

# Legislative Update: New York's Uniform Partition of Heirs Property Act Amendments and Heirs Property Protection and Deed Theft Prevention Act of 2024

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*The following piece gives readers an overview of the recent amendments to New York's Uniform Partition of Heirs Property Act and the passage of the Heirs Property Protection and Deed Theft Prevention Act of 2024. This article gives readers the legislative history and intent behind each act, explains what each act sets out to do, and then looks at recent cases involving these acts to see how courts have enforced the legislation thus far.*

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## I. Introduction

Bronx native Mae Lee Massey currently lives in her childhood home in Baychester with her husband and children.<sup>[1]</sup> Ms. Massey had moved out as a young adult and settled with her husband in another neighborhood in the Bronx, but moved back in her parents' home after her husband was diagnosed with cancer and could no longer work.<sup>[2]</sup> Ms. Massey loves her two-story brick row house and has plans to fix it up

from top to bottom.[3] But a few years ago, Ms. Massey discovered some shocking news that threatened her family home: an LLC purchased half of her home's shares and could petition the courts to force Ms. Massey to sell her house. [4] Ms. Massey would lose her childhood home, and she and her family would be left without a roof over their heads. How did this happen to Ms. Massey? And how can the LLC force Massey to sell her share?

After Ms. Massey's parents passed away, she inherited 50% ownership of her family home. A man who rented a room from Ms. Massey's mother, who Ms. Massey barely knew and had no relation to, inherited the other 50%.[5] Ms. Massey attempted to purchase the man's interest in the family home but was unsuccessful.[6] The man died in 2007, and his share of the home went to his daughter. [7] Twelve years later, a company called "US Asset Partners 1 LLC," purchased the 50% stake in the home from the man's daughter for only \$5,000.[8] Since purchasing the shares, the LLC has yet to initiate a partition action to request a court to sell the home.[9] Now, they will never have the chance to do so thanks to the new amendments to New York's Uniform Partition of Heirs Property Act.[10]

This past July, Part "O" of the 2024 New York State Budget was enacted, which contained multiple provisions to protect homeowners from predatory real estate operations.[11] One of these provisions was the adoption of two new sections of the New York's Real Property Actions and Proceeding Law ("RPAPL") § 993 Uniform Partition of Heirs Property Act. Section 12 of this act prevents speculator companies from forcing the sale of family homes, which is what almost happened to Ms. Massey, and section 13 enforces the right of first refusal.[12] The other major adaptation to the current New York legislation to protect homeowners was the passage of the Heirs Property Protection and Deed Theft Prevention Act of 2024, which now classifies deed theft as grand larceny under New York Penal Law § 155.42.[13]

These two new regulations provide homeowners significant protections on paper, but how will the courts enforce this legislation? Considering these amendments have o

been in effect for less than six months, there has not been much time for cases on these provisions to come before the court. However, a few cases have made their way into the courtroom, and from the decisions made thus far, it seems that the courts will enforce the amendments in a way that will protect homeowners.

## II. RPAPL § 993: Uniform Partition Heirs Property Act

### A. Legislative History and Intent of the Uniform Partition Heirs Property Act

Nearly half of Americans do not make wills, which results in a substantial amount of real property being transferred by intestacy.<sup>[14]</sup> The ownership structure of real property that is transferred through intestacy is highly insecure because it only takes one tenant in common to initiate a partition action and request a court to resolve the litigation by ordering the property be sold, which is also known as a forced sale.<sup>[15]</sup> Courts will often resolve these partition actions by forcing the sale of the property, even when these courts could have ordered a remedy that would have preserved the property rights of the tenants in common.<sup>[16]</sup> In 2010, the Uniform Law Commission drafted the Uniform Partition of Heirs Property Act to address these partition action abuses that have led to significant property loss.<sup>[17]</sup>

