

New York Takes Legislative Action Against Deed Theft

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I. Introduction

A Brooklyn homeowner hangs up the phone in disbelief after a stranger explains to her that he is now the co-owner of her home, which she and her family had been living in for years, after buying a fractional share from a distant relative. The homeowner learns that under New York's partition laws, this predator has the power to force a sale of the home or demand a buyout of his share. In one calculated move, her family's security is at risk.

This is not an isolated case. Deed theft, a predatory practice where homeowners are deceived or exploited into signing over their properties, has quietly stripped many families of their most valuable asset – their home.^[1] In response to this growing problem, New York State has finally taken action. Three pivotal pieces of legislation have recently been enacted to address the crisis of deed theft: (1) the Uniform Partition of Heirs Property Act (the “Partition Act”);^[2] (2) the Transfer on Death Deed Law (the “TOD Deed law”);^[3] and (3) Senate Bill S.6577/A.6656 (the “Anti-Deed Theft Law”).^[4] The Partition Act and the TOD Deed law are designed to protect individual homeowners, and the Anti-Deed Theft Law is intended to enhance prosecutors' ability to combat these crimes.^[5]

II. What is Deed Theft and How Does it Happen?

Deed theft occurs when an individual, often through deceptive tactics, takes the title to a home without the homeowner's knowledge or consent.^[6] Two common ways deed theft occurs are forgery, where a "thief takes a homeowner's signature on a deed and files it with the county clerk," and fraud, where a "homeowner signs their deed over to a thief without realizing what they are signing."^[7]

In a recent wave of fraudulent schemes, real estate investors have been targeting the homes of deceased owners in gentrifying neighborhoods.^[8] These investors use New York's partition law, under which "anyone with any fractional interest in a property can go to court and demand that a judge order its sale, splitting the proportional proceeds among its recognized shareholders."^[9] Investors approach heirs, who are often unaware of their property's true value, and give lowball offers to buy out their shares at below-market prices.^[10] Once they acquire partial or full ownership of a property, investors go to court to force a sale or evict remaining family members or tenants to resell the property for a substantial profit.^[11] This crooked business model thrives due to the "lack of government authority in shepherding assets of deceased homeowners and [the] lack of government oversight that allows deed-related paperwork to make it through the system without much vetting."^[12]

While anyone can fall victim to deed theft, scammers primarily target vulnerable properties, such as properties in foreclosure, empty properties, or those where the homeowner is deceased.^[13] Scammers often go after the elderly, immigrants, and people of color.^[14] Over the last decade, there have been at least 3,500 complaints of deed theft in New York City.^[15]

An article by "THE CITY" recounts a pattern of cases of deed theft where a group of real estate investors used coercion, harassment, threats, and other fraudulent actions toward homeowners of over fifty properties in New York City.^[16] One case involved a Brooklyn family that fell victim to the investors' exploitation of New York's partition law.^[17] In this case, a homeowner's son inherited his mother's fraction of the family

home after her death.^[18] The son sold his fractional interest to the investors, who then used the partition law to force the family still living in the home to either buy back a share or risk a forced sale through litigation.^[19] Ultimately, the investors profit approximately \$170,000 from this tactic.^[20]

Another case centers on an investor purchasing shares of property from the heirs of a Bedford-Stuyvesant brownstone.^[21] The investor agreed to pay the heirs at least \$448,500 for each of their 20% interests in the property.^[22] Three days after acquiring full ownership of the property, the investor sold the shares for \$880,000 to another company, nearly double the amount he had agreed to pay the heirs.^[23] At least one heir, however, claims that the investor only paid him \$15,000, a fraction of what was promised to him.^[24] The investor disputes this, claiming he paid much more, but failed to proffer any evidence showing otherwise, despite promising to do so.^[25]

III. The Uniform Partition of Heirs Property Act

A. The 2019 Partition Act

In 2019, the Uniform Partition of Heirs Property Act was enacted to amend traditional partition proceedings and provide protections for individuals who owned real property as tenants-in-common.^[26] However, the law left significant gaps in addressing the problems surrounding the exploitation of vulnerable properties.^[27]

Under the Partition Act, residents who lived in the property were prioritized over other parties to purchase the shareholders' stakes.^[28] Courts assessed how any newly acquired partial interest in the property was obtained.^[29] If the court decided that a sale was warranted, the process had to be managed by a third-party court-appointed broker.^[30] However, the Partition Act also allowed any partial owner to initiate a partition action.^[31] Consequently, investors would profit by purchasing the property for far less than what the shares were worth and residents would likely lose their home.^[32]

