



**L E G A L
S E R V I C E S**

INCORPORATED

TESTIMONY

ON

**THE CITY'S EFFORTS TO COMBAT
REAL PROPERTY DEED FRAUD**

PRESENTED BEFORE:

CITY OF NEW YORK, COMMITTEE ON FINANCE

PRESENTED BY:

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My name is Belinda Luu and I am a Staff Attorney in the Foreclosure Prevention Project at MFY Legal Services, Inc. (“MFY”). MFY envisions a society in which there is equal justice for all. Our mission is to achieve social justice, prioritizing the needs of people who are low-income, disenfranchised, or have disabilities. Our organization provides high-quality civil legal services to more than 10,000 poor and low-income clients every year in the areas of housing, employment, consumer, seniors, and disability rights. As an organization dedicated to preserving New York communities, MFY commends the Council for examining the City’s efforts to combat real estate fraud.

In New York City, communities of color are disproportionately targeted by various real estate scams. As a result, communities of color are not only in danger of losing their homes, but also losing their best opportunity to accumulate household wealth. In the United States, and in particular New York City, homeownership plays an important role in mitigating the overall wealth disparity between white families and families of color.¹ For minority homeowners, the home is usually their sole wealth-accumulating asset; investment in financial markets or other assets is uncommon.² For African Americans, homeownership constitutes 92% of their net worth and for Latinos, 67%, in contrast to whites, for whom homeownership represents only 58% of their net worth.³

¹ Sara D. Wolff, “The Cumulative Cost of Predatory Practices: The State of Lending in America & its Impact on U.S. Households.” *Center for Responsible Lending*, June 2015, available at: <http://www.responsiblelending.org/state-of-lending/reports/13-Cumulative-Impact.pdf>.

² Rebecca Tippet, et. al., “Beyond Broke: Why Closing the Racial Wealth gap is a priority for National Economic Security,” *Center for Global Policy Solutions*, May 2014, available at: http://globalpolicysolutions.org/wp-content/uploads/2014/04/Beyond_Broke_FINAL.pdf.

³ Peter Drier, et. al, “Underwater America: How the So-Called Housing Recovery is Bypassing Many American Communities,” Haas Institute for a Fair and Inclusive Society, May 2014, available at http://diversity.berkeley.edu/sites/default/files/HaasInstitute_UnderwaterAmerica_PUBLISH_0.pdf.

As a result of this disparity, real estate scams are particularly harmful to minority homeowners because such scams threaten to steal the only asset that can build a better future for their children: their home.

Property Scams in Communities of Color: More Than Just Deed Fraud

(1) Contract Buyer Scams – Obtaining the Court’s Approval to Steal Property

Unfortunately, efforts to steal property from vulnerable New York City homeowners are not limited to deed theft. Scammers continue to invent new ways of victimizing the most vulnerable members of our communities, particularly those who are poor, elderly, disabled, people of color, or of limited English-speaking proficiency. The recent experience of our client, Louise Charles, sheds light on a new type of pernicious scam: the contract buyer scam.

Ms. Charles is a 79-year-old resident in Council District 35 in Brooklyn. Born and raised in Haiti, Ms. Charles immigrated to the United States in 1978 searching for a better life. After working and saving for nearly 20 years, Ms. Charles fully realized the American dream in 1995 when she purchased her Crown Heights home. Now retired, Ms. Charles’s home serves as a sanctuary for her children and her increasing number of grandchildren. Furthermore, with a fixed income of social security and no retirement savings, Ms. Charles’s home is the only asset she has to pass along to her children.

Sadly, as a senior citizen in her predominately black Crown Heights neighborhood, Ms. Charles is an attractive homeowner to scammers seeking to benefit from skyrocketing home values. She is the victim of a new type of scam: the “contract buying” scam. In separate attempts to take her home, two different limited liability companies have attempted to enforce purported contracts of sale against Ms. Charles in Kings County Supreme Court. In fact, Ms. Charles, who speaks very limited English, was tricked into signing a document she did not understand under the

pretense of receiving public assistance. Ms. Charles was never aware that she was agreeing to sell her home for a small fraction of the market value.

