



DON'T LIEN ON ME:
HOW NEW YORK'S PUBLIC ASSISTANCE MORTGAGES UNDERMINE
HOMEOWNERSHIP AND FINANCIAL STABILITY

By Susan Antos, Kristin Brown Lilley, Tamara Frazier
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ACKNOWLEDGEMENTS

This report was made possible through the generous contribution of the Robert Sterling Clark Foundation. The views presented here are those of the authors and not necessarily those of the Robert Sterling Clark Foundation or its directors, officers, or staff.

The author wishes to acknowledge the fine editing of Saima Akhtar and Kristi Hughes for the design and layout.

Many thanks to the attorneys and advocates who told us how Social Services Law 106 affected their clients: Rose Marie Cantanno, New York Legal Assistance Group (NYC); Justin Haines, Legal Services-NYC-Bronx; Joseph Kelemen, Western New York Law Center (Buffalo); Robert McCool, Neighbors Helping Neighbors (Brooklyn); Zachary Pike, Legal Aid Society of Rochester (Rochester); Andrew Sprong, Western New York Law Center (Buffalo); and Mary Traynor, Legal Services of Central New York (Syracuse).

All errors and omissions are the authors' own.

ABOUT EMPIRE JUSTICE CENTER

Empire Justice Center is a statewide, public interest law firm with offices in Albany, Rochester, White Plains and on Long Island. Empire Justice focuses on changing the "systems" within which poor and low-income families live. With a focus on poverty law, Empire Justice undertakes research and training, acts as an informational clearinghouse, and provides litigation backup to local legal services programs and community based organizations. As an advocacy organization, Empire Justice engages in legislative and administrative advocacy on behalf of those impacted by poverty and discrimination. As a non-profit law firm, Empire Justice provides legal assistance to those in need and undertakes impact litigation in order to protect and defend the rights of disenfranchised New Yorkers.

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I. INTRODUCTION

Homeownership is a cornerstone of the American Dream. For those who achieve it, the home is as an asset that will provide stability and financial security for their families. Numerous programs encourage individuals and families seeking a ladder to the middle class to invest in homeownership as a way to build equity, become a part of a community and to invest in the Dream.

Unfortunately, in New York State, that notion is undermined by a law that requires homeowners to give a mortgage on their homes in exchange for receiving welfare benefits. For these recipients, welfare is not a benefit but a loan, a virtually invisible debt that grows every month that they are on assistance and which silently drains the equity out of their homes for as long as they receive benefits. These homeowners sign a mortgage document when they apply for benefits and the next time they or their families hear about their debt could be decades later when they are downsizing, re-financing, when they pass away, or, to add insult to injury, when they are in foreclosure. In the years since they signed the mortgage, they have not been told how much is being charged or credited against their debt, as would be done with a regular mortgage or home equity loan. As a result, the homeowner can not identify errors. If the homeowner were to become aware of an error, social services regulations expressly prohibit them from requesting an administrative fair hearing to challenge the amount of the debt applied to the mortgage.¹

This report describes and quantifies New York's use of the welfare mortgage lien, which has leveraged over \$25 million in homeowner equity and taken more than 12,000 new mortgages since 2006. The report will make the case that the laws which permit this practice should be repealed, or at the very least, homeowners should be provided with an annual statement from their mortgage holder, just as they do from other mortgage servicers. This report also provides a comprehensive analysis of the laws and regulations which allow Social Services Districts to require public assistance recipients to give the District a mortgage as a condition of eligibility for public assistance. It describes how the law is implemented, how it has been interpreted by the courts, how the provision frustrates efforts at self-sufficiency and how the lack of clarity and transparency in the calculation and collection of the debts underlying these mortgages has led to erroneous recoveries from New York's most vulnerable families struggling to stay afloat.

Section V (Just How Extensive is the use of SSL §106?) and the accompanying charts in Appendix I of this report provide an overview of the number of mortgages taken by Social Services Districts under SSL §106 between the years 2006-2012 and the amount of money recovered by each Social Services District during that same time period. Appendix III is a toolkit for attorneys and advocates to enable them to assure that mortgages are taken only in the appropriate situations and that they are correctly calculated.

The final sections review legislative proposals that have addressed the harms caused by New York's mortgage provisions including a comprehensive proposal which if enacted, would bring transparency to the DSS mortgage collection process, and make recommendations for New York State to address the serious problems created by SSL §106.

II. WHAT'S WRONG WITH TAKING MORTGAGES AGAINST THE HOMES OF PUBLIC ASSISTANCE RECIPIENTS?

Social Services Law §106 perpetuates an archaic practice and creates a severe impediment to the goal of self-sufficiency. By taking a lien on real estate for the value of benefits received, the law burdens public assistance recipients with debt and blocks their ability to move ahead in life due to the onerous and extremely confusing mortgage on the property.

Unlike lenders of traditional mortgages, the Social Services Districts are not required to and do not provide homeowners with any upfront notice of the amount of the lien, or periodic accounting of the accrued debt or credits made against the debt.² As a result, homeowners do not know the size of the mortgage against their home until they attempt to sell, modify or refinance their mortgage loan. These events are often the first time that homeowners understand that there is a substantial encumbrance on their property. Problems occur as a result of the lack of accounting. For example, the amount of the debt assessed to the homeowner could be overstated if the Social Services District erroneously included payments which cannot be charged to the welfare lien: Supplemental Nutrition Assistance Program (SNAP, formerly food stamps) benefits, Home Energy Assistance Program (HEAP) benefits and child care subsidies. Alternatively, the amount could be excessive because the Social Services District failed to credit a recovery already made on the account. This includes child support collected and retained by the District to pay itself back for public assistance issued to a minor in the household, or a lottery intercept under Social Services Law §131-r. These types of errors result in Districts taking more of the homeowner's equity than they are actually owed. To make matters worse, many homeowners are unaware that when they apply for public assistance they have the right to refuse to execute a mortgage and still receive public assistance for their children. Because there is no required accounting, homeowners have no avenue to determine the true amount of public assistance provided and credits made over time.

The problem is compounded by the fact that homeowners cannot dispute the amount of the mortgage at an administrative fair hearing.³ The only available remedy is a court proceeding pursuant to CPLR 5239, which will be costly, requiring a court appearance and a lawyer. The ability to refute recoveries is nearly impossible because some mortgage debt goes back decades and the only evidence of payment, if the District is asked and able to produce it, are hundreds of pages of computer printouts written in obscure code. More importantly, the financial stability of some of the most vulnerable homeowners is placed at risk. Homeowners most often impacted are divorced spouses, typically women who received the house as the only asset in their divorce, elderly individuals and their families seeking to sell the family home, and homeowners seeking to refinance to avoid foreclosure or to obtain home equity loans for things such as home maintenance or medical costs.