B. Recent Amendments to the Law

Recognizing the need for further action, the New York legislature strengthened protections against deed fraud with new amendments to the Partition Act.^[33] The new law took effect on July 19, 2024, following THE CITY's investigative series on dispossessed homeowners.^[34] The 2024 changes to the Partition Act aim to prevent the strategy used by investors who use New York's partition laws to their advantage, buying stakes of properties from vulnerable heirs and then demanding large payouts by initiating a forced sale through a partition action.^[35]

The new law introduces several revisions to combat the issue of deed fraud.^[36] First, under the amended Partition Act, only those who inherit property directly can bring a partition action to court; real estate investors who buy out individual shares from heirs cannot initiate a partition action.^[37] Thus, the revised legislation effectively bars real estate investors who purchase fractional interests from pushing family members out of their homes.^[38] Although investors can still keep their shares, they are no longer able to use the court system to strip families from ownership and control.^[39]

Second, if an heir receives an outside offer for their share of the property, other heirs have the right to purchase the share at the same price.^[40] The purpose of this is to keep properties, and their accompanying wealth, within the family.^[41] Since heirs who currently reside in the property are given priority in these purchases, they are less likely to be displaced.^[42]

Additionally, when an offer is made, both the heir receiving the offer and the potential buyer must notify the other heirs.^[43] Once notified, the heirs have six months to decide whether they want to match the offer.^[44] If the heirs are not notified and the buyer fails to make a good-faith effort to get in touch with them, but the sale proceeds, the remaining heirs are not at an impasse; the heirs can still buy back the shares at the purchase price within six months of learning about the sale.^[45]

Further, there are opportunities for property owners and heirs who live on the property but lack the financial means to purchase shares held by other heirs.^[46] The heirs may be eligible for a loan through Sustainable Neighborhoods, a subsidiary of the Center for NYC Neighborhoods.^[47] The Center's Homeowner Hub also offers free legal services for property owners and heirs facing complex property situations.^[48]

Edward Mostoller, director of the Homeowner Stability Project at the City Bar Justice Center, proclaims the amendments to the Partition Act to be "a game-changer" in the fight against deed fraud, ensuring that families retain security and control over their properties for future generations.^[49]

IV. The Transfer on Death Deed Law

A. Key Points of the Recent Legislation

On April 20, 2024, New York State joined at least twenty other states in enacting the Transfer on Death Deed law as part of the 2023-2024 Executive Budget.^[50] The law, which became effective on July 19, 2024, allows a real property owner to designate a beneficiary who will automatically inherit the property upon their death.^[51] Property is transferred to beneficiaries by the owner through the recording of the transfer on death "TOD" deed.^[52] Thus, probate is avoided.^[53]

The TOD Deed law requires the property owner to have testamentary capacity and sign the TOD deed before two witnesses and a notary.^[54] Additionally, the deed must be recorded during the owner's lifetime in the county in which the property is located, thereby making the deed a public document.^[55] The law also stipulates that the transfer of property is only effective if the designated beneficiary survives the owner; the owner retains full ownership and control during their lifetime.^[56] Additionally, the TOD Deed law allows for revocation of the deed at any time, allowing the owner to have flexibility and control over their property.^[57]

B. What Is Probate And Why Do We Want To Avoid It?

Probate is the legal process through which a deceased person's will is validated.^[58] The process of validating a will involves proving before an authorized official that a document presented for official recognition and registration is the last will and testament of the deceased person.^[59] Further, the original will, "usually delivered to the executor or administrator of the deceased, together with a certificate of the will having been proved, is also commonly called 'probate.'"^[60]

There are several benefits of avoiding probate; the most common being to avoid the cost and time commitment.^[61] In many jurisdictions, both the attorney and the executor of the estate are entitled to minimum fees which can be as high as six percent of the gross value of the estate, resulting in an expensive probate process.^[62] Additionally, the probate process can take months or even years in some cases, often complicating the administration of the estate and leading to greater expenses.^[63] These expenses can include greater attorney fees, court fees, accounting fees for financial management, and administrative costs.^[64] Delays may also result in costs due to disputes or litigation among heirs.^[65]

Further, probate gives families less control over the decedent's estate since the process goes through the court system.^[66] The court oversees the administration of the estate, which can limit the flexibility and control that the decedent's executor has over the assets.^[67] Many individuals may want to manage their assets without court interference.^[68]

C. How the Law Helps Prevent Deed Theft

The TOD Deed law can help prevent deed fraud by allowing individuals to transfer property directly to the rightful beneficiary as named in the TOD deed, without having to go through the often lengthy and expensive process of probate.^[69] Scammers often exploit individuals who lack the financial means to probate a will, who have limited access to legal resources, and who have valuable homes in gentrifying neighborhoods.^[70] Scammers' plans often succeed since they target owners who are unsuspecting and unprepared to fight back.^[71] The clear designation of beneficiaries in a TOD deed can

also preempt disputes in cases where a homeowner does not have a will.^[72] The TO Deed law provides a simple and effective way for homeowners to pass down their property to the intended heirs, reducing the risk of fraud and protecting individuals from exploitation.

