying order of reference and *sua sponte* directing dismissal of the complaint. Court repeated by rote the mantra that "**Since the defendants failed to answer the complaint and did not make pre-answer motions to dismiss the complaint, they waived the defense of lack of standing.**" Second Department further recited without analysis that "**a party's lack of standing does not constitute a jurisdictional defect and does not warrant a *sua sponte* dismissal of the complaint by the court.**"

Citimortgage, Inc. v. Finocchiaro, 2013 NY Slip Op 30003(U) (Richmond Cty., Maltese, J. January 4, 2013) (granting order to show cause seeking vacatur of order of reference entered on default and dismissal for lack of standing. **Court determined that defendant possessed meritorious standing defense where plaintiff's chain of title derived from MERS and where MERS never held any interest in the note.** Court expressly considered Mastropaolo and nonetheless held that standing defense could not be waived, dismissing the action for lack of standing. **In rejecting Mastropaolo, the Court stated that "it has become evident in the realm of foreclosure litigation that it would be a miscarriage of justice to continue to treat standing as a defense that can be waived"**).

Irrelevant of the Defendant's assertion, failure to insist that the Plaintiff prove up his standing should be grounds for denial of judgment. Yet too many Courts, at the whim of the presiding judge, are granting judgment for the Plaintiff when prima facie evidence, such as an ineffective MERS assignment, demonstrates the Plaintiff's lack of standing. Plaintiff banks are placing bets that the homeowner(s), lacking the funds to hire proper legal defense, will put up little to no opposition and the Plaintiff will be awarded the property via its deception.

Bank of N.Y. v. Waters, 2013 NY Slip Op 50585(U) (Kings Cty., Saitta, J. April 15, 2013) (denying plaintiff's ex parte application for order of reference, finding that plaintiff failed to submit proof that originator of loan authorized MERS to assign. **Court noted two different versions of the note, one of which appeared to be altered to include an allonge, and also noted that purported MERS assignment appeared to be an assignment to a different entity than the plaintiff.** Court acknowledged that standing is an affirmative defense that is waived if not raised in an answer, **but also noted that ownership of the note is part of Plaintiff's prima facie case and its burden of proof, and concluded that it "is proper for the court to deny an application for a default judgment and order of reference where the underlying papers presented to the court are defective on their face and do not contain sworn or affirmed allegations demonstrating the merit of the claims."** Court also held that plaintiff's conclusory statements that it became owner of the note prior to commencement of the action were insufficient and concluded by noting that the "court cannot turn a blind eye to the alteration of documents submitted or documents which on their face indicate another entity may own the mortgage, simply because the application is on default").

Plaintiff banks have no legal foundation to foreclose a mortgage in which they had no interest at the time of filing the summons and complaint. Lack of a plaintiff's interest at the beginning of the action strips the court's power to adjudicate over the action. Siegel, NY Prac § 136, at 232 [4th ed]. Lack of interest and controversy is protected by the umbrella of subject matter jurisdiction. Whenever a court lacks jurisdiction, a defense can be raised at any time and is not waivable. Siegel, NY Prac § 136, at 232 [4th ed]. In other words, for there to be a cause of action, there needs to be an injury. At the time that the action was commenced, the instant plaintiff suffered no injury and had no interest in the controversy. As a controversy was missing between the existing parties, the court lacked the subject matter jurisdiction to adjudicate over the present case. The defendants are therefore entitled to a dismissal without prejudice because the court lacked jurisdiction over a non-existent controversy, due to Plaintiff's lack of standing.

THE TRANSFER OF NOTES SHOULD BE RECORDED

The transfer of notes should be recorded. The original intent of recorded assignments has been usurped and gamed by the banks. The newly endorsed (transferred) note should be recorded. This would significantly reduce the arguments that load the courts. Today the computer capacity is available to allow for this recording.

COURTS DO LITTLE TO REDUCE DEFENDANT DEFAULTS

The Court appear to do little to stem defaults by Defendants. I arrive at this conclusion because the exalted RPAPL 1320 regulation that insists that notice that the Defendant must submit an answer leaves out very significant information from such notice. That information is the timeline by which an answer is required, especially any allowance for post settlement conference submission. As a result, the inexperience defendant is rendered defenseless from the start. They not knowing that on average they have only 20 days, to find a lawyer, pay for a lawyer and file an answer. Else they may be considered in default or their answer may be rejected by the plaintiff for being late.

Even the increase to, is it 30 or 60 days, for filing of an answer after settlement conference does little if the conference referee provides no information in regards to required answer timeline and court procedures. I know this personally for I have sat in conferences multiple times and know persons who have attended conferences and **they are never informed** of this.

Courts, such as the Judge Noah Dear's court, appear to take glee in declaring Defendants in default without the opposing side having submitted a notice of motion for default or order of reference.

The declaration of a Defendant as being in default denies the Defendant of many of the protections offered by various RPAPL rules (See Aurora vs. Leroy). Appeal court rulings such as US Bank vs Carey did not help this situation.

PLAINTIFF BANKS SHOULD BE MANDATED TO PRESENT THE WET-INK NOTE TO A COURT OFFICER (NOT JUST A CONCOTED COMPUTER GENERATED COPY)

Plaintiff banks are using bogus notes to create a case (position) of standing and failing to produce the original "wet ink" note. When challenged to produce the note at the settlement conference the law clerk presents states that it is not required at this time. This is in direct conflict with CPLR 3408(e).

Courts are granting summary judgment on hearsay evidence without requiring the Plaintiff to present the actual "wet-ink" note in support of the alleged possession stated in submitted affidavits.

CPLR 3408(e) requires that at a conference documents should be presented but this in practice is only being applied to the homeowner. The Plaintiff banks enter into the conference without presentation of a "wet-ink" note. A mere ALLEGED copy (likely form a computer database) and the signature of their lawyer that lacks personal knowledge and had never been to the storage location of the note or viewed the original is enough for the Courts to grant standing. When you challenge the Plaintiff to present a copy of the note, the Conference Law Referee interjects that it si too early in the stage for that. I my case it was three years into the lawsuit.

Kondaur Capital Corp. v. McCary, 115 A.D.3d 649, 981 N.Y.S.2d 547 (2d Dep't 2014) (affirming grant of summary judgment and judgment of foreclosure and sale to plaintiff, and denying cross motion to dismiss for lack of standing, reciting without analysis that **plaintiff established that it had standing as the holder of the note and mortgage "by submitting the written mortgage assignments and the affidavit of plaintiff's president, which established that it had physical possession of the note prior to commencement of this action."**)

ENFORCE CPLR 3012-B

Courts are not adhering to CPLR 3012-b and instead are turning a blind eye to lack of or inadequacy of required attorney affirmations. Attorneys are submitting affirmation regarding foreclosure actions that are false on their face. For example, filing of lawsuits wherein the plaintiff was assigned only the mortgage and not the note as seen from the recorded assignments and there is no proof of delivery of the note or pleadings of the same. **The requirements for attorney affirmation are not being followed or properly enforced by the courts.**

Plaintiff law firms engage in multiple switching of law firms so that they may have plausible denial of CPLR 3012B.

Counsel must submit affirmation with all applications made at any stage of the foreclosure case. See Citimortgage v. McGee, 30 Misc.3d 199, 915 N.Y.S.2d 436 (Sup. Ct. Suffolk Co. 2010); Citibank, N.A. v. Murillo, 30 Misc.3d 934, 915 N.Y.S.2d 461, 2011 NY Slip Op 21004 (Sup. Ct. Kings Co. 2011) (dismissing foreclosure action with prejudice, and cancelling Notice of Pendency, where plaintiff failed to timely file attorney's affirmation confirming accuracy of foreclosure filings after being ordered by Court to do so);

America's Residential Properties, LLC v. Lema, 118 A.D.3d 735, 987 N.Y.S.2d 169 (2d Dep't 2014) (reversing Kings County order (Solomon, J.) denying plaintiff's motion for leave to discontinue without prejudice and granting defendant's cross motion to dismiss with prejudice and for attorneys' fees. **Court below had dismissed because plaintiff had failed to file Attorney's Affirmation pursuant to Administrative Order 431/11, and Second Department held that court should not have dismissed with prejudice on a ground that was not litigated or raised by the**

parties, and, in any event, there was no basis for dismissing with prejudice inasmuch as there was no evidence of prejudice to defendant. Although defendant had argued below that dismissal with prejudice was called for due to plaintiff's lack of standing, **it did not raise that issue on appeal.**)

Deutsche Bank Natl. Trust Co. v. Espinoza, 2013 NY Slip Op 50926(U) (Suffolk Cty., Whalen, J. June 5, 2013) (granting motion to confirm referee report and judgment of foreclosure and sale and denying cross motion to vacate order of reference and for leave to file late answer, finding no reasonable excuse for default or meritorious defenses. Court also held that defendant's failure to succeed on application to vacate default warranted denial of motion to dismiss on grounds of standing, and stating that, in any event, standing is not a jurisdictional defect nor an element of plaintiff's claim for foreclosure, and that it was thus waived. **Court also rejected challenge to attorney affirmation, invoking Second Department's decision in LaSalle V. Pace for the proposition that the attorney affirmation is not substantive evidence and therefore cannot be relied upon by defendant to avoid foreclosure.**)

How does a Plaintiff bank get to make an error as to two foreclosure filings if the required attorney affidavits of merit requirements are being adhered to?

Sutton Funding, LLC v. Wong, Index No. 103520/08 (Richmond County, DCM Part 4, Fusco, J., Dec. 17, 2013) (denying defendant's motion for leave to amend pro se answer and granting plaintiff's cross-motion to discontinue foreclosure action, where a subsequent foreclosure action relating to the same property had been commenced after this case by plaintiff's alleged predecessor in interest, in which, following settlement conferences, a motion for summary judgment remained pending (with a trial solely on the issue of standing scheduled pursuant to CPLR 3212(c)). Court exercised its discretion to grant plaintiff's motion to voluntarily discontinue the first foreclosure action pursuant to CPLR 3217(b), finding that defendant had not demonstrated that he would be prejudiced by the discontinuance, because his standing defense was being litigated in the second foreclosure action. Court also held that defendant had not offered a reasonable excuse for the delay in seeking leave to amend his answer in the present action.)

Courts are allowing Banks to get away with fraud, essentially a con job, when it can be shown, prima facia, that a bank committed fraud or misrepresentation.

In the sample presented below the affirmation that would have been required by Deutsche would have to be knowingly false. The bank officer that signed the assignment would have or should have known that the assignment of any asset while in bankruptcy without the authority of the Bankruptcy Court is intrinsically invalid. The bank had to have engaged in a deception, inducing Engel to a loan modification. In other words, the bank knew it lacked standing but pursued a lotto game against Engel. Engel should have had the right of first refusal in the payoff/agreement with the original note owner, and probably at better or more manageable terms.

Engel v. Deutsche Bank Natl. Trust Co., 116 A.D.3d 915, 983 N.Y.S.2d 630 (2d Dep't 2014) (affirming grant of defendant's motion to dismiss plaintiff homeowner's action for fraud, negligent misrepresentation and for rescission of loan modification agreement, holding that general release executed when prior foreclosure action was settled barred plaintiff claims in this action premised on Deutsche Bank's allegedly false allegations that it owned plaintiff's mortgage because the assignment to **Deutsche Bank was invalid because it was issued two days after the assignor filed for bankruptcy protection. Court held these allegations of fraud predated the release and therefore could not be asserted.**)

HSBC Bank USA, N.A. v. Ashley, 104 A.D.3d 975, 961 N.Y.S.2d 337 (3d Dep't), *app. den.* 21 N.Y.3d 956, 991 N.E.2d 213, 969 N.Y.S.2d 439 (2013) (affirming denial of defendant's motion to vacate judgment of foreclosure and sale, to dismiss action or to permit filing of late answer. Court rejected defendant's motion to vacate judgment of foreclosure and sale premised on assertion that plaintiff engaged in fraud by falsifying assignment documents to make it appear as if it had standing to foreclose when it did not, because **defendants had waived standing defense by failing to raise it in either an answer or pre-answer motion to dismiss.**)

There are cases wherein the **Plaintiff blatantly produce two notes for one mortgage** and the Court allows it to go forth, instead of dismissing for the fraud:

Citimortgage, Inc. v. Friedman, 109 A.D.3d 573, ___ N.Y.S.2d ___, 2013 WL 4437086 (2d Dep't August 21, 2013) (affirming denial of defendant's motion for summary judgment, holding that court below properly determined that **defendant waived standing defense by**

failing to raise it in its answer or a pre-answer motion to dismiss, and further holding that, in any event, defense failed on the merits because plaintiff demonstrated that when it commenced the foreclosure action it was the holder of the mortgage and two slightly different versions of the note, both of which were indorsed in blank, and because plaintiff agreed to proceed on the version of the note that defendant conceded was validly signed and was not altered).

