



Alerts

New York Governor Hochul Signs Anti-Deed Theft Bill into Law: What Mortgage Lenders and Servicers Need to Know

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Hinshaw Alert

New York Governor Kathy Hochul recently signed off on anti-deed theft legislation, as outlined in Senate bill 2023-S.6577 with companion Assembly bill 2023-A.6656. The Governor signed the new legislation on November 14, 2023, and it goes into effect 30 days later, on December 14, 2023. (See 2023-A.6656 section 8.)

What is Deed Theft?

Deed theft generally refers to a practice in which a homeowner is targeted and defrauded into turning over the title to their real property. In some deed theft schemes, the homeowner does not even know of, let alone approve, the title transfer.

For instance, a deed theft perpetrator might forge a homeowner's signature on a deed and proceed to file it with the county clerk. Another example of deed theft might be a homeowner whom a deed theft perpetrator tricks into signing a document without them understanding that the document is a deed or under "false promises of quick money." (See 2023-S.6577 in the "Justification" section.)

Deed theft is not an isolated phenomenon. The New York legislature describes it as "surprisingly frequent." (See 2023-S.6577 in the "Justification" section.) Over 3,500 deed theft complaints have been reported in New York City within the past ten years. The issue is particularly pronounced for elderly homeowners and those residing in minority communities, especially those identified as "gentrifying." (See *id.*)

The stated purpose of the new legislation is to increase protections against deed theft by providing new tools to restore title, protect homeowners in distress, and prevent "deed theft scammers from utilizing the courts and the law to their advantage in carrying out the fraud." (See 2023-S.6577 in the "Purpose" section.) The new legislation now establishes several new measures to combat deed theft.

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Six Key Updates to the Law

1. First, the legislation creates Real Property Actions and Proceedings Law ("RPAPL") 756-A.

Under this new section of the RPAPL, a federal, state, or local government agency, including the New York Attorney General or local District Attorney, can now move to stay any legal proceeding in which title to real property is contested. (See RPAPL 756-A[1][A].)

Such legal proceedings include mortgage foreclosure actions, actions to enforce a mortgage note, eviction actions in housing court, quiet title actions, or other civil cases. (See RPAPL 756-A[6].)

If a governmental deed theft investigation is ongoing in good faith, the court in such legal proceeding "shall" grant the stay. (See RPAPL 756-A[1][A].) Moreover, if the government has initiated a criminal action with a charging instrument for deed theft, the court in such legal proceeding "shall" grant a stay. (See RPAPL 756-A[2].)

Likewise, if a federal, state, or local government agency has commenced a civil action pertaining to deed theft, the court in such legal proceeding "shall" grant a stay. (See RPAPL 756-A[3].) Note that "shall" is mandatory language, instead of using a word like "may," which would be discretionary.

Once the stay is imposed under RPAPL 756-A[1][A], the court must arrange a status conference every six months to determine whether the government's deed theft investigation is ongoing. (See RPAPL 756-A[1][B].) The court "shall" continue the stay until the government's investigation is closed. (See *id.*) That being said, the court can continue the stay after the government's investigation is closed in the interests of justice. (See RPAPL 756-A[5].)

The legislation then creates a rebuttable presumption for bona fide property disputes. (See RPAPL 756-A[4].) The presumption in civil actions will be that a deed transfer was fraudulent where a party to the transfer has been convicted of deed theft or related fraud for that property. The defendant can rebut the presumption.

2. In addition, the legislation amends RPAPL 1501.

Now, where a person has been convicted of a criminal offense involving deed theft, the conviction creates a rebuttable presumption that the deed transfer was fraudulent. (See RPAPL 1501[6].) The burden, therefore, shifts from the original homeowner to the convicted party to prove legitimate title to the property.

3. The legislation also amends Real Property Law ("RPL") 266, which pertains to good faith purchasers or incumbrancers.

The new legislation provides that purchasers' or incumbrancers' rights become impaired upon prior notice of fraud. (See RPL 266.) Such notice can be acquired through the purchaser or incumbrancer's actual knowledge that the deed was fraudulent, but it can also be acquired through constructive knowledge, i.e., the purchaser or incumbrancer should have known that the deed was fraudulent. (See *id.*)

There is also a rebuttable presumption that a buyer is not a good faith purchaser if the original owner's mortgage loan is unpaid following the conveyance of the property and the buyer does not formally assume said mortgage loan.

