

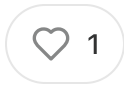
# New York Strengthens Protections Against the Rising Crime of Deed Fraud

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## A. Background on Recent Legislation

“This legislation is New York’s strongest tool yet to crack down on illegal deed theft and put the American Dream back in the hands of thousands of New York homeowners,” Governor Hochul said in a press release on November 14, 2023, announcing Legislation S.6577/A.6656. <sup>1</sup> The legislation recently enacted by Governor Hochul originated as a Senate Bill, sponsored by Senator Kavanagh (“Bill S6577” or “Bill”), and its Assembly version was introduced by Assemblymember Weinstein (“A6656”) in April of 2023. <sup>2</sup>

The new legislation significantly alters New York’s property laws to address the escalating issue of deed fraud in this state. Specifically, it adds Real Property Action and Proceedings Law (“RPAPL”) § 756-a and amends §1501. <sup>3</sup> RPAPL § 756-a was amended to create a “[s]tay of action or proceeding when a party’s claim to title is in dispute” and RPAPL §1501 now reads: “[w]here a person . . . has been convicted of a criminal offense in connection with a deed theft or fraudulent transaction involving real property, the conviction creates a rebuttable presumption that such deed transaction was fraudulent.” <sup>4</sup> To further help protect victims of deed theft and put interested parties on notice, the legislation also amends Real Property Law (“RPL”) §§265-a, 266 & 266 of the Real Property Law (“RPL”). <sup>5</sup> Additionally, Criminal Procedural Law

“CPL”) §420.45 was amended as well as Civil Practice Law and Rules (“CPLR”) §650 to strengthen safeguards against this growing type of crime.<sup>6</sup>

As stated in Senator Kavanagh’s Sponsor Memo for Bill S.6577, “[t]he purpose of this bill is to increase protections against real property theft, commonly known as deed theft, by providing homeowners and prosecutors tools to assist in restoring title to rightful homeowners, extending certain consumer protections to homeowners in distress, and preventing deed theft scammers from utilizing the courts and the law to their advantage in carrying out the fraud.”<sup>7</sup> Accordingly, the goal of the legislation is to add extra safeguards to enable law enforcement and prosecutors to prevent and stop fraudulent transactions and to further protect the vulnerable victims of deed fraud.

## B. How Does Deed Theft Happen?

Deed theft is a deceitful practice in which property owners are tricked into losing title to their homes.<sup>8</sup> According to the New York State Attorney General’s website, the most common tactics scammers use to accomplish deed fraud are “forgery, where the scammer fakes the homeowner’s signature on a deed and files it with the county clerk and “fraud, where the homeowner signs the deed over to the scammer without realizing what they are really signing.”<sup>10</sup> Oftentimes the scheme occurs when fraudsters make false promises of predatory loans, mortgage modifications, and other guarantees to entice vulnerable homeowners to sign away the title of their homes.<sup>1</sup>

Deed theft is a growing issue in New York, disproportionately affecting gentrifying areas comprised of older people and people of color.<sup>12</sup> Moreover, it can widen the racial wealth gap as minority victims lose what might be their most valuable asset—their homes.<sup>13</sup> According to the New York City Sheriff’s Office, more than 3,500 complaints of deed theft have been filed in New York City over the past decade.<sup>14</sup>

To demonstrate the rise of deed theft in gentrifying areas, between 2014 and 2019, 4 of complaints of deed theft came from Brooklyn, and in 2020, Attorney General Let James stated that her office “receives 3-4 reports of deed theft a week, predominant from Brooklyn, Queens, Northern Manhattan, and The Bronx.” [15](#) The Bill’s Sponsor Memo specified the justification for the changes to the law: “[d]eed theft perpetrators often target minority homeowners in gentrifying neighborhoods whose property values have increased significantly and tend to single out those who are more likely be susceptible to fraudulent schemes, especially preying on seniors and those facing financial hardship.” [16](#)

### **C. Key Measures of the New Laws**

The newly signed legislation includes several key provisions to help resolve property title disputes, combat fraudulent transactions, and add protections for homeowners and victims of this type of theft: [17](#)

#### **i. Courts Are Required to Stay Eviction Proceedings**

The first section of the legislation requires “courts to stay eviction proceedings where a government agency is in an investigation, or criminal or civil litigation concerning title to a property, or where a party in housing court has a dispute about title.” [18](#) The second section warrants that a “criminal conviction for deed theft or a fraudulent transaction involving real property” creates a rebuttal presumption in any related actions that the “deed transfer was fraudulent.” [19](#) So this provision shifts the “burden of proof from the original homeowner to the convicted party to prove that they have legitimate title to the property.” [20](#)

#### **ii. Added Protections for At-Risk Homeowners**

The third section of the Bill amended the RPL to extend the protections of the Home Equity Theft Prevention Act (HETPA), which mandates foreclosure and the sale of

homes in default, to permit homeowners with utility liens to cancel any contract to their property.<sup>21</sup> Additionally, the legislation modified the definition of "distressed home loan" in Section 265-b of the RPL "so that it covers a home loan for which an installment payment is more than sixty days past due."<sup>22</sup> Hence, this provision adds security for homeowners who are at risk of losing their homes and therefore could be more vulnerable to deed fraud.