The Uniform Partition of Heirs Property Act (“the Act”) seeks to modify partition law to address the specific problems that families with heirs property have experienced with partition actions.<sup>[18]</sup> The Act makes three major changes to partition law.<sup>[19]</sup> The first major reform of the Act is the buyout of a co-tenant that petitioned the court for partition by sale.<sup>[20]</sup> If a co-tenant petitions a court to order a forced sale, the co-tenants that did not seek a sale must be afforded the opportunity to buy out the co-tenant that petitioned the court to sell at a price that represents the value of the petitioning co-tenant’s fractional ownership interest.<sup>[21]</sup> The second major reform of the Act is meant to increase preference for a partition in kind.<sup>[22]</sup> In determining whether to order partition in kind or partition by sale, a court must consider several factors that constitute a mix of economic and non-economic factors.<sup>[23]</sup> The third major reform of the Act is meant to improve the sales procedures used in partition

sales to achieve higher sales prices.<sup>[24]</sup> To that end, the preferred sale procedure under the Act is an “open market sale” under which the court appoints a disinterested real estate broker to list the property for sale for at least its value, as determined by the court and to market the property using commercially reasonable practices.<sup>[25]</sup> Since 2010, 22 states and territories in the United States have enacted the Uniform Law Commission’s Partition of Heirs Property Act, and two have enacted acts substantially similar to the Uniform Law Commission’s Partition of Heirs Property Act.<sup>[26]</sup>

## **B. New York’s Uniform Partition Heirs Property Act**

Governor Andrew Cuomo enacted New York State’s version of Uniform Partition of Heirs Property Act on December 9th, 2019 (RPAPL § 993).<sup>[27]</sup> Senator Brad Hoylman and Assembly Member Jeffrey Dinowitz sponsored the legislation.<sup>[28]</sup> Not only did New York adopt the Commission’s Uniform Partition of Heirs Property Act in its entirety, New York also added a mandatory conference provision to their adopted version of the Act.<sup>[29]</sup> Section 5 provides that a court must hold a mandatory settlement conference within a certain amount of time from when a request for judicial intervention is filed, in order to discuss the rights and obligations of each party, with respect to the property in dispute.<sup>[30]</sup> This additional provision encourages the use of Alternative Dispute Resolution to help resolve these proceedings outside the courtroom, which ideally would save the heirs time, money, and also protect them from the stress of ongoing litigation.

## **C. Recent Amendments to the New York’s Uniform Partition Heirs Property Act**

As previously mentioned, when a property owner dies intestate, the real property passes to the property owner’s heirs as tenants in common; these tenants in common are vulnerable because any individual tenant can request the court to order a partition sale.<sup>[31]</sup> Oftentimes, real estate speculators purchase a share of heir’s property for well below market value, and then file a partition action to force a sale.<sup>[32]</sup> Utilizing this tactic, a property investor can acquire an entire piece of property for a price well below the property’s fair market value and deplete a family’s inherited wealth and residence.

in the process.<sup>[33]</sup> In New York City, these real estate speculators often target properties owned by the elderly and people of color in neighborhoods being gentrified.<sup>[34]</sup>

Section 12 and 13 are the new amendments to the Uniform Partition of Heirs Property Act that were put in place to combat these predatory behaviors.<sup>[35]</sup> Section 12 puts limitations on who can initiate a partition action.<sup>[36]</sup> This provision decrees that only the parties that inherited their share can petition to force a sale.<sup>[37]</sup> This means that parties who purchase their share, such as real estate speculators, cannot force the sale of the property.<sup>[38]</sup> With this update, real estate speculators can continue to buy and hold shares in a property from an heir but considering they can no longer petition the courts to force a sale, there is little they can do with their interests.<sup>[39]</sup> If the heir decides to sell the property, the speculators would have to negotiate with the investor.<sup>[40]</sup> This amendment takes significant power away from predatory investors and puts more authority and security back into the hands of the heirs.

Section 13 concerns the right of first refusal to buy shares from other heirs wanting to sell.<sup>[41]</sup> Under this provision, if a real estate speculator offers to buy an heir's share in a property, that heir must consult the other tenants in common to give them an opportunity to buy the share first.<sup>[42]</sup> If the heir were to sell their shares before giving the co-heirs the opportunity to purchase, the other heirs shall have the right to purchase the shares from the real estate speculator for the price the real estate speculator paid.<sup>[43]</sup> This amendment, similarly to Section 12, reduces the power of predatory investors, and strengthens the heirs' claims to the shares.