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Finally, the very existence of the welfare lien undercuts other initiatives in the Social Services Law to encourage homeownership. Recognizing that home ownership is an important step toward self-sufficiency, the Social Services Law encourages public assistance recipients to save for a home, by depositing earnings in special savings accounts called Individual Development Accounts, which can be matched with other funds and used for certain limited purposes, including purchasing a home.⁴ For welfare recipients, it is a cruel hoax for the State to encourage the use of these accounts, because the savings which are used to buy a home, will be taken back by the local Social Services District in the form of a mortgage against the newly purchased home.

III. AN OVERVIEW OF THE LAW

A. PUBLIC ASSISTANCE IS A LOAN

In New York State, public assistance is a debt that a Social Services District can collect through the interception of windfalls such as inheritances, personal injury recoveries and life insurance payouts.⁵ A person who wins a lottery prize of \$600 or more will have up to 50% of the lottery prize intercepted to repay any public assistance received in the last ten years.⁶ In addition, even though New York State does not count the home as a resource in determining public assistance eligibility, New York Social Services Law §106 and §360(1) permit Social Services Districts to require homeowners who receive public assistance to sign a mortgage in favor of the District as a condition of eligibility for benefits.⁷ The size of the mortgage is equal to the total amount of public assistance received. As a result, the debt continues to accrue as the individual or family receives welfare benefits – increasing the size of the mortgage with each subsequent payment.

New York is one of only two states in the nation that requires welfare recipients to execute a deed or mortgage as a condition of eligibility for public assistance. Only New York and Connecticut allow the taking of a mortgage to recover public assistance paid to a homeowner with State or federal funds.⁸

Although SSL §106 allows a Social Services Commissioner to accept a mortgage on behalf of the Social Services District for the assistance and care of a public assistance recipient,⁹ the placement of liens remains wholly discretionary.¹⁰ So while local Districts are not required to place a mortgage on the homes of families receiving assistance, only two counties, Cayuga and Yates, do not currently take mortgages under this provision.¹¹

There are some restraints on the powers of the Social Services District holding title to the assigned deed or mortgage to sell the property or assign or enforce the mortgage. First, the sale or other disposition of the property cannot materially adversely affect the assignee's welfare.¹² Upon the death of the mortgagor, the property may be used to shelter other public assistance recipients for a period of up to one year, "(e)xcept in cases where the property...is used to shelter a surviving spouse."¹³ Presumably this means that surviving spouses may stay for a longer period of time, but the regulation is not clear. The only clear statutory guarantee permitting a surviving spouse to remain in the mortgaged home is when the mortgage was executed in return for benefits under the pre-1974 Aid to Aged, Blind or Disabled (AABD) program.¹⁴ For surviving spouses who live in homes where welfare mortgages were executed after 1974, the law needs to be amended to clarify that all surviving spouses are assured of this protection. If the mortgage has not been paid within six months from the date of the death of the mortgagor, the Social Services official may sell the property within one year.¹⁵ After the death of the mortgagor, any public assistance recipient who remains living in the house will cause the mortgage debt to increase every month by a "reasonable rental" amount, unless that person is the surviving spouse.¹⁶

When the mortgagor has died, but owns the property with an individual who has not received public assistance and has not also executed a mortgage in favor of the Social Services District, the rights of the Social Services District are complicated and in some situations may be extinguished. This situation is reviewed in more detail in Section III (I) (Jointly Owned Property).

B. LEGAL CHALLENGES TO SOCIAL SERVICES LAW §106

Social Services Law §106 has withstood many challenges to its validity. The first reported challenge to the law was in 1937 when the Herkimer County Supreme Court held that §130 of the Public Welfare Law (now §106 of the Social Services Law) was "constitutional" and the welfare commissioner had a right to take and accept the deed on behalf of the County.¹⁷ The decision provides little guidance for understanding its analysis since it fails to identify the basis for the constitutional challenge.

In 1969, the Supreme Court of the United States summarily affirmed a decision of the Southern District of New York in *Snell v. Wyman*, a broad challenge to nearly all the recovery provisions in the New York Social Services Law. The United States District Court had held that none of the provisions challenged, including the provision permitting mortgages to be taken against the homes of welfare recipients, offended the Supremacy Clause or the Due Process or Equal Protection clauses of the U.S. Constitution.¹⁸

The only subsequent challenge to the mortgage provision was *Ford v. Weinstock*. The challenge raised in the *Ford* case was based on a provision of federal law adopted after the decision in *Snell*, which prohibited states from including the home as a resource for purposes of determining eligibility in the federal Aid to Families with Dependent Children program.¹⁹ The plaintiff in *Ford* argued that since federal law provided that the home was exempt as a resource, no mortgage could be taken under SSL §106.²⁰ The plaintiff further argued that *Snell* was no longer controlling because Congress had passed the above mentioned home exclusion provision after *Snell*.²¹ Nevertheless, the United States District Court for the Eastern District of New York held that, although federal law precluded the State from denying benefits on the basis of home ownership, the requirements of New York State's mortgage provisions had no bearing on eligibility determinations and did not violate the federal welfare statute.²²

Where is Due Process?

None of the foregoing cases raise the due process problems that result from the lack of adequate notice and opportunity to be heard as welfare liens mount up year after year. "The fundamental requisite of due process of law is the opportunity to be heard."²³ Due process requires that a person who faces the possibility of serious loss be given "notice of the case against him and an opportunity to meet it."²⁴ Such an opportunity to be heard must be given "at a meaningful time and in a meaningful manner."²⁵ The procedure for hearing any issues raised must be tailored, in light of the decision being made, to "the capacities and circumstances of those who are to be heard," so that anyone with a grievance is given a meaningful opportunity to state their case.²⁶

None of the above due process requirements are met under the current statutory framework. Welfare recipients who give a mortgage to their local Department of Social Services are given no understanding of how their mortgage debt is being calculated. Every month they receive welfare, the amount they receive is added to the debt. They also receive credits for money collected by the Department of Social Services, for example, from sources like child support or lottery winnings. However, these homeowners receive no periodic statement informing them of this fact, nor do they receive any explanation of what amounts are being included or credited to their mortgage. Notice in this situation is not merely inadequate, it is completely non-existent.

C. REFUSAL TO SIGN A MORTGAGE

It is possible for many applicants and recipients of public assistance to refuse to agree to give the Social Services District a mortgage against their home and still receive public assistance, but at a reduced level, but generally they are not aware of this option. Applicant homeowners are generally told that if they want public assistance, they must sign a mortgage.

The penalty for refusal to comply is not the denial of assistance but rather that the agency will reduce the family budget to exclude the person who refused to sign the lien.²⁷ The household is sanctioned using an incremental budgeting method, meaning the sanctioned or ineligible individual is removed from the temporary assistance household and case count. For example, if one member of a three-person case is sanctioned under this method, the household will receive a grant for two people.²⁸ For a household of one, benefits will be denied or discontinued. Individuals who are asked to sign a mortgage should be advised of this rule both orally and in writing before they sign a mortgage.