HSBC Bank USA, N.A. v. Taher, 104 A.D.3d 815, 962 N.Y.S.2d 301 (2d Dep't 2013) (reversing *sua sponte* dismissal with prejudice and denial of order of reference based on **Judge Schack's independent research establishing absence of standing and prosecution of foreclosure based on robo-signed documents, and reversing subsequent sanctions ordered against HSBC and foreclosure mill firm resulting therefrom**. Court repeated that standing had been waived by failure to answer and was not proper basis for *sua sponte* dismissal, **and reprimanded Judge Schack for doing so following its decision in U.S. Bank v. Emmanuel, 83 AD3d 1047 (2d Dep't 2011), also stating that evidence on which Judge Schack relied was not properly the subject of judicial notice**. Court held that directing hearing on sanctions was an abuse of discretion and remitted case to Supreme Court for further proceedings before a different judge).

U.S. Bank Natl. Assn. v. Allen, 102 A.D. 3d 955, 958 N.Y.S.2d 737 (2d Dep't 2013) (affirming denial of defendant's motion pursuant to CPLR 5015(a)(3) to vacate an order of reference and to dismiss the complaint, premised on plaintiff's lack of standing due to an alleged fraudulent assignment. **Court held that defendant failed to make a showing that plaintiff engaged in the type of fraud or misconduct that would warrant vacatur of the order of reference** pursuant to CPLR 5015(a)(3)).

Bank of N.Y. v. Waters, 2013 NY Slip Op 50585(U) (Kings Cty., Saitta, J. April 15, 2013) (denying plaintiff's *ex parte* application for order of reference, finding that plaintiff failed to submit proof that originator of loan authorized MERS to assign. **Court noted two different versions of the note, one of which appeared to be altered to include an allonge, and also noted that purported MERS**

assignment appeared to be an assignment to a different entity than the plaintiff. Court acknowledged that standing is an affirmative defense that is waived if not raised in an answer, **but also noted that ownership of the note is part of Plaintiff's prima facie case and its burden of proof, and concluded that it "is proper for the court to deny an application for a default judgment and order of reference where the underlying papers presented to the court are defective on their face and do not contain sworn or affirmed allegations demonstrating the merit of the claims."** Court also held that plaintiff's conclusory statements that it became owner of the note prior to commencement of the action were insufficient and concluded by noting that the **"court cannot turn a blind eye to the alteration of documents submitted or documents which on their face indicate another entity may own the mortgage, simply because the application is on default"**).

A Defendant may fail in their defense of a case but when the foreclosure has the least smell of fraudulent activity how in the world is it allowed to prevail or be subject to a different test or more scrutiny?

New Century Mtge. Corp. v. Corriette, 117 A.D.3d 1011, 986 N.Y.S.2d 560 (2d Dep't 2014) (affirming denial of motion to vacate judgment of foreclosure and sale and referee's deed pursuant to CPLR 5015(a)(3) and for leave to serve late answer pursuant to CPLR 3012(d). Court rejected assertion that judgment was obtained by means of fraudulent allegations about its legal existence and standing to foreclose, holding that to obtain vacatur pursuant to CPLR 5015(a)(3) based on intrinsic fraud, defendant must establish both a reasonable excuse for default and potentially meritorious defense, and defendant here proffered no excuse for his default.)

Could it be that the defendant defaulted because they had no idea that the plaintiff had any connection to their mortgage? New Century Mortgage was long gone by Year 2014.

PROOF OF SERVICE BY PLAINTIFF SHOULD BE REQUIRED THROUGHOUT THE FORECLOSURE PROCESS

When faced with strong opposition by the defendant many law firms engage filing motions without proper service to the pro-se (non e-file participating) defendant. No proof of mailing the Plaintiff is ever presented and the Plaintiff thereby obtain a default judgment for an undeclared motion filing.

COURTS ARE NOT RESPECTING CONSENT ORDERS AGAINST VARIOUS BANKS AND LAW FIRMS

Despite the existence of various consent orders Courts are still allowing submission of assignments that go against the intent of the Consent Order, such as the ones against the law firm Steven Baum.

Defendants continue to be affected by various false filings and other improprieties created by these firms.

COURTS ARE ALLOWING TRUSTS TO PROCEED WITH POOLING AND SERVICING AGREEMENTS WHEN THE PROPERTY BEING FORECLOSED IS NOT ON THE SCHEDULE OF THE PSA AND HENCE THE TRUST COULD NEVER HAVE BEEN A HOLDER/OWNER OF THE NOTE

Plaintiff Trusts whose PSA clearly shows by documentary evidence that the note could not be part of the Trust, is yet allowed to claim standing. Courts are not insisting that the Trusts proof up standing by presenting the “wet-ink” note, when documentary evidence demonstrates the note was not part of the Trusts creation. **This is also in violation of trust law wherein trusts are not supposed to be involved in active trading in and out of the trust beyond the closing date of the trust.** This is not a question of trying to sue for non-performance or fiduciary duty which would lead to a denial of standing holding that defendants were neither parties nor third party beneficiaries of the pooling and servicing agreement but an evaluation of documentary evidence, such as a mortgage assignment or deed would be examined, to determine if the Trust is a true owner of the note.

US Bank Natl. Assoc. v Mosquera, 2013 N.Y. Slip Op. 31720(U), 2013 WL 3961676 (Queens County, Weiss, J., July 29, 2013) (granting plaintiff's motion to dismiss defendant's affirmative defenses and counterclaims and for summary judgment holding that plaintiff established its standing by submitting a copy of the note with a special endorsement and a written assignment of both the mortgage and the note, ostensibly demonstrating that when the action was commenced plaintiff owned the note and mortgage. Court held that plaintiff's servicing agent's affidavit was sufficient to establish delivery of the note and to establish that plaintiff was the holder of the note with standing to foreclose, **and rejected defendant's argument that plaintiff should be estopped from alleging ownership of the note and mortgage because the note was conveyed in violation of the governing pooling and servicing agreement, holding that defendants were neither parties nor third party beneficiaries of the pooling and servicing agreement and therefore, ironically, lacked standing to challenge plaintiff's standing.**)

Wells Fargo Bank, N.A. v. Velazquez, 2012 NY Slip Op 52300 (Queens Cty., McDonald, J. December 10, 2012) (granting plaintiff's motion for summary judgment and order of reference and denying defendant's cross motion to dismiss for lack of standing, finding that plaintiff's summary judgment submission established prima facie case and that defendant failed to submit adequate evidence to raise material disputed issue of fact on its standing defense. **Although defendant's counsel made several allegations concerning the invalidity of the assignment to plaintiff, including that the assignment post-dated the closing of the plaintiff trust, counsel failed to provide any supporting documentation to support its contentions.** Defendant's invocation of robo-signing was also not supported by any evidence, and its complaint of a lack of a MERS assignment failed because MERS was not involved in the loan).

**DEFENSE ATTORNEYS SADDLE CONTRACTS WITH
CLAUSES THAT ROB HOMEOWNERS OF THEIR EQUITY**

2020 NY Slip Op 20072

**JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, Plaintiff,
v.
BENJAMIN CARDUCCI; MARIE CARDUCCI, ET AL., Defendants.**

70822/2017.

Supreme Court, Westchester County.

Decided March 10, 2020.

Angelo Anthony Regina, Esq., McCalla Raymer Leibert Pierce, LLC, 420 Lexington Avenue, Suite 840, New York, NY 10170, 347-329-2071, for plaintiff.

James Marsico, Esq., 2500 Westchester Avenue, Suite 109, Purchase, NY 10577, 914-313-5298, for defendant.

TERRY JANE RUDERMAN, J.

This motion, brought one business day before the scheduled foreclosure sale, seeks an order setting aside the judgment of foreclosure and sale that was entered on default, and dismissing the complaint, based on the contention that plaintiff lacks standing. Defendants rely on the newly-enacted RPAPL 1302-a, which became effective December 23, 2019; the new statute provides that the failure to challenge the plaintiff's standing in an answer or a pre-answer motion to dismiss no longer waives the defense.

Determination of the motion requires consideration of the history of the action. The summons and complaint, filed on December 22, 2017, seek to foreclose a mortgage on the property located at 1 Magnolia Drive in Purchase, New York. The note and mortgage were executed by the borrowers on March 17, 2003, in the principal amount of \$1,670,000.00, in favor of Washington Mutual Bank. The terms of the Note and Mortgage were then modified by a Modification Agreement executed by the borrowers on April 7, 2008, effective May 1, 2008, modifying the principal balance of the Note to \$1,617,053.80, the payment schedule, and the interest rate. After Washington Mutual Bank went into receivership and its assets were turned over to the FDIC, the mortgage was assigned to plaintiff. The note, which had been endorsed in blank by Washington Mutual Bank, was delivered to plaintiff.

The complaint alleged that defendant borrowers were in default as of February 1, 2017. It is alleged that as of the date of default, the principal balance due and owing pursuant to the terms of the Note was \$1,382,229.47. The filed affidavits of service indicate that the borrower-defendants, Benjamin and Marie Carducci, were served pursuant to CPLR 308 (2), by service at the subject premises on a co-occupant who identified herself as Natalie Carducci, described as between 22 and 35 years old, between 5'4" and 5'8" tall, weighing between 131 and 160 lbs.

The borrower-defendants did not file an answer. A foreclosure conference notice dated January 22, 2018 was sent to defendant Benjamin Carducci at the subject premises, notifying him of a mandatory settlement conference scheduled for March 13, 2018. Defendants did not appear, and the matter was released for litigation.

Plaintiff's notice of motion for a default judgment and an order of reference was granted without opposition, on September 5, 2018, and the judgment of foreclosure and sale granted, without opposition, on February 5, 2019.

Defendants moved by order to show cause dated April 23, 2019 to vacate the judgment and dismiss the action. However, upon being denied a stay of the foreclosure sale scheduled for April 25, 2019, defendant Benjamin Carducci filed a bankruptcy petition, thereby staying this action and the sale.

According to information provided by defendants on oral argument of this motion, the bankruptcy proceeding was resolved, and the automatic stay vacated, on November 15, 2019. Yet, defendants did not inform the Court that the stay was vacated, nor did they seek to have the Court address their motion to vacate the judgment of foreclosure and sale. They took no further action at all in regard to this litigation, until plaintiff re-scheduled the foreclosure sale for February 18, 2020. They then filed the proposed order to show cause on this motion, one

business day before the sale, February 14, 2020, seeking a stay of the sale and to vacate the judgment and dismiss the action. The argument defendants make on the present motion is that newly-enacted RPAPL 1302-a allows for the vacatur of a judgment of foreclosure entered on default, without a showing of excusable neglect, based solely on a contention that the plaintiff lacks standing to bring the action.

The sought stay of the scheduled sale was granted only upon condition that defendants make a payment to plaintiff bank of \$50,000; that condition was not satisfied and the foreclosure sale proceeded on February 18, 2020. Defendants nevertheless contend that they are entitled to vacatur of the judgment of foreclosure.

Discussion

Initially, the bank made the necessary showing to properly obtain a judgment of foreclosure. It produced the unpaid note, endorsed in blank, as well as the assigned mortgage and evidence of the mortgagors' default (see Citibank, N.A. v Van Brunt Props., LLC, 95 AD3d 1158, 1159 [2d Dept 2012]). Although there was no answer putting plaintiff's standing in issue, plaintiff's submissions proved its standing. The documents submitted with the filed complaint established that plaintiff was assigned the mortgage, and was in physical possession of the note, endorsed in blank by the payee (see Wells Fargo Bank, NA v Thomas, 150 AD3d 1312, 1313 [2d Dept 2017]).

Defendants abandoned the previous motion to vacate the judgment, therefore, the issues raised there — an alleged lack of personal jurisdiction and failure to comply with conditions precedent regarding required notices — are deemed to have been abandoned.

Defendants now rely solely on the contention that plaintiff lacks standing. They cite in support newly-enacted RPAPL 1302-a, which provides that "any objection or defense based on the plaintiff's lack of standing in a foreclosure proceeding relating to a home loan. . . shall not be waived if a defendant fails to raise the objection or defense in a responsive pleading or pre-answer motion to dismiss." However, defendants read too much into the new statute when they argue that defendants who seeks to interpose the standing defense after defaulting in the action need not establish grounds to vacate their default.

In order to vacate a default judgment of foreclosure and sale, a defendant must establish both a reasonable excuse for the default and a meritorious defense (see CPLR 5015 [a][1]; HSBC Bank, USA v Dammond, 59 AD3d 679, 680 [2d Dept 2009]). While RPAPL 1302-a abrogates the portion of HSBC v Dammond which held that "[h]aving failed to interpose an answer or file a timely pre-answer motion which asserted the defense of standing, the respondent waived such defense pursuant to CPLR 3211(e)" (59 AD3d at 680), the statute does not alter the remainder of the ruling of that case, that "since the respondent failed to demonstrate any other meritorious defense to the foreclosure action, *and did not demonstrate a reasonable excuse for his failure to answer*, it was error for the Supreme Court to grant those branches of the respondent's motion which were to vacate the judgment of foreclosure and dismiss the complaint (*id.* [emphasis added]).

Assuming that the defendants established the existence of a newly-available, valid standing defense, they must also establish excusable neglect. At oral argument, counsel for defendants conceded that they are unable to make such a showing. Moreover, nothing in defendants' moving papers makes such a claim. Accordingly, grounds to vacate the default judgment of foreclosure have not been presented.