Thanks to these amendments, Ms. Massey no longer has to worry about the LLC forcing her to sell her family's home.<sup>[44]</sup> The LLC never began the legal process to order the courts to force the sale of the property and now will never have the chance to do so thanks to these amendments.<sup>[45]</sup>

### **III. New York Penal Law § 155.42: Heirs Property Protection and Deed Theft Prevention Act of 2024**

Luckily, Ms. Massey is safe from losing her home, but not all victims of property schemes and scams are out of the woods yet. Over in Brooklyn, another New Yorker named Ray Cortez is at risk of losing his home.[\[46\]](#) Mr. Cortez is 90 years old and has lived in his Park Slope brownstone for over half a century.[\[47\]](#) Mr. Cortez raised his three children in his home, and he plans to spend the rest of his days there.[\[48\]](#) But instead of relaxing in this latter part of his life, Mr. Cortez finds himself in housing court.[\[49\]](#) Somebody who claims to be the owner of Mr. Cortez's brownstone is petitioning the court to evict Mr. Cortez.[\[50\]](#) How is this possible? Mr. Cortez is a victim of deed theft.[\[51\]](#) Deed theft occurs when someone takes over the title of a home without the approval or knowledge of the true owner.[\[52\]](#) In 2006, Mr. Cortez was seeking money for renovations and was tricked by a con man to sign over the deed to his home.[\[53\]](#) This man then took out a \$700,000 line of credit on Mr. Cortez's house, which led to the property being sold by the bank at foreclosure for \$2 million.[\[54\]](#)

### **A. Legislative History and Intent of the Heirs Property Protection and Deed Theft Prevention Act of 2024**

According to the Office of the Attorney General, the New York City Sheriff's office received nearly 3,500 complaints of deed theft between 2014 and 2023.[\[55\]](#) Similarly to Ms. Massey's forced sale situation, victims of deed theft are often homeowners who are elderly and people of color in neighborhoods that are being gentrified.[\[56\]](#) Governor Hochul signed the Heirs Property Protection and Deed Theft Prevention Act of 2024, with the intent to crack down on deed theft by giving more power to homeowners and law enforcement to combat these frauds and forgeries.[\[57\]](#) The legislation was co-authored by Attorney General James, and sponsored by State Senator Zellnor Myrie and Assemblymember Landon C. Dais.[\[58\]](#) The Heirs Property Protection and Deed Theft Prevention Act of 2024 establishes deed theft as a crime, extends the statute of limitations to give homeowners and prosecutors more time to take action, and grants the Office of the Attorney General original criminal jurisdiction to prosecute deed theft.[\[59\]](#)

## B. How Deed Theft is Now Punishable under the Heirs Property Protection and Deed Theft Prevention Act of 2024

Under New York Penal Law § 155.42, deed theft is now considered grand larceny.<sup>[60]</sup> Grand larceny in the first degree, which is a class B felony, applies to deed theft of a residential real property that is occupied as a home by at least one person and is a home that is owned by someone who is elderly, incapacitated, or physically disabled or deed theft of three or more residential real properties, regardless of monetary value.<sup>[61]</sup> Grand larceny in the second degree, which is a class C felony, applies to deed theft of one residential property, one commercial mixed-use property with at least one residential unit, or two or more commercial properties, regardless of monetary value.<sup>[62]</sup> Grand larceny in the third degree, which is a class D felony, applies to deed theft of one commercial real property, regardless of monetary value.<sup>[63]</sup> The classification of deed theft as grand larceny is a major step in protecting homeowners from deed theft because now that the act is criminalized, there exist remedies and punishments within the legal system. In addition, this legislation has extended the statute of limitations to prosecute deed theft so that prosecution must begin within five years of the theft or within two years after the rightful homeowner realizes their deed has been stolen, whichever occurs later.<sup>[64]</sup> The statute of limitations for the crime of deed theft being based on whichever wrongful act occurs the latest is another layer of protection for property owners because it gives property owners and law enforcement more time to bring legal action against thieves. Finally, the new legislation grants the Office of the Attorney General original criminal jurisdiction to prosecute deed theft crimes, which expands the resources and manpower that can be dedicated to pursuing deed theft cases.<sup>[65]</sup>