D. WHAT WELFARE PAYMENTS COUNT WHEN CALCULATING THE DEBT UNDER SSL §106?

Benefits paid under both the Family Assistance (FA) and Safety Net Assistance (SNA) programs can be recovered under SSL §106. FA is the name given to a form of cash assistance that is provided to families with dependent children, and is currently funded entirely with federal Temporary Assistance to Needy Families (TANF) block grant dollars.²⁹ With narrow exceptions, federal law places a five year limit on the receipt of public assistance benefits paid with TANF funds.³⁰ SNA is the name given to cash assistance that is provided to other eligible individuals and families including single adults, childless couples and families with dependent children who have exceeded the five year time limit on TANF assistance. SNA is paid for with a mix of State and local funds. Although Social Services Districts may also take mortgages for benefits paid in cases of temporary need,³¹ as well as most emergency or short-term assistance,³² a mortgage may not be required as a condition of receiving Emergency Assistance to Adults (EAA), which provides emergency assistance to disabled individuals and those over 65.³³

Most other categories of assistance are exempt from recovery including Supplemental Nutritional Assistance Program (SNAP, formerly Food Stamps),³⁴ Home Energy Assistance Program (HEAP)³⁵ and child care assistance.³⁶ Medicaid is generally exempt with two exceptions noted below and cannot be included when calculating the amount of the mortgage due.

As a general rule, with respect to Medicaid, no lien may be imposed against the real property of any individual on account of medical assistance paid or to be paid, except in cases of long term care (not reasonably expected to be discharged from the institution and to return home)³⁷ or where a Medicaid recovery is taken against a home after the death of an individual who received Medicaid after the age of 55 where the home is part of the individual's estate.³⁸

E. NO PENALTY IF THE HOME IS TRANSFERRED

In some situations, the transfer of an asset by an applicant for public assistance benefits can disqualify the applicant from receipt of assistance. This rule does not apply to the transfer of a home. First, there are no restrictions with respect to Family Assistance for the transfer of any asset.³⁹ Although there is a penalty for transferring an asset for recipients of Safety Net Assistance,⁴⁰ that penalty does not apply if the resource that is transferred is exempt. Since the home is an exempt resource, there is no penalty, and the transfer will not trigger the transfer of assets penalty.⁴¹

F. LOOK BACK PERIOD FOR SOCIAL SERVICES DISTRICTS

Public assistance recipients may receive benefits irregularly over many years, even decades. In *Flowers v. Perales*, the New York State Appellate Division, Second Department limited the retroactive reach of SSL §106 to ten years prior to the date of the mortgage.⁴² Ms. Flowers had been off and on public assistance from 1965-1985. In 1982, during a period that she was not on public assistance, she became the owner of a home. The next year, she needed public assistance and executed a mortgage in favor of Nassau County Department of Social Services. In calculating the mortgage, the County included all public assistance paid back to 1965. Ms. Flowers challenged this determination. The Court determined that the 10 year Statute of Limitations in SSL §104 applied to mortgages taken under SSL §106 and precluded the County from recovering benefits paid more than 10 years prior to the execution of the mortgage and directed Nassau County to modify the lien accordingly.⁴³

G. TIME LIMIT FOR SOCIAL SERVICES DISTRICTS TO DEMAND REPAYMENT

When a public assistance recipient ceases to occupy his or her mortgaged property, the Social Services District's right to demand repayment is governed by the six year Statute of Limitations as set forth in CPLR 213(4).⁴⁴ The six years runs from the date the public assistance recipient vacates the mortgaged property, or if the recipient is deceased, six years from when a fiduciary to the recipient's estate is appointed.⁴⁵ This six year limit was upheld in *Baur v. Amrhein*, where the Suffolk County Department of Social Services put a mortgage on the home of a public assistance recipient in 1972. The homeowner ceased to occupy the premises by 1976.⁴⁶ Suffolk County did not attempt to enforce the mortgage until 1987 (eleven years after the homeowner left and five years after the Statute of Limitations had run). The court held that the claim was time barred pursuant to CPLR 213(4),⁴⁷ finding that the law gives the Social Services District a possible maximum of sixteen years – “ten years to discover assets (SSL §104) and six years thereafter (CPLR 213(4)) – within which to seek reimbursement of the public funds expended.”⁴⁸

H. CREDITS AGAINST THE AMOUNT OF THE LIEN

1. Effect of Child Support on Recoveries

As a condition of eligibility for public assistance, a custodial parent must assign his or her right to collect child support payments directly to the Commissioner of the local Social Services District.⁴⁹ The child support paid by the non-custodial parent is issued to the local Social Services District to reimburse it for public assistance paid to the custodial parent and her children. Additionally, the custodial parent will receive the first \$100 dollars of support collected for one child, and the first \$200 dollars if the recipient has more than one child, so long as the child support is paid in the month when it is due (“current support”).⁵⁰ This is called the child support “pass through” or “bonus” and does not count as income when calculating the amount of the public assistance grant.⁵¹ Before 2008, the pass through was capped at \$50 per month.⁵² In a given month, the Social Services District will retain all child support collected in excess of the pass through in an amount not exceeding that month’s assistance paid.⁵³ Additionally, past due support received while the parent is on assistance is, as a general rule, retained by the Social Services District.⁵⁴

A Social Services official may not assert a claim under Social Services Law §106 to recover payments of public assistance if such payments were reimbursed by child support collections.⁵⁵ This is because the Social Services District was already paid in part for public assistance granted, and therefore must credit the child support it has retained against the balance of the mortgage. This is yet another reason that mortgages held by Social Services District should be closely monitored to ensure that all child support payments are properly applied to the mortgage debt.

