



NEW YORK REAL ESTATE LAW REPORTER®

An **ALM** Publication

Volume 36, Number 1 • December 2019

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Recent Investigation, Prosecution and Legislation Regarding Fraudulent Deeds

By Carol A. Sigmond

New York City, particularly gentrifying areas of Brooklyn, Harlem, and Washington Heights, are seeing an upsurge of deed theft. Attorneys, architects, title companies, real estate brokers, agents, contractors, developers and construction managers need to be alert to this potential issue when blocks of properties are assembled for development in these neighborhoods.

There have been complaints of fraudulent deeds received by the New York City Department of Finance (DOF) over the years. Families, particularly families of color, were forced to navigate the judicial system to try and recover properties on their own, with only a few able to afford lawyers to represent them. Moreover, these unfortunate victims of theft were required to post a bond as a precondition of litigating to recover their homes from the thieves. This impediment made recover of stolen homes more difficult.

Beginning in 2017, that began to change. FY 2018/2019 1st Quarter Report Notice of Recorded Document Program Local Law 249-2017, which became effective July 1, 2018, requires the DOF to notify property owners when documents are recorded against their property. It further requires DOF provide a report to the City Council that includes complaints regarding any claims of fraudulent deeds being used to convey property.

Attention to this issue has increased. For example, approximately a year ago, questions about fraudulent deeds were raised by Brooklyn Borough President Eric Adams and City Council Member Robert Cornegy, Jr. Messrs. Adams and Cornegy demanded an investigation. Simultaneously, Manhattan District Attorney Cyrus Vance had a Grand Jury investigate the issue. On Dec. 13, 2018, the Manhattan Grand Jury issued a 53-page report with recommendations. The Grand Jury Report found that owners of "single family brownstones in culturally diverse and rapidly gentrifying" areas of Brooklyn, Harlem, and Washington Heights were being dispossessed by a variety of fraudulent schemes. A copy of the report is available at <http://bit.ly/2Qo1Pc4>.

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The Grand Jury reported that homes in these neighborhoods had been in the same family for many years, up to two or three generations. As the current owners age, the properties accumulate liens. If the current owner passes away, the property might become unoccupied or dilapidated. The fraudsters would scour city records, visit targeted neighborhoods, and locate properties that appeared vulnerable. The fraudsters were so brazen that they would forge the last owner's signature on a deed. The fraudsters would then be free to sell, mortgage, or develop the properties. "SLAP" suits were also used to frighten legitimate owners into allowing the fraudsters to retain the properties.

In response to the Grand Jury Report, the DOF placed a "Deed Fraud Alert" on its website and initiated an on-line reporting slink and a brochure entitled "Protect Your Home: Deed Fraud Guide." See, <https://on.nyc.gov/2NT0Ped>.

New York State Attorney General Letitia James has been investigating individual cases and pressing charges with success. On Jan. 8, 2019, James announced the first sentence for theft of residential property by filing fraudulent deeds with the New York City Register's Office. Marilyn Sanchez of Brooklyn was sentenced to 60 days in jail and five years' probation for fraudulently acquiring two properties in Brooklyn by means of fraudulent deeds. Sanchez returned the properties to the rightful owners as part of her agreement with James' office. On March 14, 2019, James announced the indictment of two Long Island residents for fraudulently acquiring ownership of residential properties, one each in Brooklyn and Queens.

Carol Sigmond is a partner in the New York office of Cohen Seglias and concentrates her practice on construction industry matters, including contract preparation, mediation, litigation, suretyship, bid protests, appeals, and arbitration.

These latter cases were brought with multiple felony charges.

Likewise, Brooklyn District Attorney Eric Gonzalez has been aggressively prosecuting individuals using fraudulent deeds and false filings to steal homes from the heirs of decedents. In addition, the Sheriffs for New York, Kings, Queens, Richmond and The Bronx are also combating deed fraud. Deed fraud alert information, including how to protect yourself from deed fraud by registering on ACRIS, as well as how to report a theft, are found on line at <https://on.nyc.gov/2XpUREU>.

New legislation, Senate Bill 1688/ Assembly Bill 5615, has passed both houses of the New York legislature and been signed by the Governor. This bill amends the Home Equity Theft Act of 2006 by increasing protections to home owners where the properties are in default or foreclosure. This new legislation provides additional time to homeowners to cancel contracts with so called "distressed property consultants" and overall mandates that the terms of these contracts be more consumer friendly.

This legislation eliminated the condition of a bond requirement for victims of deed theft to litigate in order to recover a stolen home. Moreover, where there has been a criminal conviction for deed theft, there is now a mechanism to allow the victims to use the criminal conviction of the thief to quiet title to the property.

In passing this legislation, the State Senate and State Assembly recognized that "savvy scammers" were 'exploiting loopholes' in the law to avoid prosecution and retain their ill-gotten gains. The goal of the legislation was to expose these schemes to criminal prosecution and to provide the victims with fair opportunity to recover the property.

On Oct. 22, 2019, Governor Cuomo directed the New York State Department of Financial Services (DFS) to conduct a full investigation of deed fraud in Brooklyn. The Governor directed the DFS to send a Foreclosure Relief Unit to Brooklyn to assist victims of deed theft. The hotline to report deed theft is 1-800-342-3736.



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Telephone: (800) 756-8993
Editorial e-mail: ssalkin@alm.com
Circulation e-mail: customer@alm.com
Reprints: www.almreprints.com

New York Real Estate Law Reporter 021873
Periodicals Postage Paid at Philadelphia, PA
POSTMASTER: Send address changes to :

ALM
150 East 42 Street, Mezzanine Level
New York, NY 10017

Published Monthly by:
Law Journal Newsletters
1617 JFK Boulevard, Suite 1665, Philadelphia, PA 19103
www.ljonline.com