Even if defendants are correct that RPAPL 1302-a authorizes the vacatur of a default judgment solely upon a demonstration of a viable standing defense, defendants' last minute argument challenging plaintiff's standing is not meritorious. Plaintiff was in possession of the note, endorsed in blank by the original lender, when it commenced this action. Defendants' citation to JPMorgan Chase Bank N.A. v Grennan (175 AD3d 1513 [2d Dept 2019]) is unavailing. In that matter, the Court found an issue of fact as to whether the note's endorsement in blank, which was situated on a separate page, was on an allonge that was firmly affixed to the note. The endorsement on the note at issue here is on the note's signature page.

This Court rejects defendants' argument that Washington Mutual's endorsement is invalid and has no legal effect, because of Washington Mutual's bankruptcy and takeover by the FDIC, which sold the bank's assets to plaintiff on September 25, 2008. The timing of the official assignment of the mortgage from the FDIC to plaintiff, which

did not occur until November 3, 2016, does not invalidate the endorsement in blank of the note, which necessarily occurred while Washington Mutual was still in business. Defendants engage in mere speculation when they contend that the endorsement occurred improperly, at a time when Washington Mutual no longer had an interest in the note.

Based on the foregoing, it is hereby

ORDERED that motion of defendants Benjamin Carducci and Marie Carducci for an order vacating and setting aside the judgment of foreclosure and sale issued in this matter, and/or dismissing the complaint based on a lack of standing (motion sequence 5), is denied.

Motion sequence 4 is denied as abandoned.

This constitutes the decision and order of the Court.

Save trees - read court opinions online on Google Scholar.

Fake real-estate agent gets jail for swindling imam out of \$50K

By [Lia Eustachewich](#)

October 26, 2016 | 3:11pm

[Enlarge Image](#)



Dan Stern (left) and Imam Al-Hajj Talib 'Abdur-Rashid Steven Hirsch

A phony real-estate broker was shamed Wednesday by a Harlem imam for stealing \$50,000 that it took his congregants the past 30 years to raise, as the conman was sentenced to 3-to-6 years behind bars.

Imam Al-Hajj Talib 'Abdur-Rashid, from the Mosque of Islamic Brotherhood on W. 113th St., recalled how scammer Dan Stern "exploited our dream" of buying a new church when he conned them out of their money.

Enlarge Image
Hirsch

Dan SternSteven

“We collected and saved the money of mostly poor people while praying for the opportunity of growth and expansion,” ‘Abdur-Rashid said in Manhattan Supreme Court.

In all, Stern, 52, swiped \$250,000 from victims he duped into believing he was an authentic real-estate agent or lawyer between 2014 and 2015.

He pulled off the scam by opening up Harlem Village Realty on East 126th Street and advertising properties for sale — unbeknownst to the true owners and without their permission.

The properties included two churches and several buildings – located at 41 West 124th Street, 36 West 128th Street, 52-54 East 126th Street, 342 West 123rd Street and 175 West 126th Street – that were facing foreclosure or were badly in need of repairs.

Stern convinced interested buyers to hand over down payment checks, which he then pocketed.

“As we all know now, the property was bait in a trap of lies and deceit,” said the imam, as Stern hung his head and refused to look at him. “He has devastated all of us.”

Prosecutors said Stern blew the money on credit card payments, a country club membership, cash withdrawals, and luxury cars.

He pleaded guilty in September to multiple charges of scheme to defraud and grand larceny.

Stern said nothing in court and his lawyer had no comment.

The imam said outside the courtroom that Stern left his congregants gutted.

“He promised us the spot was available and he requested of us to place \$50,000 in escrow. We trusted him and we followed his instructions,” ‘Abdur-Rashid said. “At least he could’ve expressed remorse for what he has done.”

NYC
community land
initiative



Testimony of John Krinsky, New York City Community Land Initiative

New York City Housing and Buildings Committee

October 13, 2020

Chairperson Cornegy, members of the City Council Housing and Buildings Committee:

Thank you for holding this hearing today about the problem of deed theft.

My name is John Krinsky, and I am here representing the New York City Community Land Initiative, an alliance of social justice and affordable housing organizations committed to winning housing for all New Yorkers. Our alliance includes grassroots, community- and faith-based, labor, and city-wide organizations working to advance Community Land Trusts (CLTs) to address root causes of homelessness and displacement. NYCCLI engages in community education, capacity-building training, and advocacy to support CLTs and non-speculative housing models that promote development of housing and neighborhoods for and with community members not served by the private market.

Deed theft is a terrible crime that could be curbed by adopting the proposed reforms in Intro 1919-2020, and by the state legislature adopting reforms as set out in the resolutions before the committee today.

Deed theft is also a product of desperation, and speculation. My testimony focuses on connections between NYC's lien sale, which exacerbates financial distress among low income homeowners, and deed theft scams.

The tax lien sale disproportionately affects homeowners, in NYC's neighborhoods of color. These include homeowners who own their homes free and clear but, due to speculative sales and gentrification are faced with far higher tax bills than before. This also includes homeowners who have been targeted by predatory lenders and longstanding discrimination in lending, leading to higher and escalating costs. If they cannot afford to pay, they have few choices: sell or try to stay and work something out.

For those who sell immediately, there is no shortage of buyers. Anyone walking around a neighborhood like Cypress Hills or Jamaica will find signs posted advertising cash for homes (they'll also find signs advertising classes on how to flip homes). For people desperate to sell because of sudden financial hardship, these cash buyers may seem like a lifeline, even if they will pay far less than market rates for the homes.

For those who try to hang on, one strategy is to delay paying taxes. This doesn't always work. If the homeowner finds themselves unable to pay, they can end up on the tax-lien sale list. While it's helpful for them to know that they're at risk of having their tax liens sold, it's also a way for scammers to find desperate homeowners. Deed-thieves identify possible marks and then, with the promise of financial assistance or a sale-over-time, they get the homeowner to sign over the deed of the property to them, often for very little money, and then sell the property out from under their mark, leaving the original homeowner with little or nothing.

Though deed theft happens in a number of ways, it's clear that the city's sale of tax liens greatly facilitates the strategies of speculative fraudsters. This is all the worse because the tax-lien sale is, itself, a speculative program that makes the City a co-speculator with the private tax-lien sale trust to which it sells the liens. The tax-lien sale sells most of the liens on uncollected tax and water debt in bulk to a lien sale trust for \$0.72 on the dollar and the trust turns around and markets tranches of the debt to investors. The trust becomes the debt-collector and is entitled to collect interest and fees on the ever-growing debt. Usually, the trust does not foreclose, but rather waits until the debt accumulates to a point at which it makes its money for the investors and is able to make the city whole. Meanwhile, low- and moderate-income homeowners are forced either to take out usurious and predatory loans in order to redeem their housing from the lien pool (the NYC Department of Finance already knows this to be true and warns—weakly, since the system pushes in this direction—against predatory lenders) or to sell their housing quickly to avoid losing more money in interest and fees to the lien sale trust on any eventual sale. This, again, leaves them vulnerable to deed theft.

Ending the lien sale, and treating debt differently, whether through *in rem* foreclosure and transfer of property to a community land trust or other nonprofit, community-based, mission-driven owner or through subordinating liens in return for a regulatory agreement to preserve the housing as affordable or to restrict its resale, could go a long way both toward the preservation of affordable housing and preventing the deed-theft associated with the sale of liens. The key is that with a set of programs that attempt to collect debt but focuses on preservation, the sense of desperation among homeowners and small property owners may be turned down significantly, making them less vulnerable to scammers.

The tax-lien sale has been reauthorized many times since 1997, with more recent authorizations trying to build in protections for a range of homeowners and tenants. But in the lien sale, the City is trying to have its cake and eat it, too, while homeowners and low-income tenants are stuck with the risk of displacement and loss of their communities. That the lien sale provides a well-acknowledged opportunity for predatory lenders and deed-thieves should lead us to rethink how New York City enforces tax payments and the leverage over possible affordable housing opportunities it has through owning debt. We stand with community-based organizations and community land trusts across the city in calling for an end to the tax-lien sale and its replacement with a system that reduces the burdens on our communities of color and removes the opportunities for predators and speculators to compound these harms.

Man with fake Harlem real estate business stole \$250G from customers, prosecutors say

By [Shayna Jacobs](#)

NEW YORK DAILY NEWS |

Mar 17, 2016 | 10:04 PM

Manhattan DA Cyrus Vance said the suspect opened an office to lure potential victims. (Joe Marino/New York Daily News)

A real estate fraudster opened a fake office in Harlem and stole \$250,000 in down payments from four commercial customers, prosecutors said Thursday.

Dan Stern, 51, who was not licensed, allegedly claimed to be authorized to sell a handful of run-down properties, including at least two that were in churches and others that were in foreclosure, authorities said. He allegedly lured his marks with attractive offers between October 2014 and May 2015.

Stern, who sometimes acted as a real estate agent and as an attorney — although he was neither — used the stolen loot for fancy cars, a country club membership and other personal expenses, prosecutors said.

"This defendant allegedly went so far as to open a brick-and-mortar business to lure potential victims," Manhattan District Attorney Cy Vance Jr. said.

Stern pleaded not guilty to scheme to defraud and grand larceny charges in Manhattan Supreme Court. Justice Gregory Carro set bail at \$500,000 cash or \$750,000 bond.

**TESTIMONY AT THE JOINT HEARING OF THE
NYC COUNCIL COMMITTEE ON HOUSING & BUILDINGS AND THE
COMMITTEE ON FINANCE**

Examining the City's Deed Theft and Deed Fraud Crises

Richard Flateau

October 13, 2020

My name is Richard Flateau and I am an owner of 1424 Fulton St., Brooklyn, NY. I am also a small business owner, former President and Chairman of the Bedford-Stuyvesant Real Estate Board and current Chairman of Community Planning Board #3, Brooklyn.

Housing and Buildings Committee Chair Cornegy and Finance Committee Chair Dromm, thank you for allowing me to testify today. You are having this hearing at the right time because it is likely that the financial distress due to the disparate economic impacts of COVID-19 will make property owners, particularly property owners of color, more susceptible to fraudulent scammers.

I was one of the victims of Mr. *Aderibigbe Ogundiran* who was sentenced in May 16, 2018 for crimes involving multiple properties in Kings County. Mr. Ogundiran forged my signature on a Power of Attorney and filed that fraudulent document with the New York City Register's Office on November 10, 2016. Mr. Ogundiran also had my forged signature fraudulently notarized. The next day, November 11, 2016, I awoke to an alert of his fraud with an email from ACRIS (Automated City Register Information System) indicating that someone had recorded documents against my property. I took action immediately by filing a complaint, online, with the Brooklyn District Attorney's Office and the NYC Sherriff.

As a result of Mr. Ogundiran's actions, my business and personal relationships were put under tremendous stress. His actions also caused psychological harm as I was not certain for several months, whether the person or persons involved with forging my signature had also attempted to steal my identity. Fortunately, because I am a seasoned real estate professional and a community activist, I was able to quickly leap into action to mitigate the psychological, emotional and financial damage Mr. Ogundiran wrought.

I was able to call a press conference with the help of NYC Councilmember Robert Cornegy and with the support of the NAACP, Brooklyn Legal Services, State Senator Velmanette Montgomery's Office and the Bedford Stuyvesant Real Estate Board. That publicity helped to bring Mr. Ogundiran to justice.

Mr. Ogundiran targeted a total of six properties with his fraudulent schemes and many of the other owners were probably less equipped to deal with the harm caused by his actions than I was.

I would like to publicly thank the NYC Sherriff's Dept. and the Brooklyn District Attorney's office for their diligent work in bringing Mr. Ogundiran to justice.

Policy / Legislative Recommendations

I strongly support NYC Council Reso. 1427 as well as Intros 1913 and 1919.

I would like to offer a few policy and legislative recommendations based on my experience in being a victim of property fraud.

1. **Mandate Notification of Recorded Property Documents**

The ACRIS notification system brought the fraud perpetrated against my property to my attention one day after it occurred. Notification of property owners whenever documents are recorded against their property should be required and automatic, with notice given by email and regular mail.

2. **Enhance the Security of Notary Information**

It is very easy to get someone's notary identification number online. The security of notary license numbers can be enhanced simply by omitting most of the license number online and only listing the last four digits.

3. **Increase Penalties for Fraud involving notaries**

One of the hallmarks of our real property transfer system is that signatures must be notarized in order for documents to be recorded. In my case, my forged signature was fraudulently notarized. The state legislature and NYC Council should consider increasing the civil and criminal penalties for fraud involving notaries.

4. **Enhance the Security and Integrity of the Recording Process**

Title companies are involved in the vast majority of real estate transactions. In my case, an individual, not a title company bought a fraudulent Power of Attorney in for recording. My suspicion is that the percentage of fraudulent property transactions is higher for documents recorded by individuals than for documents recorded by title companies. If that is the case, then extra scrutiny should be placed on any documents not recorded by title companies.

The integrity of the recording process could be further strengthened if resources were put into training workers in local county clerks' offices to become better at spotting unusual transactions which might be fraudulent.