## C. *People of the State of New York v. Makhani*: A Glimpse into How the Heirs Property Protection and Deed Theft Prevention Act of 2024 Will Be Enforced

One of the first deed theft cases that the Office of the Attorney General has brought under the new Act was against a Long Island man named Joseph Makhani.<sup>[66]</sup> In Ju



2023, Makhani was indicted on two counts of criminal possession of stolen property the first degree and scheme to defraud in the first degree.<sup>[67]</sup> The indictment alleges that in 2012, Makhani stole two brownstones located at 107 West 118th Street and 1 West 131st Street in Harlem through a scheme involving forged documents and shell companies.<sup>[68]</sup> In his New York State real estate tax filings, Makhani claimed to have paid only \$10 for each home, though combined the estimated value of both properties exceeded \$4.7 million at the time of possession.<sup>[69]</sup> The rightful elderly owner of the 107 West 118th Street property, former corrections officer Veronica Palmer, was forced into homelessness as a result of Makhani's theft.<sup>[70]</sup> While Makhani renovated the 107 West 118th Street property and converted it into apartments which generated \$12,000 a month from rent, Ms. Palmer was collecting cans on the street.<sup>[71]</sup>

A few months ago, the New York County Supreme Court denied Makhani's motion to dismiss the Attorney General's case against him for deed theft.<sup>[72]</sup> Defendant Makhani first contended that the court should dismiss the indictment because the five-year statute of limitations had run out on each count.<sup>[73]</sup> In response, the Office of the Attorney General argued that because New York adheres to the continuing offense doctrine, and that since possession of stolen property is a continuing offense, then the statute of limitations has not run out on either count.<sup>[74]</sup> The continuing offense doctrine puts forth that the statute of limitation begins to run with the termination of the defendant's crime.<sup>[75]</sup> In Makhani's case, the defendant's criminal possession of both properties ended in 2018 and 2023, respectively.<sup>[76]</sup> Therefore, the Court found the indictment of the 2023 crime is well within the statute of limitations and thus was brought in a timely manner.<sup>[77]</sup> Thus, the Court rejected Makhani's statute of limitations argument and ultimately denied his motion to dismiss the case.<sup>[78]</sup> The application of the continuing offense doctrine is a major win for property owners, as it gives them more time to seek a legal remedy in a deed theft situation since the statute of limitation runs with the termination of the defendant's wrongdoing, as opposed to when the defendant began the wrongdoing.

## IV. Conclusion



Both the Uniform Partition of Heirs Property Act and the Heirs Property Protection and Deed Theft Prevention Act of 2024 put into effect substantial protections for property owners. The limitations on which parties can initiate a partition action and the right of the first refusal amendments to the Uniform Partition of Heirs Property Act are strong corrective measures that take power away from predatory real estate speculators and put power back into the hands of heirs. The new criminal classification of deed theft under the Heirs Property Protection and Deed Theft Prevention Act of 2024, in addition to the new jurisdiction of Office of the Attorney General for deed theft cases, coupled with the continuing offense rule being applied in deed theft cases, has given authorities the proper tools to successfully pursue deed theft crimes. *People v. Makhani* is an early indicator that the courts will enforce this legislation in a way that will protect New York property owners like Ms. Massey and Mr. Cortez.

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[1] Samantha Maldonado, *Heirs Gain New Shield From Predatory Real Estate Speculator* The City, (July 23, 2024), <https://www.thecity.nyc/2024/07/23/heirs-predatory-real-estate-speculators-partition/>.

[2] *Id.*

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] S. Maldonado, *supra*, note 1.

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] RPAPL § 993 (2024).

[12] *Id.*

[13] S. Maldonado, *supra*, note 1.