V. The Anti-Deed Theft Law

A. Background on the Recent Legislation

This past year, another piece of legislation has been enacted to help prevent deed theft: Senate Bill S.6577/A.6656.^[73] The legislation was originally sponsored in the senate by Senator Kavanaugh, and then recently signed by Governor Hochul.^[74] The Assembly version of the bill was sponsored by Assemblymember Weinstein in April 2023.^[75] The purpose of the law is “to amend the real property actions and proceedings law, the criminal procedure law, and civil practice law and rules, in relation to the theft of real property and for victims of real property theft.”^[76] Further, the Anti-Deed Theft Law is meant “to increase protections against . . . deed theft by providing homeowners and prosecutors tools to assist in restoring title to the rightful homeowners, extend certain consumer protections in distress, and preventing deed theft scammers from utilizing the courts and law to their advantage in carrying out deed fraud.”^[77] In her press release announcing the law, Governor Hochul said that “[w]ith the protection enshrined in this legislation, we are empowering homeowners and law enforcement to fight back against deed theft and keeping families, homes, and communities intact.”

B. Defense Against Deed Theft

The Anti-Deed Theft law gives the Attorney General and district attorneys the ability to halt housing court eviction proceedings for homeowners who are caught in ownership or title possession disputes, helping prevent wrongful evictions.^[79] This allows prosecutors to “flag properties where they believe deed theft may have occurred in order to prevent further transactions.”^[80] The law also broadens the ability of the Attorney General and district attorneys to “void fraudulent documents that dictate

interests in the property.”^[81] Further, a legal presumption of fraud is established in civil ownership disputes if any party has a prior deed-related fraud conviction.^[82]

Additionally, the law expands protections under the Home Equity Theft Prevention Act, which “allows homeowners whose properties are in foreclosure or on the city t lien sale list to cancel contracts to sell their homes.”^[83] The new law extends certain provisions of the Home Equity Theft Prevention Act to include homeowners who h active utility liens.^[84] This is significant because properties with signs of financial distress, such as those with utility liens or foreclosures, attract the attention of scammers.^[85]

Overall, the law provides prosecutors with better resources to defend homeowners who are at risk of deed fraud.^[86] When announcing the new legislation, Governor Hochul stated that

“the law gives prosecutors and New Yorkers greater tools to ‘combat those who try steal their deeds, their wealth, and their American Dream.’”^[87]

VI. Preventative Measures

The recent legislative measures provide homeowners with greater tools to protect themselves and enhance prosecutors’ power to defend the public from these crimes further protect themselves, the NYC Department of Finance suggests every New Yorker take two key steps.^[88] First, homeowners should check their property’s deed least once a year with the City’s Register records “to make sure that no deeds or mortgages have been recorded” on their property without their consent.^[89]

Additionally, homeowners should sign up for the Notice of Recorded Document Program in order to receive notifications when a new document is recorded against their property.^[90]

VII. Conclusion

For all the Brooklyn homeowners who were blindsided by the news that a stranger now claimed part ownership of their homes, the consequences of deed theft were

devastating and life-altering. Those families were forced to either sell their homes or pay thousands of dollars to stay in them. However, New York's recent legislative actions, including the Uniform Partition of Heirs Property Act, the Transfer on Death Deed law, and the Anti-Deed Theft law, are a critical step forward in protecting homeowners from such fraudulent practices. This legislation provides homeowners with the resources to protect their property and prosecutors with the power to take action against scammers. Through enactment of the recent laws, New York is strengthening its commitment to preserving the rights and security of homeowners.

[1] George Joseph and Samantha Maldonado, *A House Divided: How a Band of Speculators Seized Deeds of Black-Owned Brooklyn Brownstones*, The City (April 17, 2023, 5:00 AM) <https://www.thecity.nyc/2023/04/17/speculators-black-brown-homes-deeds/>.

[2] RPAPL § 993.

[3] RPL § 424.

[4] S.6577, 2023-2024 Leg. Sess. (N.Y. 2023).

[5] RPAPL § 993; RPL § 424; S.6577, 2023-2024 Leg. Sess. (N.Y. 2023).

[6] *Deed Theft*, Letitia James New York State Attorney General, <https://ag.ny.gov/publications/deed-theft>.

[7] *Id.*

[8] Joseph, *supra* note 1.

[9] *Id.*

[10] *Id.*

[\[11\]](#) *Id.*

[\[12\]](#) Senator Brian Kavanagh, *Hochul Signs Bill Giving Prosecutors More Power to Halt Deed Evictions*, The New York State Senate (Nov. 16, 2023), <https://www.nysenate.gov/newsroom/in-the-news/2023/brian-kavanagh/hochul-sign-bill-giving-prosecutors-more-power-halt-deed>.