Finally, it will be easier to catch fraudsters if all persons delivering documents to County Clerk's offices were videotaped.

Thank you for giving me the opportunity to provide this testimony.

**ATTENTION: The Committee on Housing & Buildings
and The Committee on Finance**

Dear Sirs,

Please find attached the Francis Group Holding Corp. testimony regarding the above-captioned matter. Unfortunately, we were not able to testify via video conferencing and take this opportunity to submit our detailed testimony concerning the theft of our three buildings.

Attached are the following:

1. Our Testimony (Three building theft)
2. Our deeds to the properties
3. Series of attachments corroborating events and exchanges between parties involved
4. Newspaper reports of Dan Stern's arrest

Please feel free to contact me directly at (347) 539-7364 or (718) 493-4500 if you have any questions.

Best regards,

Roger Francis
Pres. Francis group Holding Corp.
1194 Nostrand Avenue
Brooklyn, New York 11225
(718) 493-4500 tel.
email: rogerfrancis511@gmail.com

I am cell phone challenged at the moment, but you can e mail me at gmk1059@gmail.com or text me at 203-253-3389.

Thank you.

Please confirm receipt of this transmission.

Hope things are well.

Gerard



Linden Contract 8 15 13 with comments.docx
294.1kB

Fw: 180 Linden Boulevard Contract

From: maria malave (mariamalave364@yahoo.com)

To: fghe38@yahoo.com

Date: Saturday, March 22, 2014, 9:33 AM EDT

On Tuesday, August 27, 2013 4:08 PM, maria malave <mariamalave364@yahoo.com> wrote:

Dan:

I hate these proposals which are unrealistic. What does Gerard get out of it? This property is in foreclosure and has a receiver.

Have you spoken to Roger, the "OWNER"

I will not propose something like this to him.

Maria

----- Forwarded Message -----

From: Gerard Karlen <gmk1059@gmail.com>

To: mariamalave364@yahoo.com; Gerard Karlen <gmk1059@gmail.com>

Sent: Thursday, August 22, 2013 6:38 PM

Subject: 180 Linden Boulevard Contract

Hi, Maria.

Transmitted herewith is the contract for 180 Linden Blvd. The contract was marked up by purchaser's attorney and sent to Dan last night.

Dan reviewed it and approved it.

Let me know what you think.

The purchaser's attorney's information follows:

Arthur Gutman, Esq.

Gutman Weiss, P.C.

2276 Sixty-Fifth Street, 2nd Floor

Brooklyn, N.Y. 11204

(718) 975-0781.

I looked up the firm on the web and found what appears to be an old address and old phone number. The old number is (718) 259-2100, if the above number does not work.

Assuming that you are all right with the contract, the purchaser wants to wire the money directly into your account.

As I explained earlier, I am deeply involved in this transaction and need it to go through for a number of reasons. The purchaser is a legitimate owner with more than 200 buildings.

Please accept their wire transfer, assuming that you approve of the contract.

Once again, I apologize for not getting it to you for review in the first instance. I thought that Dan had done it and take full responsibility for the mistake.

RE: Meeting on Monday

From: Roger Francis (fghc38@yahoo.com)

To: jnbcapital@aol.com

Date: Saturday, March 22, 2014, 12:06 PM EDT

Joe,

The meeting is scheduled for Monday, 4:30 PM at 1479 East 34th Street, Brooklyn. The meeting will be with Alex Levkovitch. Could you please confirm ?

Thanks,

Roger

Fwd: Linden Ave

From: jnbcapital@aol.com

To: fghe38@yahoo.com

Date: Saturday, March 15, 2014, 7:33 PM EDT

From: ernestkalaba@yahoo.com

To: gmk1059@gmail.com

CC: jnbcapital@aol.com

Sent: 8/15/2013 1:08:53 P.M. Eastern Daylight Time

Subj: Linden Ave

Gerard,

This is my contact info. As per our conversation ,please send me the contract and i will forward to my clients for review. ernestkalaba@yahoo.com ..

We look forward to working with you to finalize and close this deal.Thank you.

Regards,

Ernest Kalaba 203-676-3369

URGENT

From: maria malave (mariamalave364@yahoo.com)

To: fghc38@yahoo.com

Date: Saturday, March 22, 2014, 9:23 AM EDT

ROGER THIS IS MARIA MALAVE, I NEED TO SPEAK TO YOU URGENTLY PLEASE GIVE ME A CALL.

Y PHONE CONTACT WERE ERASED AND I NEED TO TALK TO YOU REGARDING AN IMPORTANT MATTER.

MY CELL NUMBER IS 646 713-6651 IF I DO NOT PICK UP TRY TO TEXT ME WITH YOUR CELL IF POSSIBLE.

I AM IN MY MOTHER' S BECAUSE SHE CAME OUT OF THE HOSPITAL YESTERDAY. I AM GOING TO SEND YOU SOME E-MAILS THAT I RECEIVED AND I NEED TO TALK TO YOU.

MARIA MALAVE

March 15, 2014

NOTICE OF FRAUD AND RESCISSION

Dear Mr. Stern:

We have discovered that all of our dealings involving you have been fraudulent. We have discovered that you have fraudulently induced us to execute various documents that have caused Francis Group Holding Corp. ("FGHC") to sustain damages and allowed you to profit at our expense. Based on such discovered fraud, we are hereby rescinding any and all documents that we have executed in connection with your fraud, including but not limited to: (i) any deeds that purport to transfer FGHC's interest in the properties known as 180 Linden Blvd., 287 Clarkson Ave., and 394 Rutland Road (the "Properties"); (ii) any agreements that purport to give you ownership of any of the corporations that FGHC's interest in the Properties may have transferred to: 180 Linden Blvd. Corporation, 287 Clarkson Avenue Corp. and 394 Rutland Road Corp. (the "Corporations"), including the agreement purporting to transfer the stock of such Corporations after financing, which agreement was never countersigned by you; and (iii) any other agreement whether known to us or not involving either the Properties or the Corporations.

Be guided accordingly. We reserve all rights.

FRANCIS GROUP HOLDING CORP.

Francis Group Holding Corp.

180 Linden Boulevard, Brooklyn, NY

August , 2013

New York City Department of
Housing, Preservation and Development
New York, NY

Re: 180 Linden Boulevard
Brooklyn, NY
HPD Registration No. 338303

To Whom This May Concern:

Francis Group Holding Corp. owns real property located at 180 Linden Boulevard, Brooklyn, NY. Upon information and belief, the correct HPD Registration Number is 338303.

On behalf of Francis Group Holding Corp., _____ is hereby authorized to have full access to all DHCR Registrations and other matters of record with HPD or the DHCR.

Sincerely,



Roger Francis

President

Francis Group Holding Corp.

Re: #8 REAL ESTATE FRAUD - Fw: Fwd: Fw: 180 Linden Boulevard

From: Roger Francis (fghc38@yahoo.com)

To: newyork@fbi.gov

Date: Tuesday, May 27, 2014, 2:22 PM EDT

#8 REAL ESTATE FRAUD

Roger

On Wednesday, April 23, 2014 9:47 AM, Roger Francis <fghc38@yahoo.com> wrote:

On Saturday, March 15, 2014 3:33 PM, "Jnbcapital@aol.com" <Jnbcapital@aol.com> wrote:

From: ernestkalaba@yahoo.com
To: jnbcapital@aol.com
Sent: 8/15/2013 8:46:59 P.M. Eastern Daylight Time
Subj: Fw: 180 Linden Boulevard

Regards,

Ernest Kalaba 203-676-3369

Ernie:

The contract and DHCR registrations for 180 Linden Boulevard are transmitted herewith.

Please verify receipt.

Thank you.

Gerard Karlen

 Linden
670.7kB

 Linden
2.3MB

**HISTORY OF THE THEFT OF THREE PROPERTIES
OWNED BY FRANCIS GROUP HOLDING CORP.**

Francis Group Holding Corp.
1194 Nostrand Avenue
Brooklyn, NY 11225

PRINCIPLES

Roger Francis, President
Rudy Francis, Vice President
Roy A, Francis, Secretary
1194 Nostrand Avenue
Brooklyn, NY 11225
Tel. (718) 493-4500
Cell (347) 539-7364
rogerfrancis511@gmail.com

PROPERTIES OWNED BY FRANCIS GROUP HOLDING CORP.

- 1) 287 Clarkson Avenue, Brooklyn, New York 11226 purchased 1962
8 Units
- 2) 180 Linden Boulevard, Brooklyn, New York 11226 purchased 1968
36 Units
- 3) 394 Rutland Road, Brooklyn, New York 11225 purchased 1985
15 Units with one commercial store

Submitted to: The Committee on Housing & Buildings
And The Committee on Finance

Francis Group Holding Corp. submits the following information regarding the theft of our three properties. We are available for any further details that may be requested.

WE HAVE NEVER INTENDED OR ATTEMPTED TO SELL OUR BUILDINGS THAT HAVE BEEN IN OUR FAMILY SINCE 1962.

Observations: of the Bankruptcy Court proceedings:

Roger Francis, Rudolph Francis and, Roy Francis, principals of Francis Group Holding Corp. assert that Judge Elizabeth Stong did us a great injustice by not fully hearing our side of the case. **Our case is also about a criminal matter of deed theft and Fraud.**

1. Judge Stong allowed The Rally Group to enter our case and put in a claim against us in the amount of \$1,700,000.00 although we had never met them or transacted any business with them regarding our three buildings. Further according to their deposition, they never did due diligence or even checked with ACRIS. Our properties were all listed under ACRIS. They could have located the legitimate owners of the three buildings.

2. Judge Stong ordered that all sides take depositions. She did not follow through with her order that the note holder's, David Berger and Modechai Spera take their depositions as she had ordered. All other parties complied. Fraudulent activities would have surely been revealed through deposing David Berger and Mordechai Spera.

The foregoing actions on the part of Judge Stong and her refusal to allow our attorney Jeffrey Rosenberg equal time to present our case restricted our ability to defend ourselves by neglecting to take into account that there were numerous fraudulent activities perpetrated against Francis Group Holding Corp. by Dan Stern, The Rally Group principal Ralph Milstein and his attorney Alex Lefkowitz, as well as Gerard Karlin, , David Berger and Mordechain Spera.

Participants in this matter:

Miriam Perez – Introduced us to Dan Stern and subsequently informed us that Dan Stern was an imposter (not an attorney) and that she was duped by him as well.

Dan Stern – Thief posing as an attorney.

Maria Malave – Attorney associate of Dan Stern who was involved with the sale of our properties representing Dan Stern in the contract regarding the buildings.

Gerard Karlin – THIEF -Attorney associate of Dan Stern who solicited our buildings for sale.

Ralph Milstein – Knowingly made a deal with Dan Stern to purchase stolen property, knowing that Dan Stern was not the owner.

Alex Lefkowitz – Ralph Milstein's attorney who aided and abetted

Ralph Milstein in the fraudulent purchase of our three buildings

David Graubart – Ralph Milstein’s lawyer who contacted us to represent FGHC and later brings a case against FGHC.

David Berger – Mordechai Spera the note holders for our buildings gives Dan Stern an IOLA check in the amount of \$180,000.00 to repay The Rally Groups deposit

The note for 180 Linden Boulevard is purchased from the bank by 12-18 Walworth Street, LLC, principal David Berger, and Mordechai Spera.

The notes for 287 Clarkson Avenue and 394 Rutland Road are also purchased by SDF8 CBK, LLC., principal David Berger, and Mordechai Spera.

Dan Stern:

We meet Dan Stern through Ms. Perez, a former loan officer with Bank of America. They subsequently form a real estate company ME Perez and Associates engaged in property management and refinancing real estate properties with offices at 1375 Broadway, NYC., later moving to Wadsworth Avenue in Washington Heights. The main purpose of engaging ME Perez Associates and Williams Associates was to obtain refinancing for the three buildings. **We made it clear from the outset that we were not interested in selling our buildings.**

The refinance:

Dan Stern creates three new entities instead of the single entity FGHC and indicated that it would be easier to refinance each building individually. Our previous attorney Jeffrey Rosenberg had also suggested we replace the single entity FGHC with three new individual corporations to limit liability and for refinancing. The corporations were:

180 Linden Boulevard Corp.,
287 Clarkson Avenue Corp.
394 Rutland Road Corp.

Dan Stern introduced us to Attorney Maria Malave

Dan Stern introduced us to Attorney Maria Malave, regarding another matter. In conversation, **explained to her that we were not interested in selling our buildings (a point we made clear to everyone that we interacted with regarding our real estate).** She told my brother Rudolph and myself that “Dan Stern has a deed”. The deed turned out to be the secret sale of our three buildings to The Rally Group.

Dan Stern introduced Attorney Gerard Karlin to us

Attorney Gerard Karlin filed bankruptcy while Dan Stern procured a refinance of the buildings. In the following email sent to us by Maria Malave, Gerard Karlin attempts to close a deal on the sale of our building 180 Linden Boulevard to JNB Capital unbeknownst to us.

From: gmk1059@gmail.com
To: Jnbcapital@aol.com
Sent: 8/16/2013 7:41:30 A.M. Eastern Daylight Time
Subj: 180 Linden

Good morning, Joseph.