[14] *Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property Act*, American Bar Association, (Oct. 1, 2016),  
[https://www.americanbar.org/groups/state\\_local\\_government/publications/state\\_local\\_government\\_news/2016-17/fall/restoring\\_hope\\_heirs\\_property\\_owners\\_uniform\\_partition\\_heirs\\_property\\_act](https://www.americanbar.org/groups/state_local_government/publications/state_local_government_news/2016-17/fall/restoring_hope_heirs_property_owners_uniform_partition_heirs_property_act)

[15] *Id.*

[16] *Id.* (particularly impacting poor and disadvantaged Americans, African American, white Americans, and Native Americans.)

[17] *Id.* (representing the most substantial reform of partition law in the United States in 150 years.)

[18] *Id.* (seeking to stabilize heirs' property ownership, the Uniform Partition of Heirs Property Act drew upon some of the tools that wealthy and legally sophisticated families typically utilize to preserve their family real property holdings.)

[19] *Id.*

[20] *Restoring Hope for Heirs Property Owners: The Uniform Partition of Heirs Property A* *supra*, note 15.

[21] *Id.*

[22] *Id.*

[23] *Id.* (“For example, a court must consider whether the property that is the subject of a partition action has sentimental, cultural, or historic value; whether one or more cotenants could be rendered homeless if a court ordered the property sold; and whether the property as a whole has economies of scale that would make it more valuable than the aggregate value of the parcels that would result from a potential partition in kind”).

[24] *Id.*

[25] *Id.*

[26] Partition of Heirs Property Act, Uniform Law Commission, <https://www.uniformlaws.org/committees/community-home?CommunityKey=50724584-e808-4255-bc5d-8ea4e588371d>.

[27] *City Bar Applauds Governor and Legislature on Passage of the Uniform Partition of Heirs' Property Act*, New York City Bar, (Dec. 6, 2019), <https://www.nycbar.org/press-releases/city-bar-applauds-governor-and-legislature-on-passage-of-the-uniform-partition-of-heirs-property-act/>.

[28] *Id.*

[29] RPAPL § 993.

[30] *Id.*

[31] *Support for the Uniform Partition of Heirs Property Act*, New York City Bar, (May 2 2019),

<https://www.nycbar.org/reports/support-for-the-uniform-partition-of-heirs-property-act/>.

[32] *Id.*

[33] *Id.*

[34] S. Maldonado, *supra*, note 1.

[35] RPAL § 993.

[36] *Id.* (“Prohibition on initiation of a partition action. No partition action related to an heirs property may be initiated by a party that purchased or otherwise acquired their share or shares by means other than inheritance, and who did not inherit their share or shares directly from a person who was a co-tenant prior to the property becoming heirs property or from a co-tenant who was an heir thereto”).

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

[41] RPAL § 993.

“(a)When a co-tenant receives a bona fide offer from a non-co-tenant to purchase a share or shares of an heirs property and the co-tenant intends to accept or respond with a counteroffer, the co-tenants who inherited their share or shares of the property or the co-tenants who are relatives to those co-tenants who inherited their share or

shares of the property shall have the right to purchase such shares for the identical price, terms, and conditions of the offer or counteroffer, with first priority to any co-tenant who occupies the property as their primary residence and second priority to co-tenant who otherwise utilizes the property.

(b) It shall be the duty of the non-co-tenant who made the initial offer for the shares of the property as well as the co-tenant who received the offer to exercise all due diligence to identify all of the other co-tenants to the property and notify such co-tenants of the pending offer. Such notice shall include the names, addresses, phone numbers and electronic mail addresses of all of the other co-tenants. Notice shall be made in the same manner as set forth in section three hundred eight of the civil practice law and rules. The other co-tenants shall have one hundred eighty days from the date they are notified of the offer to match such offer.”

[42] *Id.*

[43] *Id.*

[44] S. Maldonado, *supra*, note 1.

[45] *Id.*

[46] *90-year-old faces eviction of his Brooklyn home after discovering decades-old scam*, A Eyewitness News, (Aug. 14, 2024), <https://abc7ny.com/post/90-year-old-faces-eviction-after-discovering-decades-old-deed-scam-brooklyn-brownstone/15155329/>.