[\[13\]](#) *Id.*

[\[14\]](#) *Id.*

[\[15\]](#) *Id.*

[\[16\]](#) Joseph, *supra* note 1.

[\[17\]](#) *Id.*

[\[18\]](#) *Id.*

[\[19\]](#) *Id.*

[\[20\]](#) *Id.*

[\[21\]](#) *Id.*

[\[22\]](#) Joseph, *supra* note 1.

[\[23\]](#) *Id.*

[\[24\]](#) *Id.*

[\[25\]](#) *Id.*

[\[26\]](#) *Support for the Uniform Partition of Heirs Property Act*, N.Y.C. Bar Ass'n (May 21, 2019), <https://www.nycbar.org/reports/support-for-the-uniform-partition-of-heirs->

[property-act/](#).

[\[27\]](#) *Id.*

[\[28\]](#) Samantha Maldonado, *Heirs Gain New Shield From Predatory Real Estate Speculators*, The City (July 23, 2024, 2:54 PM), <https://www.thecity.nyc/2024/07/23/heirs-predatory-real-estate-speculators-partition/>.

[\[29\]](#) *Id.*

[\[30\]](#) *Id.*

[\[31\]](#) *Id.*

[\[32\]](#) *Id.*

[\[33\]](#) Maldonado, *supra* note 27.

[\[34\]](#) *Id.*

[\[35\]](#) *Id.*

[\[36\]](#) *Id.*

[\[37\]](#) Maldonado, *supra* note 27; RPAPL § 993.

[\[38\]](#) Maldonado, *supra* note 27.

[\[39\]](#) *Id.*

[\[40\]](#) *Id.*

[\[41\]](#) *Id.*

[\[42\]](#) *Id.*

[\[43\]](#) *Id.*

[\[44\]](#) Maldonado, *supra* note 27.

[\[45\]](#) *Id.*

[\[46\]](#) *Id.*

[\[47\]](#) *Id.*

[\[48\]](#) *Id.*

[\[49\]](#) *Id.*

[\[50\]](#) Sharon L. Klein, *New York's Latest Legislative Session: What Passed, What Didn't, What's Next*, N.Y.L.J. (Sept. 9, 2024), <https://www.law.com/newyorklawjournal/2024/09/09/new-yorks-latest-legislative-session-what-passed-what-didnt-whats-next-6/>.

[\[51\]](#) RPL § 424.

[\[52\]](#) *Id.*

[\[53\]](#) *Id.*

[\[54\]](#) *Id.*

[\[55\]](#) *Id.*

[\[56\]](#) Klein, *supra* note 49.

[\[57\]](#) *Id.*

[\[58\]](#) *Probate*, Black's Law Dictionary, <https://thelawdictionary.org/probate/#:~:text=The%20act%20or%20process%20of,per>

%2C%20is%20such%20in%20reality (last visited Nov. 7, 2024).

[\[59\]](#) *Id.*

[\[60\]](#) *Id.*

[\[61\]](#) *Id.*

[\[62\]](#) *Id.*

[\[63\]](#) *Id.*

[\[64\]](#) 2 John J. Regan et al., *Tax, Estate & Financial Planning for the Elderly: Forms and Practice* § O:4 (2024).

[\[65\]](#) *Id.*

[\[66\]](#) *Id.*

[\[67\]](#) *Id.*

[\[68\]](#) *Id.*

[\[69\]](#) RPL § 424.

[\[70\]](#) *Protecting Your Home From Deed Theft*, City Bar Justice Center (Feb 10, 2017), <https://www.citybarjusticecenter.org/news/protecting-home-deed-theft/>.

[\[71\]](#) *Id.*

[\[72\]](#) *Id.*

[\[73\]](#) S.6577, 2023-2024 Leg. Sess., at (N.Y. 2023).

[\[74\]](#) *Id.*

^[75] *Governor Hochul Signs Legislation to Protect New York Homeowners From Deed Theft* N.Y. State (Nov. 14, 2023), <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-protect-new-york-homeowners-deed-theft>.

^[76] S.6577, 2023-2024 Leg. Sess., at 1 (N.Y. 2023).

^[77] *Id.*

^[78] N.Y. State, *supra* note 74.

^[79] Kavanagh, *supra* note 11.

^[80] *Id.*

^[81] *Id.*

^[82] *Id.*

^[83] *Id.*

^[84] *Id.*

^[85] Kavanagh, *supra* note 11.

^[86] *Id.*

^[87] *Id.*

^[88] *Protect Your Property from Deed Fraud*, NYC Dept. of Finance, <https://www.nyc.gov/site/finance/property/deed-fraud.page> (last visited Nov. 7, 2024)

^[89] *Id.*

^[90] *Id.*

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