I need to know by 12 PM whether your buyer is going through with the deal.

There is a back up offer (actually more than one) waiting in the wings.

I have not said anything re: first buyer pulling out.

Please keep in contact this morning. It sounded like Ernie did not know about first deal and I did not want to break confidence.

If your guys want it, contract and check must be delivered to buyer's atty today.

Let me know.

Gerard
Sent from my Verizon Wireless BlackBerry

Joseph Bazur mentioned in the email had employed Dan Stern previously. JNB Capital also supplied us emails between themselves and Dan Stern/Gerard Karlin) which are in the possession of our attorney:

Jeffrey Rosenberg, Esq.
1399 Franklin Avenue, Suite 200
Garden City, New York 11530
(516) 714-3384 Ph
(516) 208-2159 Fax

Approximately a week before the foreclosure sale of our properties Dan Stern purports having a refinance in place. Our attorney Umar Cheik continues to discuss the refinance with Dan Stern. Two days before the actual auction/sale of our buildings Dan Stern disappears, and we cannot reach him. We realize that Dan Stern had strung us along up until the last day before they secretly put up our buildings for sale, With no other option left, we were forced to file a pro-se bankruptcy in order to save the buildings from auction sale the next day.

Two weeks after filing bankruptcy, our attorney, Umar Cheikh contacted us that he ~~has~~ met someone who would be willing to “help us”. We, Rudolph and Roger Francis, met with The Rally Group, and their attorney Alex Lefkowitz at his office. The Rally Group turned out to be the buyer who went into contract with Dan Stern to purchase our three buildings. Our meeting was on March 24th, 2014 at 1479 East 34th Street, Brooklyn, New York,

Meeting with The Rally Group.

The Rally Group were the buyers of our buildings

The following were present at the meeting:

Roger Francis, FGHC

Rudolph Francis, FGHC

Joseph Bazar, JNB Capital

Alex Lefkowitz, Attorney for the Rally Group

Ralph Milstein, principal of The Rally Group admits to us that they were scammed by Dan Stern. Our response to them was “Why didn’t you go to ACRIS and check the ownership?” We also asked them if they went to the DA’s office to report the fraud – no answer. We felt this was totally bogus, especially with their attorney present who had no comments.

It was at this meeting that we learned from Ralph Milstein that Dan Stern had entered into a contract with them to sell them our three buildings. Unbeknownst to us, Ralph Milstein had visited our buildings with Dan Stern and inspected them.

Ralph Milstein and his attorney Alex Lefkowitz informed us that they paid Dan Stern a deposit of \$180,000.00 on 180 Linden Boulevard. According to the contract in our possession, the actual sales price of the building was \$3,200,000.00. This is well below market price for a 36 family building, suggesting to us that Dan Stern wanted to unload the our buildings ASAP.

Additionally, they paid Dan Stern a deposit of \$75,000.00 ~~as deposit~~ on both 287 Clarkson Avenue and 394 Rutland Road. The Rally Group demanded refund of their deposits. Dan Stern did not have the deposit to repay them so he went to the note holders, David Berger and Mordechai Spera and got a \$180,000.00 IOLA check to pay back The Rally Group’s deposit for the purchase of 180 Linden Boulevard. Our attorney Jeffrey Rosenberg has an actual copy of the check. The note holders David Berger and Mordechai Spera also knew that FGHC were the owners of the three buildings.

Deed Theft

Once becoming aware of the above improprieties ~~this~~, we reacted by sending Dan Stern a Notice of Recission (attached) and transferred the three deeds back into our original name FGHC, (We felt that Dan Stern was actively selling our buildings and that there were possibly other entities with deeds to our buildings who might be attempting to sell them as well.

One of the lenders that we contacted to refinance our buildings was Mr. Joseph Bazur of JNB Capital. Through Mr. Bazur, we learned that he had previously employed Dan Stern and was familiar with him as well as Attorney Gerard Karlan. Dan Stern and Gerard Karlan had contacted Joe Bazur to solicit a deal for our buildings. (JNB Capital also supplied us a series of emails between themselves and Dan Stern and Gerard Karlan,

Attorney Maria Malave also sent us a series of emails regarding her association with Dan Stern and his sale of our three buildings. One email read "I don't like this Dan, does Roger know about this", referring to Dan Stern going into contract with the Rally Group for the sale of our three buildings. Ms. Malave was the attorney who represented Dan Stern for the sale of our buildings. Another one of the emails she sent us contained the attached contract between Dan Stern and The Rally Group with a scribbled signature that purports to be my signature, (a forgery), and a letter to the New York City Department of Housing Preservation and Development to obtain access to all DHCR Registrations and other matters of record with HPD or The DHCR. (also a forgery - copy attached). We have never used 180 Linden Boulevard address as our location. It has always been 1194 Nostrand Avenue.

Depositions:

During the bankruptcy hearing, Judge Stong orders all sides to take depositions. All parties are deposed except the Noteholders, David Berger and Mordechai Spera. I heard David Berger tell his attorney, Mr. Liebowitz, that " I don't care who you get, I am not taking any deposition," and apparently his partner Mordechai Spera refused to be deposed as well. Judge Stong ruled that all three buildings go to the noteholders.

Roger and Rudolph assert is that David Berger and Mordechai Spera made a FRAUDULENT deal with Dan Stern to buy our buildings. WHY DID THEY GIVE DAN STERN \$180,000.00??? THEY WERE OBVIOUSLY HOLDING A CONTRACT BETWEEN THEMSELVES AND DAN STERN. THAT IS WHY NEITHER ONE OF THEM WANTED TO BE DEPOSED!

The DA's office:

Within a week after the judge's ruling, we went to the DA's Office to meet with ADA Richard Farrell, Real Estate Fraud Department.

During our first visit, he concluded that we had two points going for us. To our surprise, he knew Dan Stern from a previous conviction and produced a large blown-up photo of Dan Stern already known by him to be a real estate fraudster. Dan Stern had previously been arrested for deed theft and was jailed in 2003 or 2005.

Shortly after we received a phone call from Joseph Bazur informing us that Dan Stern had just been arrested for the theft of five buildings in Harlem, including two churches. (Attached). We contacted the Manhattan DA's office and met with the prosecutor, Ms. Nashonme Johnson, ADA Financial Fraud Bureau. We gave her information regarding our case involving Dan Stern.

Our buildings have been in our family for over 58 years and have been stolen.

As a side note, we have recently checked ACRIS and found that all recorded history pertaining to 287 Clarkson Avenue and 394 Rutland Road has been wiped clean. There is no trace of the buildings' existence in either listing.

Information regarding 180 Linden Boulevard shows some history. All previous information has been wiped clean.

For your reference, our Block and lot numbers are:

180 Linden Boulevard Block 5088 Lot 12
287 Clarkson Avenue Block 5057 Lot 58
394 Rutland Road Block 4809 Lot 41

ATTACHMENTS:

Email - #7 Earnest Kalaba to Gerard Karlin
Email - #4 Maria Malave Urgent Contact regarding scam
Email - #1 Maria Malave to Dan Stern
Email - #2 Meeting Lefkowitz
Email - #3 JNB Capital Gerard Karlin
Email - Gerard Karlin DHCR registrations
#5 Notice of Fraud and Recission
#6 Dan Stern Forgery HPD letter
New York City Department of Housing Letter
#8 Dan Stern - Building Fraud
#9 Dan Stern - Man with fake Harlem real estate business
#10 Dan Stern - City Island Man sentenced in Real Estate Scam
#11 Fake Real Estate Agent



WRITTEN TESTIMONY ON

**EXAMINING THE CITY'S DEED THEFT AND
DEED FRAUD CRISIS**

PRESENTED TO:

**THE NEW YORK CITY COUNCIL
COMMITTEE ON FINANCE &
COMMITTEE ON HOUSING AND BUILDINGS**

PRESENTED BY:

**BELINDA LUU
MOBILIZATION FOR JUSTICE, INC.**

HEARING DATE:

October 13, 2020

Mobilization for Justice, Inc.
100 William Street, 6th Floor
New York, NY 10038
212-417-3700
www.mobilizationforjustice.org

To Chairs Daniel Dromm and Robert Cornegy Jr., and the members of the Committees on Finance and Housing and Buildings, thank you for holding this public hearing on deed theft, one of the most pressing issues facing senior homeowners and homeowners of color in New York City today. My name is Belinda Luu, and I am a Senior Staff Attorney in the Foreclosure Prevention Project at Mobilization for Justice, Inc. (MFJ).

MFJ envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised, or have disabilities. We do this by providing the highest quality direct civil legal assistance, conducting community education and building partnerships, engaging in policy advocacy, and bringing impact litigation. We assist more than 10,000 New Yorkers each year in the areas of disability rights, children's rights, economic justice, and housing rights, benefitting over 25,000. MFJ launched its Foreclosure Prevention Project in 2008, in the aftermath of the economic recession and foreclosure crisis. A significant majority of our clients are persons of color, including seniors, veterans, persons with mental and physical disabilities, and working poor New Yorkers.

I. Homeownership and the Racial Wealth Gap

Preserving homeownership in communities of color is a vital component of racial and economic equality. According to 2016 Federal Reserve data, the median net worth of Black households (\$17,600) is one-tenth the wealth of white households (\$171,000), while the median net worth of Latinx households lags similarly far behind (\$20,700).¹ This racial wealth gap is the lasting consequence of slavery, segregation, redlining, and institutionalized racism. Now, amid a global pandemic, these deep-rooted inequities have been laid bare by COVID-19. Among other

¹ Board of Governors of the Federal Reserve System, *Recent Trends in Wealth-Holding by Race and Ethnicity: Evidence from the Survey of Consumer Finances, Accessible Data* (2016), available at <https://www.federalreserve.gov/econres/notes/feds-notes/recent-trends-in-wealth-holding-by-race-and-ethnicity-evidence-from-the-survey-of-consumer-finances-accessible-20170927.htm#figure1>.

factors, social determinates of health and overrepresentation in essential jobs have led to disproportionately high infection and mortality rates for persons of color in New York City and across New York State,² leaving countless families who have lost income-earners and caretakers in the lurch. Unemployment rates have also been disproportionately high for persons of color,³ who are overrepresented in low wage occupations and deemed most dispensable in layoffs. While unemployment insurance and the federal CARES Act have provided temporary relief to some, many are excluded from such relief because of immigration status. Without a financial cushion, families of color are least able to weather an economic storm that has no foreseeable end in sight.

Homeownership plays a vital role in mitigating this wealth gap. For families of color, a home is generally their only wealth accumulating asset and their only opportunity for intergenerational wealth. Studies have determined that homeownership constitutes 92% of net worth for Black families and 67% for Latinx families, in contrast to white families, for whom homeownership represents only 58% of net worth.⁴ As a result of these disparities, deed theft and deed fraud scams are particularly harmful to communities of color. Homeowners who are seniors and have limited English proficiency are even more vulnerable, especially those in rapidly gentrifying neighborhoods like Brooklyn.

II. Deed Theft Scams

On February 1, 2016, I testified before the New York City Council about emerging real property scams. In representing low- to moderate-income homeowners, MFJ staff found that

² See New York State Department of Health, *NYS COVID-19 Tracker: Fatality Data* (October 2020), available at <https://covid19tracker.health.ny.gov/views/NYS-COVID19-Tracker/NYSDOHCOVID-19Tracker-Fatalities?%3Aembed=yes&%3Atoolbar=no&%3Atabs=n>.

³ See Economic Policy Institute, *Black Workers Face Two of the Most Lethal Preexisting Conditions for Coronavirus—Racism and Economic Inequality* (2020), available at <https://www.epi.org/files/pdf/193246.pdf>.

⁴ Peter Drier, *et. al*, “Underwater America: How the So-Called Housing Recovery is Bypassing Many American Communities,” Haas Institute for a Fair and Inclusive Society, May 2014, available at http://diversity.berkeley.edu/sites/default/files/HaasInsitute_UnderwaterAmerica_PUBLISH_0.pdf.

scammers increasingly looked beyond outright deed forgery, using creative schemes for targeting vulnerable homeowners. We posited that such schemes were innovative responses to the public's increased attention to standard deed theft. For example, one of my Brooklyn clients was victimized by a contract buyer scam, whereby she did not execute a deed transfer but had unknowingly signed a contract of sale—a promise to sell her property at a later date. A 79-year-old immigrant from Haiti with limited English proficiency, Ms. C thought she was signing documents necessary to secure public assistance, but in fact had agreed to sell her home for a mere fraction of its fair market value. Ms. C had worked tirelessly to purchase her home in Crown Heights and achieve the American dream. As an elderly woman in financial distress who spoke limited English, she was also a prime target for scammers seeking to benefit from the significant equity that had accumulated in her home due to rapid gentrification. Later, two different limited liability companies (LLCs) sought to use the judicial process to enforce the fraudulent contract of sale, seeking specific performance relief against Ms. C in order to force her to give up her home for a small fraction of its actual worth.