A contract of sale is the promise to sell the property at a later date. When the fraudulent sale does not go through, the “buyer” seeks to enforce the contract in court and pursue the ultimate goal of transferring the deed to itself from unknowing and unwilling alleged “sellers” like Ms. Charles. In the face of these scams, Ms. Charles risks losing her longtime home to sophisticated thieves taking advantage of her unfamiliarity with the English language

MFY believes that this contract buying scheme is merely a creative response to the public’s increased attention to deed theft scams. By attempting to enforce a fraudulent contract of sale in court, the “buyers” obtain a court judgment enforcing the contract and transferring the deed. Unbeknownst to an unsuspecting judge and an overworked court system, mysterious limited liability companies, with unknown principals, obtain the imprimatur of the court system to force homeowners like Ms. Charles to hand over their homes. While Ms. Charles was fortunate enough to find MFY, which has agreed to represent her, we fear that similarly situated homeowners remain at risk of losing their homes to these new scams.

(2) Loan Modification Scams – Continuing to Wreak Havoc

Although City Council and the Attorney General have been fighting foreclosure rescue and loan modification scams for years, financially vulnerable homeowners, especially in communities of color, continue to be targeted by foreclosure rescue and loan modification scams. Often these scams falsely guarantee fast loan modifications or other mortgage relief assistance at an extremely high cost. As of December 1, 2015, the Loan Modification Scam Network at the Lawyers

Committee for Civil Rights Under the Law found that homeowners victimized by foreclosure rescue scams suffered total reported losses of over \$104 million across the United States.⁴

Notably, half of the total reported losses were reported by African American and Latino homeowners, and minority homeowners also lose more on average per scam: Hispanic or Latino homeowners report losing \$4,235 on average, compared to an average reported loss of \$3,254 for African-Americans and a \$3,008 loss for whites.⁵ Many of these scams purposefully use affinity marketing to achieve their nefarious goals. For example, New York City's mono-lingual Spanish-speaking communities have been particularly targeted with scam advertisements flooding local Spanish radio and television stations as well as newspapers. Fliers for these scammers are plastered all over Spanish-speaking neighborhoods from Corona to East New York.

In MFY's pending litigation, *Brardo v. American Hope Group*, we represent four Latino homeowners in Queens who fell victim to an alleged foreclosure rescue scam operation. Our clients allege that they were charged illegal, upfront fees, falsely promised more affordable monthly mortgage payments, and promised legal representation that some of them never received. Troublingly, lawyers are often a part of these schemes. For advocates, pursuing litigation against foreclosure rescue scammers can prove to be time-consuming and difficult, and few organizations have the resources to take them on. Also, the perpetrators of these scams are often hard to identify and may cease operating, only to create new limited liability companies. As the wheels of justice slowly turn, scammers move fast to stay one step ahead. The cases also tend to be very fact-specific, not lending themselves to class actions, and individual lawsuits in this area thus do not result in systemic impact or change.

⁴ <http://www.preventloanscams.org/newsroom/news-clips/lawyers-committee-for-civil-rights-under-law-launches-digital-guide-for-combatting-consumer-financial-scams>

⁵ *Id.*

Preliminary Recommendations To Combat Real Property Fraud

Convening this hearing and identifying the communities plagued by various real property scams is an important first step in ensuring that minority homeowners are able to share equally in accumulation of multi-generational wealth that homeownership has long provided white families. However, we cannot assume that the scams thrust on white homeowners will be the same as those found in communities of color. Nor should the proposed solutions to these frauds be the same.

(1) Require the Public Listing of the People Behind the Limited Liability Companies

Hiding behind sham limited liability companies, the perpetrators of these scams shroud their actions under a veil of secrecy. The ostensible buyers in deed theft and contract buying scams are often limited liability companies created for the sole purpose of holding the stolen property. When homeowners or advocates attempt to track down the buyers, they are often led to just a mailbox, not to a physical office of an active business with actual employees. The real actors behind the scam remain in the shadows. The cost of investigating these cases to identify the beneficial owners is prodigious, usually beyond homeowners' means. Non-profit legal services providers with limited resources fare no better. Concealed by these sham companies, scammers can act with relative impunity.

The current regime places the burden on the victim to ascertain the name and address of potential scammers after their deeds have been stolen. A better framework would be to force buyers to disclose this information *ex ante*, thereby discouraging the fraudulent sales in the first place, and facilitating legal action if the scammers follow through with the theft. Recent reforms by the Department of Finance point to a potential solution. Effective May 2015, the Department of Finance now requires limited liability companies to disclose the names of all of their members

when the company purchases real property.⁶ However, because these names are only revealed to the Department of Finance, this reform needs to go further. First, it is necessary that the names of the members be *publicly disclosed* so that homeowners can identify the potential principals behind the deed theft scams.