2. Effect of Workfare on Recoveries

For decades, employable public assistance recipients have been required to perform work assigned to them by their local Social Services District as a condition of receiving assistance. A contentious aspect of this work requirement has been resolving what the effect of this assigned work has on the local Social Services District’s ability to recover monies from the recipient for assistance granted. The seminal case on this issue is the 1979 decision of the New York State Appellate Division, Second Department regarding the effect of workfare on assistance recoveries. In the *Matter of Walker v. Shang*, Mr. Walker was assigned to a public works project by the Nassau County Department of Social Services as a condition of eligibility for receiving public assistance. His job was to work as a custodian for a local school district, and other than the value of public assistance he received, he was paid no salary.⁵⁶

Mr. Walker logged 1,529.5 hours at this job, valued at \$4,365.00, using the minimum wage at the time.⁵⁷ Nevertheless, the Nassau County Department of Social Services refused to deduct the value of his work from the lien placed against his home.⁵⁸ The Appellate Division determined that nothing in the statute showed a legislative intent that the provision of public

assistance should provide a windfall of uncompensated labor to the local Social Services District.⁵⁹ The Court held that the District's refusal to credit the petitioner's workfare against the assistance received improperly provided "the county the benefit of the petitioner's labors gratis, a benefit for which the county would have had to pay someone else if petitioner had not done the work."⁶⁰

In 1990, the Legislature codified the holding of *Walker v. Shang* by enacting SSL §336-c, which expressly provided that workfare be credited against assistance paid.⁶¹ However, the provision was repealed with little notice in 1997 in the broad rewriting of hundreds of pages of the Social Services Law as part of "welfare reform."⁶² Nevertheless, a provision still stands limiting the number of hours a recipient must work to no more than the number of hours that results from dividing the amount of assistance payable to the recipient (including the value of food stamps) by the higher of the State or federal minimum wage.⁶³

More recently, the United States District Court for the Western District of New York and the New York State Appellate Division, Second Department have held that public assistance recipients participating in Work Experience Programs (WEP) are employees entitled to the protections the federal government, provided under acts such as the Fair Labor Standards Act (FLSA) and required that a recipient be given credit for the value of workfare when a local Social Services District recovers from a lottery winnings or from interim assistance.⁶⁴ In light of these decisions, advocates should insist that any workfare performed be credited against the public assistance grant when negotiating the amount of the lien. However, asserting this right may be contentious since the Office for Temporary and Disability Assistance (OTDA) has consistently refused to direct Social Services Districts to abide by these decisions.

I. JOINTLY OWNED PROPERTY

Real property jointly owned by a recipient of public assistance and by a person not included in the public assistance budget does not protect the applicant or recipient from having to sign a mortgage.⁶⁵ However, the amount that the District will be able to recover depends upon the type of joint ownership. For the purposes of mortgage recovery, the Social Services District "steps into the shoes of the grantor or mortgagor"⁶⁶ and can only acquire the interest in the portion of the property owned by the mortgagor. The interest acquired by the Social Services District is subject to the continuing rights of the co-owner.⁶⁷ In order to understand what interest the local Social Services District is receiving when it takes a mortgage, it is important to know the relationship of the co-tenants – whether they are joint tenants, tenants in common, or whether they have a tenancy by the entirety.

Joint tenancy: Under New York State Law, when two people hold real property as joint tenants, the interest passes immediately upon death from one to the other. This is known as "a right of survivorship"⁶⁸ and exists because the joint tenants obtain and hold the

From 1986 to 1991, Laurie Schaible, a young mother who lived in upstate New York, received Public Assistance. Her marriage had just fallen apart and she had young children to raise. Her home was the only marital asset. As a condition of receiving assistance, Ms. Schaible signed a mortgage in favor of the Social Services District.

Laurie found a job while on assistance, and years later, after her children had grown up and moved out, she decided to sell the house.

It had been over 20 years since Ms. Schaible signed the mortgage and she had never received a statement itemizing the amount of the mortgage the county was seeking. She contacted the county to verify the amount of mortgage owed.

The Social Services District advised her the mortgage was nearly \$42,000. In addition to the cash public assistance she received, the county requested repayment for three federally funded programs: food stamps, child care and HEAP - none of which are properly recoverable. There were also duplicate charges and unapplied child support payments. Ms. Schaible was fortunate that she had kept over 20 years of records and was able to prove the county was wrongly trying to collect double the actual amount owed. After several months of rework and benefit reconciliation, The District ultimately agreed to reduce the amount of the mortgage to \$20,000.



property as if they together constitute one person.⁶⁹ Under right of survivorship, when one joint tenant dies, his or her interest in the property cannot be given away in a will or passed to his heirs through the laws of inheritance.⁷⁰ Instead, that interest passes to the other joint tenant(s).⁷¹ Where a Social Services District only holds an interest against one joint tenant, they will lose their interest in the mortgage if the joint tenant mortgagor dies before the other joint tenant. Conversely, if the joint tenant who has not assigned an interest dies first, the deceased tenant's interest will pass to the mortgagor, and the mortgage of the Social Services District will attach to the entire property.

Tenants in common: When two or more individuals hold interests in the same property and no right of survivorship exists, they hold that property as tenants in common.⁷² Tenants in common have separate and divisible interests in the land; rather than owning the property as an undivided whole, two tenants in common would each own a 50% share. They do not need to own equal interests in the land, however.⁷³ For example, one tenant in common could have a 75% interest, while the other only has a 25% interest. In New York State, where two or more persons take ownership of a piece of property, it is assumed that they own that property as tenants in common unless the contract or deed expressly declares it a joint tenancy.⁷⁴

Unlike a joint tenant, an interest in a tenancy in common does not pass to the other co-tenants upon the death of the owner. It may pass to anyone the owner designates in a will or it may pass to the heirs through the laws of inheritance.⁷⁵ The partial ownership share in the tenancy in common may also be freely sold by the owner to anyone he or she chooses

without ending the tenancy in common. This raises a number of questions as to what will become of the mortgage given to a Social Services District after the sale of the interest or death of the mortgagor who is a tenant in common. The answers to the questions are beyond the scope of this report, but they raise significant issues about the rights of a Social Services District when there is a tenancy in common, as the interest of the Social Services District only extends to the interest of the mortgagor. Thus, if the mortgagor dies, can the District recover money from the heirs to pay off the mortgage debt, or must it limit its recovery to the property itself? Can the social services district recover against a buyer who purchased the interest, or can recovery be sought from the seller? What rights, if any, will the Social Services District holding the mortgage have against the tenant in common who did not mortgage his or her interest?⁷⁶

Tenancies by the entirety: This ownership only exists between spouses. A tenancy by the entirety confers on the surviving spouse a right to absolute ownership of the property upon the other spouse's death.⁷⁷ Similar to tenancies in common, nothing in New York Law prevents one of the co-owners from mortgaging, or making an effective conveyance, of his or her own interest in the tenancy.⁷⁸ Like joint tenancies, the mortgage holder "steps into the shoes" of the mortgagor-spouse, and the survivorship rights are measured by the lifetimes of the original parties to the tenancy by the entirety (the spouses).⁷⁹ Therefore, if the mortgagor-spouse passes away before the spouse who was not a party to the Social Services District mortgage, the District is left with no interest in the property at all.⁸⁰ On the other hand, if the spouse who was not a party to the mortgage predeceases the mortgagor spouse, the mortgage of the Social Services District attaches to the entirety of the property.⁸¹

IV. SOCIAL SERVICE DISTRICT MORTGAGES JEOPARDIZE HOMEOWNERS' EFFORTS TO AVOID FORECLOSURE

Every month, as the foreclosure crisis continues in New York State, thousands of homeowners default on their mortgages, usually due to a loss of employment or income. Federal and State programs have been developed over the last five years to assist homeowners in getting loan modifications from their lenders so that they can remain in their home. Organizations funded through the NYS Office of the Attorney General's Homeownership Protection Program (HOPP), which include non-profit housing counseling and legal services organizations that work directly with homeowners in default, report that liens taken by the county in consideration for public assistance are jeopardizing homeowners' chances of accessing these programs.