Over four years later, new deed theft and equity stripping schemes continue to emerge, all with the goal of preying on vulnerable homeowners and exploiting skyrocketing home values in historically Black and brown neighborhoods. For example, another one of my Brooklyn clients was convinced to transfer title to her East Flatbush home to a sham LLC, with the promise that she would retain control of the LLC and ownership of her home. Similarly, Ms. B was a Caribbean immigrant who did not understand the legal consequences of the documents she was told to sign. In addition to the deed transfer, Ms. B also unknowingly assigned the shares of the LLC to a hard money lender, who later attempted to evict Ms. B from her own home. Like in Ms. C's case, the scammers attempted to force Ms. B out of her home under the shroud of a formal legal process.

Without intervention from our elected officials and sufficient resources to combat these scams, MFJ believes that those intent on flipping homes for a profit will continue to adapt and invent new ways of uprooting vulnerable populations from the very communities they have built.

III. Recommendations

In light of the above, MFJ once again commends the City Council for convening this hearing and for committing to take steps to protect vulnerable homeowners—especially persons of color, seniors, and persons with limited English proficiency—from deed fraud scams. We are committed to working with the City Council to better protect homeowners and preserve long-term affordable homeownership in New York City, particularly in communities of color grappling with systemic racism, gentrification, and the continued devastating economic impacts of COVID-19. MFJ supports Resolution 1429, calling on New York State to adopt more stringent standards around corporations’ names that mimic government agencies, and Resolution 1430, calling on New York State to designate Kings County a cease and desist zone and establishing an affirmative defense to violations of non-solicitation orders. MFJ reserves comment on Resolution 1927, calling for reforms to New York State notary laws.

MFJ also urges the City Council to dedicate funding to housing counseling and legal services organizations who can help homeowners fight back against these scams, to preserve both their homes and their equity. But deed theft cases are exceptionally complicated, time intensive, and are often appropriately referred to law enforcement agencies equipped with the resources to properly investigate them. Although the New York Attorney General has made gallant efforts to address these systemic issues, most recently by launching the “Protect Our Homes” initiative, the AG’s ability to handle individualized complaints is extremely limited. Equipping local non-profit

legal services providers like MFJ with the resources necessary to defend and prosecute these actions is an integral component of protecting New York City homeowners.

Thank you again for the opportunity to provide this testimony. If you have any questions, please contact Belinda Luu at bluu@mfjlegal.org.

CITY ISLAND MAN SENTENCED IN REAL ESTATE SCAM

**111 Dr. Martin Luther King, Jr. Blvd.
White Plains, NY 10601
Tel: (914) 995-3586
Fax: (914) 995-2116**

Jan. 24, 2017 -- Westchester County District Attorney Anthony A. Scarpino, Jr. announced today that Daniel Stern (DOB 09/16/64) of 189 Cross St., City Island, NY, was sentenced on Friday, Jan. 20, 2017 by Judge Larry Schwartz to two to four years in state prison after being convicted of:

- one count of Grand Larceny in the Third Degree, a class “D” Felony.

On Sept. 21, 2015, the defendant, while falsely representing that he was an attorney, stole approximately \$31,000 from victim Joseph Bonnano in the City of New Rochelle.

Specifically, the defendant told Joseph Bonnano that he was an attorney and could represent Mr. Bonnano during the purchase of real property. The defendant received a \$40,000 cash down payment from the victim on Sept. 21, 2015 at the victim’s house.

Unbeknownst to the defendant, the victim video recorded the transaction. The defendant then used approximately \$31,000 of said funds for his own personal use. Forensic accounting showed the victim withdrawing the \$40,000 from the bank, but the defendant did not deposit the cash into a bank account.

The defendant returned \$9,000 to the victim and in doing so admitted to the original theft amount.

The New Rochelle Police Department conducted the initial investigation working jointly with the Westchester County District Attorney’s Office.

A Judgment and Order of Restitution in the amount of \$31,000 was issued in favor of the victim.

Assistant District Attorney Brian Conway and Assistant District Attorney Stephen Ronco of the Investigations Division prosecuted the case.



Daniel Stern

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

-----X

RANDAULL COBB,

Plaintiff,

-against-

JOEL KAUFMAN, MONROE UNIQUE HOMES, LLC,
JOHN DOE 1, JOHN DOE 2, JOHN DOE 3, DAVID
ROSENBERG, STATEBRIDGE COMPANY, LLC,
SEA & SUN GROUP, LLC, JOHN DOE 4 (A/K/A "MOSHE"),
and JOHN DOE 5 (A/K/A "ROB"),

Defendants.

-----X

STATE OF NEW YORK)
)
COUNTY OF KINGS)

Index No.:

Affidavit in Support

Subject Premises:
253 Monroe St.,
Brooklyn, N.Y. 11216
Block: 1813
Lot: 63

RANDAULL COBB, being duly sworn, deposes and says:

1. I am the Plaintiff in this action. I make this affidavit in support of my order to show cause application to, *inter alia*, rescind the sale of my property, cancel the deed I executed in favor of Monroe Unique Homes LLC at the behest of Joel Kaufman and enjoin Mr. Kaufman, Monroe Unique Homes LLC and Sea & Sun Group LLC from contacting me further.

2. I will explain here how it came about that I sold my home to Monroe Unique Homes LLC, and what has happened since then.

3. The first week of February, strange numbers called me on my personal cell phone. The first call was from Joel Kaufman, whom I had never given my personal contact information to, and when I asked him where he got my phone number from, he stated, "I pay thousands of

dollars to investigate people in foreclosure.” I spoke to him briefly but because I did not know him, I soon hung up the phone. Two days later, Mr. Kaufman came to my restaurant.

4. The second call was from a man by the name of David Rosenberg, who identified himself as a representative of Statebridge Company LLC (“Statebridge”), the servicer my loan for the past two years. He stated, “the note has been sold from Victoria Waterfall to another servicing company, and some gentlemen have inquired about your property, but you should not deal with them, deal with me. We’ll pay you \$40,000 to walk and leave the premises.” I adamantly refused and told him to speak to my attorney whose information was on file. He then stated, “I tried working with you, you will receive a welcome letter in the mail stating that a new company will be your new servicer, do not call Statebridge, we are no longer your servicing company.” He never told me who the new servicing company would be. He then gave Moshe, whom I later found out was a representative of Sea & Sun Group LLC, the new servicer, my contact information. Mr. Rosenberg stated, “I’m forwarding your contact information to a gentlemen named Moshe, who’s the holder of your note.” He called again, later in the same day, and told me that he sold the note of my property and to no longer speak to him concerning the property. He said that the new owner of the note would like to speak to me and that I would receive a statement from them as of today. I still have not received any documents from them.

5. In the week of January 27- February 2, 2013, several individuals (***Joel Kaufman and two other unknown individuals***) approached me, in my family restaurant, with offers to buy my property located at 253 Monroe St, Brooklyn, New York 11216. I have owned this property for over 7 years. Mr. Joel Kaufman stated that he was interested in the property, that there was a fraudulent mortgage on it and that they can help me. They also stated that the property is in the last stages of foreclosure and that it would be in my best interest to sell it. The individuals came

to my family restaurant, located at 602 Nostrand Avenue, Brooklyn New York 11216 and told me that they would like to buy the property because “that’s what they do” and that “they buy from distressed homeowners.” At this point, I felt threatened because he knew a lot of personal information about me; I felt he was too intrusive, especially when he said “if your family life is in trouble, we can help you with that too.” He also told me that I did not “have the financial means to keep this case going on in the court, and [I] may never get the property free and clear.” He said that I was in a mortgage scam, as if I was part of it. I made it clear that I was not part of any scam, that I was the one being scammed. I informed them that my matter is still active in court and that they should speak to my attorney, for whom I provided the contact information. But they kept persisting and stated that they would give me \$160,000 cash for the property and all I would have to do is to sign some paperwork.

6. I refused their offer, but they relentlessly continued to persist. In the process, Mr. Kaufman informed me that my attorney did not know what she was doing and that my case was going nowhere.

7. The very next day, Moshe and one of his partners, Rob, came to tell me at my family restaurant: (a) That they hold the note, (b) That I’m in default and the matter in the court is extremely severe, (c) That the note is fraudulent, and (d) That I could be involved in criminal activity concerning the mortgage. Moshe and his partner told me they will pay me “more than what anybody has offered me. They’ll beat any price” for the property and handle all the delinquencies, so that I wouldn’t have to go through this immense hardship.

8. Soon after I spoke to Mr. Kaufman again (the first man who came to my family restaurant) and it seemed he had been conversing with Moshe and his partners. Mr. Kaufman

explained to me that what Moshe and his partners told me was a lie, and that he really wants to help me save my home. He said that he would see to it that the bank does not rob me anymore.

9. Every couple days Mr. Kaufman started showing up at my family restaurant with bags full of cash. I felt as if he was bribing me. He insisted that I take the money in exchange for my property. I refused. Mr. Moshe and Rob also contacted me to work with them, but I refused. They persisted and came to the family restaurant, frequently, telling me that if I didn't cooperate with them they would tell the tenants to stop paying rent and vacate the premises. They said I should no longer speak to Mr. Kaufman because he has a track record of fraudulent deed transfers.

10. The whole situation was getting very burdensome. I did not know what to do.

11. I called my attorney, Ms. Nicholson, and she instructed me to give her the names of all the individuals; I was scared, nervous, and uneasy because they made me believe that Ms. Nicholson was incompetent and that nothing will be in my favor in the court. They made it seem like the only solution was monetary compensation, so that I would be able to move on.

12. In the month of February 2013, Mr. Kaufman came back, saying that he would help me to save my property. This is what I wanted to hear. He portrayed himself as someone who was going to help me, not to take my property away from me, so I began to trust him. A few days later Moshe and his partner Rob presented to me, at my home location, documentation of their ownership of the note and their company name as Sea & Sun Group, LLC.

13. Moshe told me that it would be best if I made an agreement with them. I refused their offer, telling them that I would not comply nor have any further conversation with them. Mr. Kaufman asked me for Moshe and his partners' direct contact numbers so that he could speak to them. I gave him the numbers he requested.

14. Further, Mr. Kaufman came to the family restaurant, waited for over two hours, and then told me to go with him to his attorney's office to discuss how severe my case was in the court. He informed me that the judge will not rule in my favor, leading to the bank robbing me for a second time. He expressed how he does not want this to happen. In the attorney's office, with his attorney Mr. Andrew Tilem Esq. present, Mr. Kaufman proceeded to yet again explain to me the "severity of my case" and took out from his long coat inside pocket a plastic grocery bag filled with stacks of tens of thousands of dollars [with the bank strip]. He then placed it on the table very innocently and told me to "look at it" and "count it." He then exclaimed, "just sign this paper so I could defend the issue with the bank." I refused to sign anything without thinking it through first. He said, "okay no problem, I'll wait till you say yes." He stated, "He's a good guy, everyone in the Jewish community knows him and they know he's a good guy, although you're not Jewish." He mentioned this because of the fact that I am not Jewish, and he is still "helping" me.

15. A week later, Mr. Kaufman, stopped by the family restaurant once more and insisted that I try to come to a conclusion about his offer. He said that he would drive me to his attorney's office, and that I should "forget the other guys, trust [him] on this, and forget Sea & Sun Group, LLC." After all of the pressure I agreed to go with him in his car. He drove to the Brooklyn Navy Yard and picked up a couple more men and then drove us to what turned out to be to his attorneys office, that of Mr. Andrew M. Tilem. Throughout the entire trip, the men spoke in what I thought was Hebrew or Yiddish, ; and Mr. Kaufman, from time to time would tell me, "we'll be there shortly." I was nervous because I felt ambushed.

16. However, they turned out to be very welcoming when we arrived to the attorney's office, and Mr. Kaufman said that my case is very severe and nothing is being done in court, and

his attorney agreed with everything he said, “we need you to work with us throughout this whole process, because what we will try to do is get everything clear with the bank, and if it doesn’t work, we need to reverse everything back to you, and the short sale on the property.” “No matter what, it will work well in your favor,” Mr. Kaufman said, “I am a man of my word, and I will give you this \$160,000 no matter what.” He asked me to sign a consent form to delay the matter concerning the property. The other man who drove with us asked me numerous questions, such as if I had any outstanding parking tickets/violations and if there were any smoke detectors in the home, as a way to verify my identity. Mr. Kaufman, in front of the man, told me to answer all the questions with the response of “no.” He handed me two sheets of paper and rushed me to sign without giving me a chance to read what it said. The entire time the stacks of money stayed right in front of me on the table. All three men got up at the same time, went to the front of the office where they started to pray loudly for about five minutes. Then Mr. Kaufman came back and said, “there you go, it’s yours,” referring to the money on the table. When they told me to take the money, Mr. Kaufman said to take out \$900.00 to pay his attorney for all of the Sundays he had come to my family restaurant and I had refused to go with him because the lawyer had given up that time. Mr. Kaufman put the rest of the money back in the plastic bag and escorted me out to his car. I did not verify the amount, nor did he count it in front of me, so I had no idea how much money was in the bag; it was only when I got to the family restaurant that I counted it, and discovered that there was only \$24,100.