### **iii. Notice of Fraud**

The new law also established a rebuttable presumption that a buyer has notice of fraud and is not a good faith purchaser if the seller's "mortgage is unpaid following the conveyance of the property and the buyer does not formally assume the putative seller's loan."<sup>23</sup> Thus, the legislation creates a presumption that the purchaser is aware of potential fraud if the seller's mortgage is unpaid after the property is conveyed to the buyer. Additionally, the new legislation amended the CPL to allow the Attorney General or a District Attorney to petition the court to void the title if certain crimes related to the title are proven.<sup>24</sup> This is another layer of protection for victims of fraudulent title transactions.

### **iv. Notice of Pendency**

Finally, the legislation also amended "the CPL and CPLR to enable the Attorney General or a District Attorney to file a notice of pendency (lis pendens) in court actions that might affect title or certain other property rights, upon a property where there is probable cause that a deed theft crime has occurred or upon the filing of a criminal complaint or indictment for a real estate crime related to that property." New York CPLR § 6501(a) reads: "[a] notice of pendency may be filed in any action in a court of the state or of the United States in which the judgment demanded would affect title to, incumbrance of, or the possession, use or enjoyment of, real property, except a summary proceeding brought to recover the possession of real property."<sup>25</sup> Consequently, this empowers prosecutors to put parties with rights to the property on notice that there is a possibility that deed theft has occurred.

## D. Conclusion

With the collaborative efforts of prosecutors, legislators, and agencies, the new law aspire to add more efficiency to how homeowners and New York State can combat deed theft.<sup>26</sup> What makes deed theft so tricky and dangerous is that it can easily happen and go unnoticed by the homeowner or government.

But, with any luck, the increased protections under the state property and criminal laws will enable homeowners and law enforcement to more quickly be alerted of fraudulent activity related to the title of property. The two main things the NYC Department of Finance recommends residents do to prevent deed fraud from affect their homes are: (1) check their property's deed at least once a year and (2) sign up for the City Register's Notice of Recorded Document Program to receive an alert anytime a new document is recorded against their property.<sup>27</sup> The prevention of deed fraud is key to avoiding costly and complex litigation for both vulnerable homeowners and the courts. Thus, at a maximum, the new legislation will stop deed-related fraud from occurring in the first place, but at a minimum, it raises awareness of this growing issue and hopefully homeowners will now be on high alert.

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<sup>1</sup> Governor Hochul, Kathy. *Governor Hochul signs legislation to protect New York homeowners from deed theft*, (Nov. 14, 2023). <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-protect-new-york-homeowners-deed-theft>.

<sup>2</sup> <https://www.nysenate.gov/legislation/bills/2023/S6577> (Last visited Dec. 5, 2023).

<sup>3</sup> S. 6577, N.Y. Leg. Sess. 2023-2024. <https://legislation.nysenate.gov/pdf/bills/2023/S6577>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

6 *Id.*

7 Senate Bill S6577. <https://www.nysenate.gov/legislation/bills/2023/S6577> (Last visited: Dec 2023).

8 Governor Hochul, Kathy. *Governor Hochul signs legislation to protect New York homeowners j deed theft*, (Nov. 14, 2023). <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-protect-new-york-homeowners-deed-theft>.

9 *Id.*

10 Attorney General James, Letitia. *Deed Theft*. <https://ag.ny.gov/publications/deed-theft>.

11 *Id.*

12 Senate Bill S6577. <https://www.nysenate.gov/legislation/bills/2023/S6577> (Last visited: Dec 2023).

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14 *Id.*

15 Attorney General James, Letitia. *AG James Announces Formation of Interagency Law Enforcement Taskforce to Respond to Deed Theft Concerns*, (Jan. 11, 2020). <https://ag.ny.gov/press-release/2020/attorney-general-james-launches-protect-our-homes-initiative-combat-deed-theft>.

16 Senate Bill S6577. <https://www.nysenate.gov/legislation/bills/2023/S6577> (Last visited Dec 2023).

17 *Id.*

18 *Id.*

19 *Id.*

20 *Id.*

21 Governor Hochul, Kathy. *Governor Hochul signs legislation to protect New York homeowners j deed theft*, (Nov. 14, 2023). <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-protect-new-york-homeowners-deed-theft>.

22 Senate Bill S6577. <https://www.nysenate.gov/legislation/bills/2023/S6577> (Last visited Dec 2023).

23 *Id.*

24 *Id.*

25 NY CLS CPLR § 6501(a).

26 Governor Hochul, Kathy. *Governor Hochul signs legislation to protect New York homeowners j deed theft*, (Nov. 14, 2023). <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-protect-new-york-homeowners-deed-theft>.

27 NYC Dept. of Finance, *Protect Your Property from Deed Fraud*. <https://www.nyc.gov/site/finance/taxes/deed-fraud.page>. (Last visited Dec. 5, 2023).

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