In order to be eligible for a mortgage modification or refinancing, mortgage servicers demand that the owner of the home obtain the consent of all lien holders to subordinate their mortgages to the new affordable mortgage. Many families, who were at one time in

their lives on public assistance, have a mortgage against their house which is equal to the amount of public assistance that they received, as required by Social Services Law (SSL) §§106 and 360(1).

Problems described above are exacerbated for distressed homeowners who are trying to work with their regular mortgage lenders to obtain loan modifications or other relief. Time is often of the essence in these cases as the protections put in place on the national level, as well as in New York State's foreclosure process include strict timelines for homeowners to provide information or respond to offers.⁸² Attempts by advocates to help low income homeowners stay in their homes have been frustrated by the lack of transparency and uniformity among Departments of Social Services across the State. The greatest documented obstacles include the following.

A. The amount of the DSS loan is not easily ascertainable.

Homeowners never know the amount of the debt because they are never provided any kind of accounting. The amount is never contained in the mortgage documents. Mortgage documents vary widely from county to county. Following are examples of the range of language used by local Social Services Districts:

- Some Districts list "one dollar," followed by language such as ". . . or so much money at any time may be advanced to the mortgagor by the mortgagee for the relief of the mortgagor or for the benefit of the mortgagor on account of the mortgagor's liabilities under provisions of the social services law. . ."
- Other Districts give no dollar figure, but include language such as "an amount equal to the amount of assistance paid and to be paid in the future by the Department to or on behalf of the Recipient(s) and/or paid in the future to or on behalf of person(s) for whose support the Recipient(s) are jointly or severally liable pursuant to Section 106 of the Social Service Law. . ."
- Still other Districts set forth a specific amount in the mortgage, though the amount generally bears no relationship to the amount of the lien. Albany County DSS, for example, issued a mortgage with the dollar amount of \$35,000 (followed by ". . . or so much money at any time may be advanced to the mortgagor by the mortgagee. . .") and then asserted a lien of \$40,000. Kings County reportedly takes mortgages in the amount of \$200,000, regardless of the actual amount of assistance paid (to be reconciled only at the time of repayment).
- A Monroe County DSS mortgage limited itself to "such amount . . . as has been advanced and as may be advanced . . . for tax arrears, home insurance premiums or property repairs."

It is rare that SSL §106 mortgages set forth exactly what types of assistance can be included in the mortgage as this one did.

Not knowing the lien amount prevents homeowners from being able to make critical life decisions because they have no way to determine the amount of equity in the home.

- In one example, in Brooklyn, the occupants knew that they could not afford to stay in the home of their deceased parent that had a welfare lien, even with a modified mortgage loan from the lender. Yet their inability to determine if there was equity in the home made it impossible for them to decide whether they needed to probate the estate and sell the home, to make a profit, or to just walk away.
- If much more is owed on a property than the property is worth, it might not make economic sense for the homeowner to seek a loan modification or other workout.

B. Erroneous or improperly calculated liens occur because mortgagors receive no information during the life of the debt regarding the amount.

There is no requirement that a county provide any accounting of the accrued debt including how the debt was accrued, for what assistance the debt accrued or whether there were any credits applied to the debt. This lack of accountability can result in improper recoveries, essentially theft of equity from homeowners by local Social Services Districts.

- A Bronx legal services client had applied for emergency assistance but subsequently cancelled her application and received no benefits. Regardless, the District imposed a \$5,000 mortgage, and when a housing advocate was attempting to help the homeowner modify her lender loan, the District refused to provide her lawyer any information regarding the welfare lien. The lawyer ultimately had to serve a subpoena to compel New York City's welfare agency, the Human Resources Administration (HRA), to examine its records.
- A Cortland County homeowner, desperate to refinance her home to avoid foreclosure, ended up paying off a DSS mortgage for HEAP benefits, which are not supposed to be recoverable. Had she received a proper accounting, this mis-payment could have been avoided.

C. There is no statewide policy regarding whether a Social Services District mortgage should be subordinated when necessary to prevent a foreclosure.

Homeowners are treated differently depending on where they live, and folks could lose their homes just because there is a welfare lien, in contradiction of the statute.

- Erie County refuses to subordinate a DSS mortgage unless the homeowner paid half of the balance owed (usually making it impossible for the homeowner to modify), while HRA usually agrees to subordinate.
- Another Erie County advocate reported, "It has been like pulling teeth to simply get the name of someone who can authorize this subordination."

While these issues are problems for former welfare recipient homeowners across the board, the problems are heightened for distressed homeowners. The confusion makes it difficult, if not impossible for advocates in foreclosure prevention programs across the State to properly advise homeowners on the most appropriate steps to take in their individual situations. By adding unnecessary and unfortunate obstacles to a homeowner's attempts to rectify delinquencies on their primary mortgage and save their home, or to decide whether to move the home into the private market, these inherent problems in the system run contrary to SSL §106's goal to keep folks in their homes and add to the foreclosure crisis.

V. JUST HOW EXTENSIVE IS THE USE OF SSL §106?

New York State's Office of Temporary and Disability Assistance (OTDA), the State agency administering public assistance programs in New York State, does not maintain information regarding the number of mortgages taken by Social Services Districts pursuant to Social Services Law §106, the dollar amount recovered or the distribution of recovered funds to the federal and State governments.⁸³ As a result, Empire Justice Center sought to obtain this information by sending Freedom of Information Law (FOIL) requests to each of the fifty eight Social Services Districts in New York State.

A fiscal manual on the OTDA website contains forms which seem to require that Social Services Districts report information on mortgages taken under Social Services Law §106. The manual describes a number of forms, such as LDSS-712 (Report of Recovery), LDSS-723 (Assigned Record Card) and LDSS 949EL (Monthly Summary of Recovery Form) that tabulate the amount of fiscal recovery by each county.⁸⁴ Our initial FOIL request sought copies of these forms but as the responses came back, it became apparent that most Districts were unaware of the existence of the forms, or did not use them in the computation of recovery of public assistance.⁸⁵ Empire Justice Center then sent revised FOIL requests to all fifty eight Social Services Districts requesting information regarding the number of mortgages taken, the total amount of money that the county recovered from these mortgages and the distribution of recovered funds among the Social Services District, New York State and the federal government between 2006 and 2012.