4. Next, the legislation expands New York's Home Equity Theft Prevention Act ("HETPA").

HETPA allows homeowners whose properties are foreclosed or on the New York City tax lien sale list to cancel contracts to sell their homes. A lien on a property can serve as a beacon to deed theft scammers looking for targets.



Thus, HETPA is now broadened to include homeowners with active utility liens. The legislation also modifies the definition of "distressed home loan" in RPL 265-b to cover a home loan for which an installment payment is more than 60 days past due.

5. Further, the legislation amends Criminal Procedure Law ("CPL") section 420.45.

The New York Attorney General or local District Attorney can now motion to void a fraudulent deed. (See CPL 420.45 [1].) Said motion must be made in the Supreme Court of the county in which the subject property is located. (See *id.*) The movant needs to provide notice of the motion to all persons or parties with an interest in the property. (See *id.*)

Such interested persons or parties include the property owner of record, all entities with a lien against the property or a claim to a lien against the property, and all current residents. (See CPL 420.45[6].) The motion must include property details, such as the tax map designation and sworn allegations of the fraud. (See CPL 420.45[1].)

Within ten days of such a motion to void a fraudulent deed, the notice of motion shall be recorded by the county clerk where the property is located, effectively acting as a notice of pendency. (See CPL 420.45[2].) This will notify the public that a dispute as to title exists.

6. Finally, the legislation amends Civil Practice Law and Rules ("CPLR") 6501.

CPLR 6501 pertains to notices of pendency. The New York attorney general or local district attorney may file a notice of pendency following an investigation and determination of probable cause regarding deed fraud. (See CPLR 6501 [B].) Such a notice of pendency is effective for an initial period of 6 months but can be renewed twice after that. (See *id.*)

The New York attorney general or local district attorney may likewise file a notice of pendency upon a deed theft indictment. (See CPLR 6501[C].) Such a notice of pendency does not have a definite term but is effective until the criminal case is either dismissed or disposed of at sentencing. (See *id.*)

Next Steps for Mortgage Lenders and Servicers

With this new legislation going into effect on December 14, 2023, mortgage lenders and servicers will want to follow these steps:

1. Be alert to any loans, foreclosure actions, or other civil actions involving potential deed theft.
2. In preparing for mortgage loan closings, documents should be reviewed for any indicia of deed theft, which could give rise to a claim of actual or constructive knowledge. Extra care should also be taken when reviewing title reports and foreclosure certificates for any notices of pendency relating to deed theft.
3. Once a foreclosure action is commenced, mortgage lenders and servicers should understand that such actions may be delayed due to the imposition of a stay, leading to reprojections of milestones in the case.

While the intended purpose of the new legislation is to enhance homeowners' protections, a reduction in fraudulent deed theft will also benefit mortgage lenders and servicers, giving more confidence that the transactions are legitimate.

Questions can be directed to our New York Consumer Financial Services practice group. The head of the practice group is Partner Brian S. McGrath, (212) 471-6226, bmcgrath@hinshawlaw.com.

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The full text of the Senate bill is available on the New York Senate website at: <https://www.nysenate.gov/legislation/bills/2023/S6577> (last visited Nov. 22, 2023). The bill was sponsored in the New York Senate by Brian Kavanagh, with co-sponsors Zellnor Myrie, Jabari Brisport and Robert Jackson. The full text of the Assembly bill is available on the New York Assembly website at: <https://www.nysenate.gov/legislation/bills/2023/A6656> (last visited Nov. 22, 2023). The bill was sponsored in the New York Assembly by Helene Weinstein, with co-sponsors Alicia Hyndman, Harvey Epstein, Monica P. Wallace and Yudelka Tapia.

See Governor's Press Release, available at: <https://www.governor.ny.gov/news/governor-hochul-signs-legislation-protect-new-york-homeowners-deed-theft> (last visited Nov. 22, 2023).

The New York Senate Standing Committee on Housing, Construction and Community Development held a public hearing on deed theft on October 27, 2022; the law aims to address the issues raised at said hearing. (See 2023-S.6577 at "Justification" section.)

The court is also able to review supporting documents in camera if deemed necessary. (See RPAPL 756-A[1][B].)