17. The next day Rob (from Sea & Sun Group LLC) came to 253 Monroe Street, and informed all the tenants to no longer pay me any rent, and that the rent should be forwarded to them. This caused a great deal of problems between the tenants and me because they believed the paperwork Rob showed them saying they were the new owner of the note.

18. In the month of March I received several text messages from representatives of Sea & Sun Group LLC, stating that what I've done was illegal and that I had sold the property for \$140,000.

19. More recently, in late July 2013, Mr. Kaufman, sent me numerous texts and came to the family restaurant stating, **“I will pay Ms. Nicholson off, whatever she wants, because she does not know what she is doing, she handles small cases, not big ones, and this case is beyond her, when she gets big cases she gets confused, or I’ll take over your case and handle all the costs.”**

20. Mr. Kaufman has continued to harass me, by phone, text message and about a week ago in person at my family restaurant. When I refused to come out and speak with him he told me that he has an attorney on the case. He tried to guilt me into speaking with him by saying that it would only take a minute and he had been waiting for over an hour. When I still refused he text messaged me to ask if Ms. Nicholson had considered his “earlier request” (above) and said he would come back. When he comes to my family restaurant I feel as though I am being stalked. Over the last few weeks I had so much stress that I began having nightmares about him and losing my home.

21. I pray that this Court can grant me the relief that I understand is available to me as a victim of a foreclosure rescue scam under New York Real Property Law 265-a.

22. This roller coaster and turn of events have caused me a lot of emotional, physical and financial distress. Quite honestly, I have been having anxiety attacks every time I think I have to appear in the same room with Joel Kaufman and the attorneys for Sea & Sun. They have made me doubt my attorneys’ competence to handle this matter and commitment to my case.

23. Just last week, because of the stress, and probably being in a daze from the stress, I almost lost my life from an oncoming New York City bus (I am filing a police report).

24. I have been advised to seek medical treatment – and last week I met with Dr. Cori Stein.

25. Because of all this stress, I have caused some inconvenience to this Court by missing a conference in my foreclosure case, and I respectfully apologize to the Court for the fear that comes over me and for incurring your time.

Dated: Brooklyn, New York
August 14, 2013

_____/s/_____

RANDAULL COBB

Sworn to before me this
14th day of August, 2013

_____/s/_____
Notary Public

NYC man sentenced in \$31K New Rochelle real estate scam

[Matt Spillane](#), mspillane@lohud.com Published 12:43 p.m. ET Jan. 24, 2017

(Photo: Westchester County District Attorney's Office)

Daniel Stern impersonated a lawyer to swindle tens of thousands of dollars, but his phony legal acumen couldn't keep him out of prison, officials said.

The City Island man was sentenced on Friday to two to four years in prison for stealing about \$31,000 from a man in New Rochelle, the Westchester County District Attorney's Office said.

Stern, who had previously been convicted of one felony count of third-degree grand larceny, was also ordered to repay that amount to the victim.

Stern, 52, stole the money in September 2015 when he falsely identified himself as an attorney, officials said. He told the victim that he could represent him for a real estate purchase, and the victim gave Stern a down payment of \$40,000 in cash, they said.

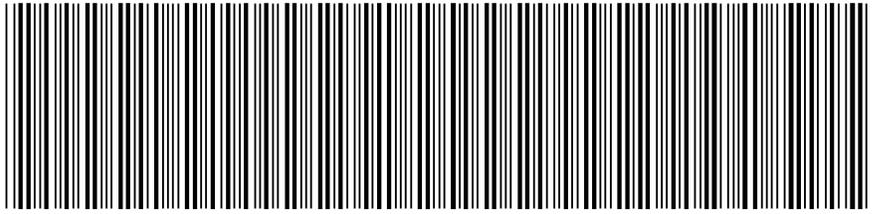
The victim secretly took a video recording of the transaction.

Stern then used about \$31,000 of that down payment for his own personal use, officials said. Stern later returned \$9,000 to the victim.

New Rochelle police conducted the initial investigation and worked with the DA's office on the case, which was prosecuted by Brian Conway and Stephen Ronco.

**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**

This page is part of the instrument. The City Register will rely on the information provided by you on this page for purposes of indexing this instrument. The information on this page will control for indexing purposes in the event of any conflict with the rest of the document.



2005092001604001003EC67B

RECORDING AND ENDORSEMENT COVER PAGE

PAGE 1 OF 3

Document ID: 2005092001604001

Document Date: 09-06-2005

Preparation Date: 10-20-2005

Document Type: DEED

Document Page Count: 2

PRESENTER:

LANDSTAR/COMMONWEALTH TITLE AGENCY
170 OLD COUNTRY ROAD, SUITE 506
PICKUP BY RSR
MINEOLA, NY 11501-4322
516-336-2020
TTARANTO@LANDSTARTITLE.NET

RETURN TO:

FRANCIS GROUP HOLDING CORP
1194 NOSTRAND AVENUE
BROOKLYN, NY 11206
LT9244

PROPERTY DATA

Borough	Block	Lot	Unit	Address
BROOKLYN	5057	58	Entire Lot	287 CLARKSON AVENUE
Property Type: APARTMENT BUILDING				

CROSS REFERENCE DATA

CRFN _____ or Document ID _____ or _____ Year _____ Reel _____ Page _____ or File Number _____

PARTIES

GRANTOR/SELLER:

RUDOLPH FRANCIS
287 CLARKSON AVENUE
BROOKLYN, NY 11226

GRANTEE/BUYER:

FRANCIS GROUP HOLDING CORP
1194 NOSTRAND AVENUE
BROOKLYN, NY 11225

FEES AND TAXES

Mortgage			Recording Fee: \$	47.00
Mortgage Amount:	\$	0.00	Affidavit Fee: \$	0.00
Taxable Mortgage Amount:	\$	0.00	NYC Real Property Transfer Tax Filing Fee:	
Exemption:			\$	165.00
TAXES: County (Basic):	\$	0.00	NYS Real Estate Transfer Tax:	
City (Additional):	\$	0.00	\$	0.00
Spec (Additional):	\$	0.00		
TASF:	\$	0.00		
MTA:	\$	0.00		
NYCTA:	\$	0.00		
Additional MRT:	\$	0.00		
TOTAL:	\$	0.00		

**RECORDED OR FILED IN THE OFFICE
OF THE CITY REGISTER OF THE
CITY OF NEW YORK**

Recorded/Filed 10-26-2005 16:57

City Register File No.(CRFN):

2005000600308



Annette McHill

City Register Official Signature

NYC HPD Preliminary Residential Property Transfer Form

THIS INDENTURE DATED September 6, 2005

between: RUDOLPH FRANCIS, by his heirs at law,
287 Clarkson Ave, Brooklyn, 11224 party of the first part,
and FRANCIS GROUP HOLDING CORP., located at
1194 Nostrand Avenue, Brooklyn, New York, party of the second part,

WITNESSETH, that the party of the first part in consideration of TEN DOLLARS and other valuable consideration paid by party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part, forever,

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND, WITH THE BUILDINGS AND IMPROVEMENTS THEREON ERECTED, SITUATE, LYING & BEING (see attached schedule "A")

PREMISES KNOWN AS: 287 Clarkson Avenue, Brooklyn, New York 11226

BEING & INTENDED TO BE THE SAME PREMISES CONVEYED TO PARTY OF THE FIRST PART BY DEED DATED May 9, 1963 & RECORDED ON May 10, 1963 IN LIBER 9122, PAGE 403. IN THE OFFICE OF THE CITY REGISTER, KINGS COUNTY

TOGETHER with all right, title and interest, if any, of the party of the first part of, in and to any streets and roads abutting the above-described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever except as aforesaid.

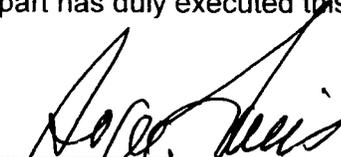
AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

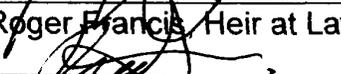
The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

B: 5057
L: 58



Roger Francis, Heir at Law


Rudolph Francis, Heir at Law


Roy Francis, Heir at Law

LT 9244.

STATE OF NY

SS:
COUNTY OF *WALTON*

On the _____ day of September 6, 2005, before me, the undersigned, a notary public in and for said state, personally appeared Roger Francis, Rudolph Francis and Roy Francis, heirs at law of Rudolph Francis personally known to me or provided to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies) and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

[Signature]

NOTARY PUBLIC

FRANCIS ALTER
Notary Public-State of New York
No. 01416070013
Qualified in Walton County
Commission Expires September 3, 2008
SEAL

BARGAIN & SALE DEED WITH COVENANTS AGAINST GRANTORS ACTS

Francis

TO

Francis Group Holding Corp.

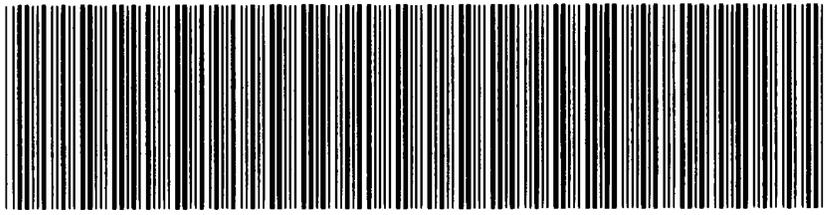
PREMISES: 287 Clarkson Avenue, Brooklyn, NY

SECTION:
BLOCK: 5057
LOT: 58
COUNTY: Kings

RECORD & RETURN TO:

**Francis Group Holding Corp.
1194 Nostrand Avenue
Brooklyn, New York 11206**

**NYC DEPARTMENT OF FINANCE
OFFICE OF THE CITY REGISTER**



2005092001604001003S08FA

SUPPORTING DOCUMENT COVER PAGE

PAGE 1 OF 1

Document ID: 2005092001604001

Document Date: 09-06-2005

Preparation Date: 10-20-2005

Document Type: DEED

ASSOCIATED TAX FORM ID: 2005090600055

SUPPORTING DOCUMENTS SUBMITTED:

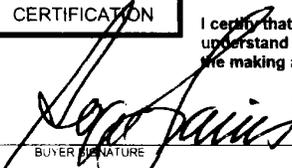
RP - 5217 REAL PROPERTY TRANSFER REPORT

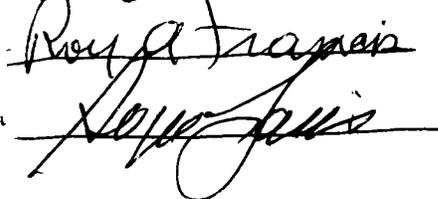
Page Count

1

CERTIFICATION

I certify that all of the items of information entered on this form are true and correct (to the best of my knowledge and belief) and understand that the making of any willful false statement of material fact herein will subject me to the provisions of the penal law relative to the making and filing of false instruments.

		BUYER		9.6.05		ROSENBERG		BUYER'S ATTORNEY	
BUYER SIGNATURE		DATE		LAST NAME		FIRST NAME			
281		CHARLES AVE		516		921-3838			
STREET NUMBER		STREET NAME (AFTER SALE)		AREA CODE		TELEPHONE NUMBER			
ROOSEVELT		NY		11226				SELLER	
CITY OR TOWN		STATE		ZIP CODE		SELLER SIGNATURE		DATE	


ROSEBERG


CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

REEL 657 PAGE 671

539c

THIS INDENTURE, made the 30th day of August, nineteen hundred and seventy three **BETWEEN** ISAAC SCHNEIDMESSER, residing at 162 East 17th Street, Brooklyn, N.Y.

party of the first part, and FRANCIS GROUP HOLDING CORP., a domestic corporation, having its principal offices at 1194 Broadway Avenue, Brooklyn, N.Y.

D.L. 5088
LOT 12

party of the second part,

WITNESSETH, that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at a point on the southerly side of Linden Boulevard (formerly Linden Avenue) distant 121 feet 3 inches easterly from the corner formed by the intersection of the southerly side of Linden Boulevard with the easterly side of Rogers Avenue, as said streets are laid out and opened; thence easterly along the southerly side of Linden Boulevard 75 feet to a point distant 2225 feet 8 inches westerly from the westerly side of Grove Road or Canarsie Road as laid out on Map of Linden Terrace Villa Plots, surveyed by George Justice, Marc 1868; thence southerly at right angles to Linden Boulevard, 159 feet; thence westerly parallel with Linden Boulevard, 73 feet 4-3/4 inches; thence northerly 159 feet 1/8 inch more or less to the southerly side of Linden Boulevard at the point or place of beginning. Said premises being known as 180 Linden Boulevard, Brooklyn, N.Y.

SUBJECT to a first mortgage reduced to \$92,484.39 and accrued interest.
SUBJECT to a second mortgage reduced to \$23,966.39 and accrued interest.
SUBJECT to a purchase money third mortgage in the sum of \$15,000.00, bearing even date, given to secure part of the consideration expressed in this deed and intended to be recorded simultaneously herewith.

SUBJECT to existing tenancies.

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; **TOGETHER** with the appurtenances and all the estate and rights of the party of the first part in and to said premises; **TO HAVE AND TO HOLD** the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid.
AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires.

IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Samuel J. [Signature]

Isaac Schneidmesser
Isaac Schneidmesser

STATE OF NEW YORK, COUNTY OF Kings

On the 30th day of August 19 73, before me personally came

Isaac Schneidmesser

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that he executed the same.

SHELLEY COLNICK
Commissioner of the State of New York
Certificate filed in Kings County
Commission Expires Sept. 1, 1974

STATE OF NEW YORK, COUNTY OF

On the day of 19 , before me personally came REEL 657 PAGE 672

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that executed the same.

STATE OF NEW YORK, COUNTY OF

On the day of 19 , before me personally came to me known, who, being by me duly sworn, did depose and say that he resides at No.

that he is the of

the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

STATE OF NEW YORK, COUNTY OF

On the day of 19 , before me personally came the subscribing witness to the foregoing instrument, with whom I am personally acquainted, who, being by me duly sworn, did depose and say that he resides at No.

that he knows

to be the individual described in and who executed the foregoing instrument; that he, said subscribing witness, was present and saw execute the same; and that he, said witness, at the same time subscribed his name as witness thereto.

REAL ESTATE STATE OF NEW YORK
BLOCK 5088 LOT 12
COUNTY OF KINGS

Bargain and Sale Deed
WITH COVENANT AGAINST GRANTORS AGEN

TITLE No. 24-73-2184

Isaac Schneidmesser

TO

Francis Group Holding Corp.

SECTION 16
BLOCK 5088
LOT 12
COUNTY OR TOWN Kings

Recorded By
USLIFE TITLE / New York
125 Maiden Lane
New York NY 10038

Return to

HAROLD STERN, Esq.
1308 Nostrand Avenue,
Brooklyn, N.Y.

Zip No. 11226

Recorded By
USLIFE TITLE / New York
125 Maiden Lane
New York NY 10038
Return to

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE
00000000
000053
SEP 6 1973
REC. FEE
TAX PAID
OFFICE OF CITY RECORDER
Kings County
RECORDED
Witness my hand
and official seal
CITY RECORDER

300-

Standard N.Y.B.T.U. Form 8002 4-68-20M—Mergin and Sale Deed, with Covenant against Grantor's Acts—Individual or Corporation. (single sheet)

CONSULT YOUR LAWYER BEFORE SIGNING THIS INSTRUMENT—THIS INSTRUMENT SHOULD BE USED BY LAWYERS ONLY.

THIS INDENTURE, made the 16th day of August, nineteen hundred and eighty-three BETWEEN FLORENCE GOLDSMITH, residing at 5537 11th Avenue North, St. Petersburg, Florida 33710; JOSEPH BLOOM, residing at 2990 N.W. 46th Avenue, Lauderdale Lakes, Florida 33319 and LILLIAN GITIN, residing at 7410 Margate Boulevard, Margate, Florida 33063

party of the first part, and

FRANCIS GROUP HOLDING CORP., having its principal place of business at 180 Linden Boulevard, Brooklyn, New York

party of the second part,

WITNESSETH, that the party of the first part, in consideration of Ten Dollars and other valuable consideration paid by the party of the second part, does hereby grant and release unto the party of the second part, the heirs or successors and assigns of the party of the second part forever,

ALL that certain plot, piece or parcel of land, with the buildings and improvements thereon erected, situate, lying and being in the Borough of Brooklyn, County of Kings, City and State of New York, bounded and described as follows:

BEGINNING at the corner formed by the intersection of the southerly side of Rutland Road and the Westerly side of New York Avenue; thence Westerly along the Southerly side of Rutland Road, 45 feet; thence Southerly parallel with New York Avenue, 100 feet; thence Easterly parallel with Rutland Road, 45 feet to the Westerly side of New York Avenue; thence Northerly along the Westerly side of New York Avenue, 100 feet to the corner the point or place of BEGINNING.

Being the same premises conveyed to FLORENCE GOLDSMITH, JOSEPH BLOOM and LILLIAN GITIN by deed, from David Wernick, Thelma Levine f/k/a Thelma Wernick, dated 5/5/59 and recorded 5/6/59 in Liber 8723 Cp 699

Said premises also known as and situate at 394 Rutland Road, Brooklyn, New York

TAX MAP DESIGNATION

Dist
Sec
Blk
Lots

TOGETHER with all right, title and interest, if any, of the party of the first part in and to any streets and roads abutting the above described premises to the center lines thereof; TOGETHER with the appurtenances and all the estate and rights of the party of the first part in and to said premises; TO HAVE AND TO HOLD the premises herein granted unto the party of the second part, the heirs or successors and assigns of the party of the second part forever.

AND the party of the first part covenants that the party of the first part has not done or suffered anything whereby the said premises have been encumbered in any way whatever, except as aforesaid. AND the party of the first part, in compliance with Section 13 of the Lien Law, covenants that the party of the first part will receive the consideration for this conveyance and will hold the right to receive such consideration as a trust fund to be applied first for the purpose of paying the cost of the improvement and will apply the same first to the payment of the cost of the improvement before using any part of the total of the same for any other purpose.

The word "party" shall be construed as if it read "parties" whenever the sense of this indenture so requires. IN WITNESS WHEREOF, the party of the first part has duly executed this deed the day and year first above written.

IN PRESENCE OF:

Handwritten signatures and names: Harold Strauss, Toby Zimmerman, August 24, 1983, Florence Goldsmith, Joseph Bloom, Lillian Gitin. Notary Public: TONY ZIMMERMAN, State of New York, No. 24-4653250, Qualified in Kings County, Commission expires March 30, 1985.

FLORIDA
STATE OF NEW YORK, COUNTY OF *Broward*

On the *16* day of August 1983, before me personally came

LILLIAN GITIN

to me known to be the individual described in and who executed the foregoing instrument, and acknowledged that she executed the same.



Charles K. Smith
NOTARY PUBLIC, STATE OF FLORIDA
COMMISSION EXPIRES 12/31/84

STATE OF NEW YORK, COUNTY OF

On the _____ day of _____ 19____, before me personally came _____ to me known, who, being by me duly sworn, did depose and say that he resides at No. _____

that he is the _____ of _____

_____ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the board of directors of said corporation, and that he signed his name thereto by like order.

State of New York ss
County of New York:

On the 29th day of August, 1983, before me came, FLORENCE GOLDSMITH to me known and known to me to be the individual who is described in and who executed the foregoing instrument, and acknowledged that she executed the same.

HAROLD S. BRAUN
Notary Public, State of New York
No. 60 5427885
Qualified in Westchester County
Commission Expires March 30, 1984

Harold S. Braun

Margain and Sale Deed
WITH COVENANT AGAINST GRANTOR'S ACTS

TITLE No. 4-49567

FLORENCE GOLDSMITH, JOSEPH BLOOM and LILLIAN GITIN TO FRANCIS GROUP HOLDING CORP.

28621

AMERICAN TITLE INSURANCE COMPANY
100 West Street
Brooklyn, N.Y. 11201
(212) 852-4000

SECTION _____
BLOCK 4809
LOT 41
COUNTY OR TOWN KINGS COUNTY
TAX BILLING ADDRESS _____

LOC. TB. 111

Recorded At Request of The Title Guarantee Company
RETURN BY MAIL TO:

SUSAN HARMON, Esq.
136-21 Roosevelt Avenue
Flushing, New York 11354

Zip No. _____

RESERVE THIS SPACE FOR USE OF RECORDING OFFICE

Comp. SHK
1983 SEP -8 PM 3:07
OFFICE OF CLERK
Kings County
RECORDED
Witness and official
George J. ...
CLERK REGISTER

REC. BY A-10
SERIAL 200-
RIT # 12516

RECEIVED
\$ 200
REAL ESTATE
SEP 8 1983
TRANSFER TAX
KINGS COUNTY

Testimony by The Legal Aid Society

Before The New York City Council Committee on Housing and Buildings together with the
Committee on Finance

The City's Efforts to Combat Real Property Deed Fraud

October 13, 2020

Founded in 1876, The Legal Aid Society is the oldest and largest provider of free direct legal services to low-income families and individuals in the United States. Operating from 26 locations in New York City with a full-time staff of over 1,900, the Society handles more than 300,000 individual cases and legal matters each year. The Society's law reform representation for clients also benefits some two million low-income families and individuals in New York City through impact litigation addressing a broad range of housing and benefit issues.

The Legal Aid Society has been at the forefront of advocating for the rights of homeowners at the City, State, and local levels since 2000 through our Foreclosure Prevention and Home Equity Preservation Project. Since the it's inception we have assisted homeowners by challenging abusive lending and real estate practices in state and federal court, defended homeowners in foreclosure actions, and, since 2008, advocated for loss mitigation at court-mandated settlement conferences. We provide Citywide community outreach and education, particularly focused on Queens and the Bronx, where we have assisted hundreds of homeowners at weekly court-based clinics.

We appreciate the opportunity to testify today on the important issue of real property deed fraud and thank the Committee on Housing Buildings together with the Committee on Finance for convening this important hearing.

Justice in Every Borough.

Real property deed fraud and related scams are, unfortunately, not new, but the foreclosure crisis has spawned their growth and transformation into increasingly new forms. The mortgage servicing industry's recalcitrance and unwillingness to provide timely relief to homeowners has fueled a pernicious new industry of scammers who target and exploit vulnerable homeowners with countless scams. In New York City, where real estate values are especially high, deed theft is particularly rampant.

Through our advocacy for homeowners in fighting to save their homes from foreclosure, we have seen countless homeowners fall victim to various kinds of deed theft and related scams seeking to profit from their home. The foreclosure crisis has had a devastating impact on low-income neighborhoods, communities of color, and the elderly and it these very same communities that have become targets of deed theft and related scams.

Deed theft can take many different forms - we have seen everything from outright recording of fraudulent deed transfers without the knowledge of the homeowner to tricking homeowners into transferring the deed to their home to a scammer in the belief they are applying for a loan modification. A more recent form of deed theft includes fraudulent short sales which in particular has targeted seniors in foreclosure and those with reverse mortgages. The fact that foreclosures, mortgage, and property information are public and easily accessible on line has made it easu for scammer to identify and target homeowners in distress. Homeowners of color, those who do not speak English as their first language, and especially our elderly homeowners are constantly and aggressively approached by mail, phone, and in person solicitations at their homes. These scammers,

already knowing that the homeowner under some sort of financial distress, promise to help but in reality are aiming to steal the deed to their home.

A case in point which we are currently litigating is Ms. R who thought she was signing a loan modification to save her home. She went to an attorney's office and was told she was signing an application for a loan modification but only to later discover that among the papers she had signed was the deed transferring title to a realtor.

Another devastating form of deed theft scams involves convincing homeowners that they have completed a short sale but later discover that the scammer never paid off their mortgage debt. With increasing frequency, scammers are using the City Register to record contracts of sale and UCC-1 liens to encumber the property, making it impossible for the homeowner to resolve the situation without reliance on the scammer. This was particularly done by Homeowner Assistance Services of New York ("HASNY") and Launch Development LLC, whose principals were recently indicted in the Southern District of New York and are currently serving time for their fraudulent deed theft schemes.

However, deed theft is not always committed by a large entity, such as Launch Development, victimizing hundreds of homeowners throughout New York City. Smaller sized scammers who use a uniquely named LLC for each fraudulent deed transfer makes it even more challenging to detect. They often use the address of the targeted property as the name of the LLC. We often see individuals hiding behind LLCs with government or official sounding names who target and prey on homeowners who are under financial distress. These official government sounding names appear trustworthy and professional.

Justice in Every Borough.

A particularly targeted population are seniors, especially those with a reverse mortgage for which they have no personal liability or a tax lien which is of public record showing they may be in financial distress. Our city has seen a recent increase in reverse mortgage foreclosures which has left many of our seniors vulnerable to deed theft scammers. Real estate speculators and their investors aggressively target these senior homeowners, sometimes pushing a senior into an unnecessary or fraudulent short sale.

A prime example is Ms. C, an elderly homeowner with a reverse mortgage who fell behind in paying her property taxes and therefore was at risk of foreclosure. When Ms. C called her reverse mortgage servicer, she was incorrectly told that she owed the entire loan balance on her reverse mortgage and her only choice was to sell her home. As a result, she fell victim to a real estate scammer who knocked on her door and made her believe she was merely signing an agreement to list her house for sale. Instead, she was tricked into signing a contract of sale to sell her house to an LLC for just \$200,000 when her house was worth approximately \$500,000. To make it worse, the brazen LLC then brought a lawsuit for a breach of contract to force the sale.

Much remains to be done to ensure that the same communities devastated by the foreclosure crisis are not further victimized by deed fraud. As these deed theft scams continue to evolve, it is critical the legislature keep abreast of the trends and find ways to prevent them from re-occurring. We therefore commend the City Council on their efforts to address this serious issue. Legislation which strengthens and adopts more stringent standards around corporations' names that mimic government agencies as well as additional oversight of public notaries is vital to protecting

homeowners against deed theft of their homes. We also urge the City Council to support an expansion of the cease and desist zone beyond Brooklyn to areas such as Queens.

Respectfully submitted by

Jennifer N. Levy

Staff Attorney of the Foreclosure Prevention Unit