Approximately fifty three, or 91.4%, of the fifty eight Social Services Districts provided partial or complete data in response to the FOIL requests.⁸⁶ The information gathered varied widely across the State. As far as we could ascertain, no two Districts maintain records of public assistance liens or amounts of recovery in the same format. While some Districts supplied information showing the filing date of the lien, the amount of the lien and the date of satisfaction, other Districts simply supplied aggregate data for the requested time period.

Based on our data, an average of \$4.2 million a year was recovered from homeowners.

Other Districts provided numerous pages of redacted case numbers. The wide disparity in information that was provided, or not provided in some cases, raises concerns about the consistency and sufficiency in record keeping at the District level, which can severely undermine the integrity and accuracy of attempted recoveries.

Ultimately, the data reveals that all but two Districts regularly use Social Services Law §106 to recover public assistance provided. Cayuga County Department of Social Services stated that, while there is no official policy expressly stating an aversion to placing such liens on homes, they simply have not done so between the years of 2006-2012.⁸⁷ In Yates County, the Commissioner of Social Services stated that the District does file liens when appropriate, but that it is uncommon to find a public assistance recipient who owns a home.⁸⁸

Analysis of the data revealed that recoveries under Social Services Law §106 are substantial. From January 2006 through December 2012, the responsive Districts filed 12,156 liens against public assistance recipients and recovered \$25,432,655.07 during the same time period. Although this number is a conservative estimate, as some Districts did not provide complete data for the requested time period, we do not know whether the mortgages were correctly calculated – whether they included only Family Assistance and Safety Net recoveries and properly deducted all credits such as child support. The following chart provides the numbers for the ten Social Services Districts with the highest number of SSL §106 mortgages.

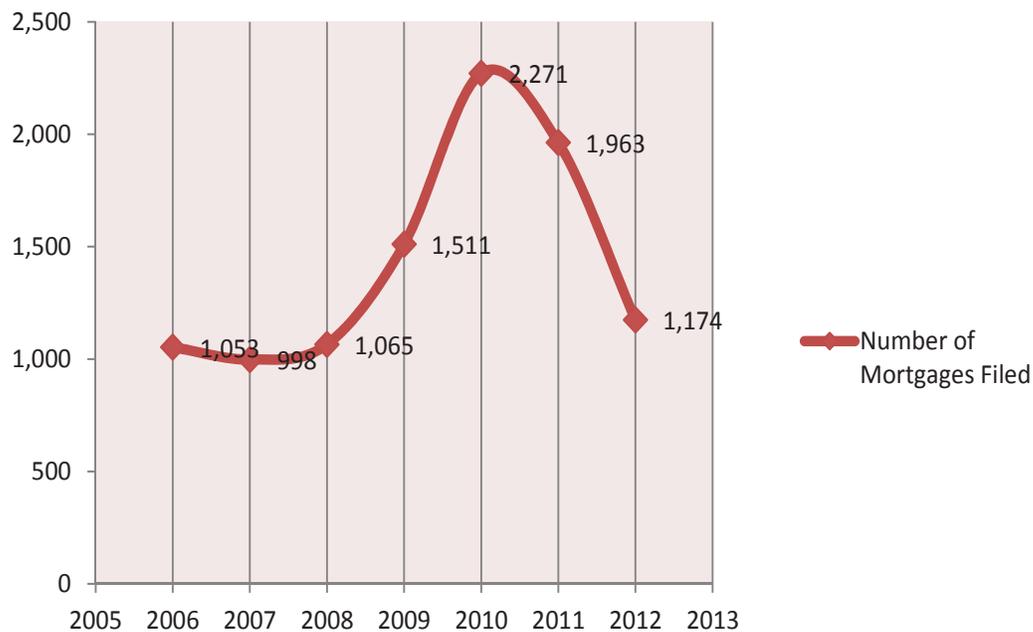
Chart 1: Social Services Districts with the Greatest Numbers of Welfare Mortgages

<u>County</u>	<u>Number of Mortgages</u>	<u>Time Period</u>
New York City	4,354*	January 2006-December 2012
Erie	1,915	January 2006-December 2012
Onondaga	639	January 2006-August 15, 2012
Monroe	622	January 2006-June 30, 2012
Suffolk	558	January 2006-June 30, 2012
St. Lawrence	501	January 2006-August, 20 2012
Oneida	355	January 2006-June 30, 2012
Chautauqua	230	January 2006-July 2012
Dutchess	195	January 2006-December 2012.
Nassau	189	January 2006-December 14, 2012

*New York City: The number of liens reflects both public assistance and medical assistance. New York City did not provide a specific breakout of the two types of mortgages. The numbers for all other Districts reflect only mortgages taken under SSL §106.

Because public assistance mortgages are not recovered until the property is sold, the home owner dies or the mortgage is modified or refinanced, the data for most counties does not reveal how long the mortgages were in place before the District recovered the lien. A few Districts provided raw data showing both the date of the original mortgage and the date the lien was satisfied. This data suggests that many mortgages remain in place for decades before they are recovered. For instance, a public assistance mortgage taken in Rockland County in 1976 for \$67,000 was not recovered until 2008- thirty two years later. In Oneida County, the District recovered \$27,053.53 in 2007 on a twenty five year old mortgage. Some Districts provided one aggregate number for the time period of 2006-2012, so it was difficult to ascertain the number of mortgages taken each year. Overall, for the twenty four Districts that provided annual data, the number of liens fluctuated from a high of 2,271 liens in 2010, to a low of 998 liens in 2007. On average, Districts filed 1,434 mortgages per year. In 2010, there was a 50% increase in the number of mortgages from the previous year, as it swelled from 1,511 liens in 2009 to 2,271 mortgages in 2010. In 2011, there was a slight decline to a high of 1,963 mortgages, with a return to previous levels in 2012, as 1,174 mortgages were filed.

Chart 2: Number of Welfare Mortgages Filed by Year



The ten Social Services Districts with the largest yearly fiscal recoveries for mortgages assessed against public assistance recipients are Suffolk, New York City, Nassau, Erie, Broome, Onondaga, Monroe, Oneida, Niagara and Dutchess.