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *90-year-old faces eviction of his Brooklyn home after discovering decades-old scam*, su note 47.

[53] *Id.*

[54] *Id.*

[55] Melanie Marich and Rachel Holliday Smith, *How to Avoid Deed Theft and Protect Against Property Scams*, the city, (Aug. 5, 2024), <https://www.thecity.nyc/2024/08/05/deed-theft-protection-home-ownership/>.

[56] *90-year-old faces eviction of his Brooklyn home after discovering decades-old scam*, su note 47.

[57] *Governor Hochul Signs Legislation to Protect New York Homeowners From Deed Theft*, New York State Governor's Office, (Nov. 14, 2023), <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-protect-new-york-homeowners-deed-theft#:~:text=The%20legislation%20empowers%20the%20Attorney,to%20grant%20the%20stay%20if>. Governor Hochul said:

“Deed theft cheats hardworking New Yorkers out of the opportunity to own and keep their homes and forces families out of their communities – particularly in Black and Brown neighborhoods. With the protections enshrined in this legislation, however, we are empowering homeowners and law enforcement to fight back against deed theft and keeping families, homes, and communities intact. I thank Attorney General Jarmond and the bill sponsors for their partnership in our mission to protect New York homeowners and for joining my administration’s continued effort to stop fraud, forgery, and abuse.”

[58] Attorney General James Announces New Protections Against Deed Theft, Office of the New York State Attorney General, (July 19, 2024), <https://ag.ny.gov/press-release/2024/attorney-general-james-announces-new-protections-against-deed-theft>

[59] *Id.*

[60] NYPL § 155.40.

[61] *Id.*

[62] *Id.*

[63] *Id.*

[64] *Attorney General James Announces New Protections Against Deed Theft*, *supra*, note

[65] *See id.*

[66] *Joseph Makhani's motion dismissed; AG James continues pursuit on Harlem deed theft case*, Legal Newsline, (Sep. 30, 2024), <https://legalnewsline.com/stories/664621187-joseph-makhani-s-motion-dismissed-ag-james-continues-pursuit-on-harlem-deed-theft-case>.

[67] *Attorney General James Announces Win in Deed Theft Case Against Joseph Makhani*, Office of the New York State Attorney General, (Sep. 30, 2024),

<https://ag.ny.gov/press-release/2024/attorney-general-james-announces-win-deed-theft-case-against-joseph-makhani>.

[68] *Id.*

[69] *Id.*

[70] *Kathianne Boniello and Georgett Roberts, Real estate developer accused of swindling elderly woman out of her home sues to be recognized as owner*, New York Post, (Aug. 1,



2023), <https://nypost.com/2023/07/29/accused-real-estate-conman-joseph-makhani-back-in-court/>.

[71] *Id.*

[72] *Attorney General James Announces Win in Deed Theft Case Against Joseph Makhani*, Office of the New York State Attorney General, (Sep. 30, 2024). In response to the Court's rejection of Makhani's motion to dismiss, New York Attorney General Letitia James released this statement:

"Deed theft is a shameful crime that robs New Yorkers of their most important asset – their homes. Our case charges Joseph Makhani for his alleged schemes targeting vulnerable homeowners. Today's ruling ensures my office can continue our case against him and seek justice. I will always fight to protect New Yorkers' homes and stop deed thieves who seek to profit from displacing communities."

[73] *People v. Makhani*, Indictment No. 73324-23 (N.Y. Cnty. 2024).

[74] *Id.*

[75] *Id.*

[76] *Id.*

[77] *Id.*

[78] *Id.* (besides finding that 1) the prosecution was not barred by the statute of limitations, the court also found that 2) any delay in prosecution was not unreasonable and did not deprive defendant of due process, 3) The Office of the Attorney General did not improperly rely on materials obtained during the first grand jury investigation, 3) defendant is not entitled to a hearing to determine whether office of the Attorney General is relying on tainted fruits of a search warrant, 4) the people's certificate of

competence is not invalid, and 5) the people are not required to provide defendant with a bill of particulars.)

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