Second, further reforms must require the disclosure of *beneficial owners* rather than just “members.” Scammers can evade the current disclosure requirements by layering the limited liability companies so that the members of the company that steal the deed are themselves sham limited liability companies. By requiring the names and addresses of beneficial owners, the Department of Finance could cut through this web of deceit. The U.S. Treasury Department has launched just such a program for property sales of more than \$3 million in Manhattan.⁷ A similar program must be launched for all properties in New York City, not just the homes of the wealthy.

(2) Widely Publicize the Department of Finance’s Recorded Document Alert System

Another step the Council can undertake to limit deed fraud scams is to better advertise New York City Department of Finance’s Recorded Document Alert System. This alert system was created specifically to stop deed fraud as soon as it happens.⁸ However, in MFY’s experience, most homeowners do not know about this simple tool or how to register for it. Further, and particularly problematic for limited-English speaking communities, descriptions of the alert system on the Department’s website are only in English.

Greater promotion of the Recorded Document Alert System is necessary. At the very least, City Council should require that an explanation of the Recorded Document Alert System be

⁶ Stephanie Saul, *New Disclosure Rules for Shell Companies in New York Luxury Real Estate Sales*, N.Y. Times, July 20, 2015, at A23.

⁷ Louise Story, *U.S. Will Track Secret Buyers of Luxury Real Estate*, N.Y. Times, January 13, 2016, at A1.

⁸ www1.nyc.gov/site/finance/taxes/property-recording-documents.page

included with every homeowner's annual property value statement, which is mailed every January. We recommend that the description and a statement urging homeowners to enroll be written in simple-to-understand English and be printed on a brightly colored piece of paper. Further, it is essential that the description also be in languages other than English. At the very least, the notice should be provided in the top languages spoken by New York City's limited-English proficient population, including Spanish, Chinese, Russian, Haitian Creole, and Korean. The description should also provide phone numbers for various local legal services organizations that can assist if a homeowner receives an alert that a deed, mortgage or other document was recorded without his or her knowledge.

Further, advertisement of this system, and the organizations that are there to help, should not be limited to a once-a-year mailing. It is important that information regarding this alert system, in multiple languages, also be advertised in the community: at libraries, on non-English radio stations, on NY1, and in local politicians' offices. This tool was designed to combat the very fraud that is the subject of this hearing, but it can only achieve its goal if homeowners know of its existence.

(3) Maintain A Continued Presence in Communities of Color

If history is any guide, real property scams in communities of color are different and more concentrated than in white communities. As a result, solutions should be tailored with this reality in mind and targeted to those communities. First, homeowner education is essential. While housing counseling agencies and legal services organizations provide some of this education, current resources are insufficient to stay one step ahead of the scammers. To ensure that minority homeowners are able to maintain their singular source of wealth: their homes, the City must continue to dedicate funding to housing counseling and legal services organizations who can assist homeowners in fighting off the scammers that have long been allowed to disproportionately prey upon communities of color.

Second, in disseminating that education, we must learn from the scammers. They have surpassed us in being the first contact for distressed homeowners. They are the ones using the foreign language media to advertise their so-called “help.” They are the ones on Hot97 and 1010 Wins pushing their wares. They are the ones whose signs appear on lamppost and telephone poles. The vast majority of homeowners are not reaching out and calling 311 for help. Instead, they are responding to those who reach out to them, who tend to be the scammers.

Furthermore, many of New York City’s limited English homeowners have no choice but to succumb to the scammers who advertise in their language. Three years after conducting an interview with the Korean-language press, one of our attorneys still receives calls from Korean-speaking homeowners referencing that article. Whenever an MFY attorney appears on Univision to discuss MFY’s lawsuit against American Hope Group, a flood of calls from Spanish-speaking homeowners fill our hotline. We must educate and inform homeowners through the specific methods of communication that reach these communities. This type of outreach requires funding not just to help individual homeowners, but for a sustained campaign to inform and educate entire communities. If we do not dedicate funds to advertise in the communities, the scammers will win, causing hundreds of homeowners to unnecessarily lose their homes.

Again, MFY thanks the Council for recognizing the disastrous effect of real property frauds. MFY is committed to working with the City Council to better protect homeowners and preserve long-term homeownership in New York City, particularly in communities of color that rely upon their homes as a source of generational wealth and help limit the ever-increasing economic inequalities of this City. Thank you for holding today’s hearing and for considering this important issue.