- Collectively, these ten Districts received a total of \$21,801,443.69.
- Suffolk County accounted for close to half (48%) of the overall recovery statewide.
 - » By a wide margin, Suffolk County collected more monies from public assistance mortgages filed, compared to any other District statewide.
 - » Even though Suffolk County only filed 558 mortgage liens between 2006-2012, the County recovered \$10,482,971 during the same time period.⁸⁹
 - » This amount represents twice as much as the amount New York City recovered, as the second largest receiver of public assistance liens.
- From 2006-2012, New York City recovered \$4,784,587 from public assistance mortgage liens and took 4,354 mortgages against both public assistance and medical assistance recipients.⁹⁰
- Nassau County took only 189 mortgages during the same time period, and recovered \$1,789,284.75 in public assistance liens.⁹¹
 - » In 2012, 1.1%, or 391, 929 individuals, of the total county population received Temporary Assistance. Seventeen mortgage liens have been levied against homeowners within this demographic.
- Erie County filed 1,915 mortgage liens and recovered \$1,621,946.64 during the same time period.
 - » Erie County filed at least 235 mortgage liens yearly, with the exception of 135 filed in 2012.
 - » In 2012, with a total County expenditure of \$78,580,737 for 28,021 TANF cases, 0.4% of the cases were homeowners. They will be targeted for recovery and will experience a loss of wealth due to 135 mortgage liens filed during this year.
- Broome County, located in the Southern Tier, only provided data from 2006-2008, yet the District recovered a formidable amount of \$766,788.67 during this time.
- Onondaga County, located in Central New York, took 639 mortgage liens and recovered \$613,644.02 from public assistance mortgage liens. Of these 639 mortgage liens taken, 104, or 16%, were filed and satisfied within the same time period (between 2006 and 2012).⁹²

The recovery of funds from mortgages taken under Social Services Law §106 provided a significant boon to the fiscal bottom line of these ten counties. The following chart depicts the top ten counties, in terms of fiscal recoveries for public assistance mortgage liens.

Chart 3: Top Ten Counties in Recovery of Public Assistance Mortgage Liens

County	Total County Population (as of Jan. 2010)	Total Number of Temporary Assistance Cases	Number of Public Assistance Mortgage Liens (2006-2012)	Local Social Services District Recovery (2006-2012)
Suffolk	1,498,816	2006: 1,068 2011: 11,320 2012: 11,488	558	\$10,482,971
New York City	8,244,910	2006: 199,684 2011: 186,167 2012: 187,288	4,354*	\$4,784,587
Nassau	1,344,436	2006: 4,284 2011: 8,429 2012: 8,116	189	\$1,789,284.75
Erie	918,028	2006: 12,528 2011: 12,884 2012: 13,142	1,915	\$1,621,946.64
Broome	200,600	2006: 5,259 2011: 7,442 2012: 7,370	N/A	\$766,788.67**
Onondaga	466,960	2006: 5,269 2011: 7,031 2012: 7,221	639	\$613,644.02
Monroe	744,344	2006: 30,277 2011: 32,396 2012: 32,604	622	\$497,924.88
Oneida	234,877	2006: 5,639 2011: 7,869 2012: 9,283	355	\$445,201.14***
Niagara	216,469	2006: 4,817 2011: 5,359 2012: 5,707	94	\$346,601.22
Dutchess	297,474	2006: 2,345 2011: 2,981 2012: 2,944	177	\$338,348.19

*New York City: The number of mortgage liens taken out reflects both medical assistance and public assistance. The amount of recovery reflects only public assistance mortgage liens.

**Broome County: The County did not supply any information as to the number of mortgage liens filed. The data reflects the time period of 2006-2008 only.

*** Oneida County: The amount of recovery is based on satisfaction of 94 of the 355 mortgage liens (January 1, 2006- June 30, 2012).

When Social Services Districts recover under SSL §106, they must return a percentage of the recovery to the state based upon the source of funding of the benefit provided. For example, since April 2011, Safety Net Assistance (SNA) has been funded 29% by the State of New York and 71% by each local Social Services District.⁹³ Before that, the cost of SNA was split equally between the State and the Social Services District and involved no federal funding.⁹⁴ Until April 2011, Family Assistance (FA) consisted of 50% federal TANF funding, with the remainder split between the State and the local Districts.⁹⁵ Since April 2011, Family Assistance (FA) grants have been paid 100% with federal TANF funds.⁹⁶

Because of this divided source of public assistance funding, Social Services Districts can retain 71% of recoveries of Safety Net Assistance that were paid during or after April 2011 and 50% of SNA benefits paid before 2011. Recoveries based on FA grants paid after April, 2011 are not retainable by local Districts because they consist totally of federal funds. However, local Districts retain 25% of recoveries for family assistance grants issued before 2011. Of the FA recoveries returned to the State, some dollars are clearly reimbursement to the State. We have been unable to determine how the returned funds are processed – whether those attributed to FA go back to the United States Department of Health and Human Services or whether they are credited to the amount of New York State’s TANF federal block grant.

One of the aims of our Freedom of Information Act requests was to determine how much of the amount recovered actually flowed back to Social Services Districts, since the recovered funds must be distributed to the entity that disbursed them, which could be the local District, the Office of Temporary and Disability Assistance or the federal government. However, some Districts, such as Cortland and Herkimer, claimed they did not have existing data regarding these distributions or it was not in a format that is readily disclosable. Other Districts, such as Monroe, stated that no such record exists. St. Lawrence County reported that all recovered funds are used to offset what would otherwise be claimed against the State and federal government, and did not provide us with an amount.⁹⁷ Some Districts (i.e., Fulton and Schoharie) were unable to supply such information because they were unable to separate or locate specific repayments for all of the various programs. Clearly, this raises more concerns about record keeping and whether the funds recovered from the sale of current or former welfare recipient’s homes are being properly directed to the State and federal agencies that paid the original benefits.

VI. LEGISLATIVE EFFORTS TO REPEAL OR REFORM SSL §106

The New York Legislature has introduced four pieces of legislation aimed at solving many of the problems highlighted in this report.

- A.543 (Gibson)/S.2816 (Adams) (2013-2014), would eliminate welfare

mortgage liens on a recipient's primary residence by amending Social Services Law §§104, 106 and 369 so that the mortgage provision would no longer apply to one, two or three family homes, condominiums or manufactured homes.

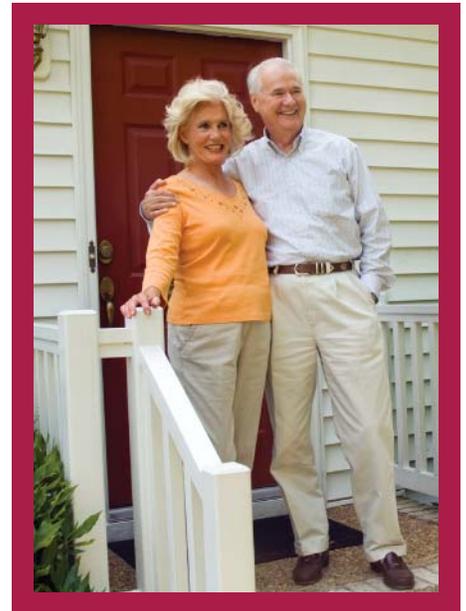
- S. 3269 (Krueger) (2013-14) would repeal the mortgage provisions in Social Services Law §§106 and 360, so that Social Services Districts could no longer require any public assistance recipient to execute a mortgage in favor of the District as a condition of eligibility.
- A.547 (Gibson)/S.311 (Diaz) (2013-14) would add a new section to Social Services Law §110 requiring that any applicant for public assistance must be fully informed, orally and in writing, that he or she may be liable to reimburse the State for public assistance benefits received. The bill would require the Social Services District to provide an acknowledgement form, separate from any other forms related to the application, for each applicant to sign to be kept in the applicant's file. While this notice of fiscal liability would be helpful, it falls short because it does not require that that applicants be advised of the types of public assistance that are recoverable and those which are not recoverable (HEAP; SNAP and child care), and that the refusal to sign a mortgage will not result in the loss of the children's share of the public assistance grant.
- A.7780 (Titus)/S.5498 (Savino) (2013-2014) is discussed more fully below and would require annual statements of disbursements and credits, and disclosure of the rights of homeowners.

VII. A BILL THAT WOULD PROVIDE ACCOUNTABILITY AND TRANSPARENCY

To support efforts at self-sufficiency and the upward mobility of low income New Yorkers, Social Services Law §106 should be repealed. Short of that, there is an urgent need to ensure that applicants of public assistance are aware of their rights and that recipients and former recipients of public assistance are regularly made aware of their accrued debt and credits. Both houses of the New York Legislature introduced legislation in the 2013-2014 session [A.7780 (Titus); S.5498 (Savino)] that would achieve that goal by requiring:

- That Social Services Districts provide recipients with an annual statement that clearly states the amount and type of public assistance benefits provided during the calendar year, including any credits made against the debt, as well as the total debt accrued. This accounting would also provide instructions for how to make payments on the mortgage lien, and the law would provide that no mortgage is valid unless such an accounting is provided.

- An amendment to Social Services Law §106 that clearly sets forth that Supplemental Nutrition Assistance Program, child care assistance and Home Energy Assistance Program payments made by the Social Services Districts are not recoverable.
- That applicants be advised in writing that their children will remain eligible for public assistance if the homeowner refuses to sign a mortgage.
- That Social Services Districts shall subordinate SSL §106 mortgages when doing so is necessary to avoid foreclosure.



Providing an annual statement, just like any other mortgage, ensures that welfare recipients and former welfare recipients are aware of the ongoing encumbrance on their property and that they can check the statement for accuracy regarding the amount of public assistance paid and credits made. Current and former public assistance recipients can ensure the mortgages on their property are not improperly calculated. Finally, public assistance recipients can make efforts to pay down the balance of the mortgage lien over time, rather than attempting to amass a lump sum of money to satisfy the mortgage lien. Due to the serious nature of this financial burden on public assistance recipients, it is imperative that there is a stable system in place to bring transparency and accountability to the process.

CONCLUSION

Social Services Law §106 undermines the financial stability of homeowners who have hit hard times. It erodes the financial foundation of what is often a family's only asset, and does nothing to reduce child poverty or long term dependence on government assistance. Further, as currently implemented, there is no transparency in the manner in which charges are added to the mortgage debt, creating a system with no accountability.

The lack of information provided to homeowners about the amount of their debt, the details of what they are being both charged or credited for makes it incredibly difficult to ensure that the information is accurate. Even worse, the current system may result in New Yorkers paying back more than they owe because there are not sufficient systems in place to ensure that the information is correct.

Finally, as New York struggles to move beyond the foreclosure crisis, many continue to face foreclosure – indeed, the very homeowners with these liens against their homes are often at higher risk of foreclosure because many live so close to the financial edge. It is unconscionable for Social Services Districts to be unwilling to subordinate welfare mortgages. In doing so, the Districts themselves become an impediment to homeowners who are facing

foreclosure and are otherwise eligible for a loan modification that would allow them to stay in their homes. Yet this is what appears to be happening. This practice not only places homes in jeopardy, but also adversely affects the stability of the community, as each foreclosure has a negative ripple effect on the value of surrounding homes, the municipality's tax base, and ultimately has the potential to create neighborhood blight and all its attendant consequences.

We strongly urge New York State to address these problems by quickly pursuing the following recommendations:

1) *Repeal SSL §106:* With an average of \$4.2 million per year, or \$25 million, in equity pulled from mostly low income families, New York must do a cost benefit analysis to determine whether the money recovered from this small cohort of homeowners is worth the systematic overhaul of the procedures at the State and county level that would need to be made to ensure that the implementation of this law is fair, accurate and transparent. Such an analysis will reveal that it's time for New York State to leave Connecticut behind as the sole state that takes mortgages to recover properly paid public assistance. This can be done by enacting A.543/S.2816, which would repeal SSL §106 for one, two or three family homes, condominiums or manufactured homes; or by enacting S.3269, which would repeal the law altogether.

2) *Absent repeal, New York must:*

a. Enact A.7780/S.5498, which will provide an annual accounting to each welfare recipient or former recipient who has a mortgage placed on their home by the Social Services District, just as is done for any other mortgage or lien. The accounting will include the amount of money accrued and recovered in the past year, as well as the total debt owed. In addition, it will provide information about how to make payments, so that if they are in a position to do so, they can pay off their debt. This bill would also make clear to Social Services Districts that they may subordinate their mortgage, and that if subordination is required for a loan modification, that they must do so within 30 days.

b. Completely overhaul the existing welfare mortgage lien recovery system to ensure that it is consistent across the State, accurately accounting for and recovering only welfare benefits paid and crediting child support, lottery and other windfall recoveries. The local Districts should also be required to report to the Office of Temporary and Disability Assistance on an annual basis the amount of liens taken, recovered and what percentage of those recoveries will go to the State and federal government so that the information is readily available when needed.

c. Enact legislation that clarifies that all surviving spouses may remain in their homes after the death of their husband or wife who has given a mortgage to the Social Services District, even when their name is not on the deed.

NOTES

¹ 18 NYCRR 358-3.1(f)(5).

² A welfare mortgage is similar to a home equity line of credit (HELOC) in that the balance may increase from the date of origination. Lenders of HELOC loans are required to send periodic statements to the borrower disclosing the beginning balance, the amount of date of each transaction, any amounts credited, and the outstanding balance. TILA, 15 U.S.C. 1601 et seq., Reg. Z sec. 1026.7(a). Lenders typically send annual statements setting forth the current principal balance to borrowers with conventional mortgages at the time they send notice of yearly interest paid for tax purposes.

³ 18 NYCRR 358-3.1(f)(5).

⁴ Social Services Law §358(5).

⁵ N.Y. Soc. Serv. Law §104; See, *Matter of Colon*, 83 Misc. 2d 344 (Sur Ct, Kings County 1975); *Perez v. Dumpson*, 58 A.D. 2d 887 (2d Dep't 1977) *King v. Sturtevant*, 206 Misc. 153 (County Ct, Essex County 1954).

⁶ N.Y. Soc. Serv. Law §131-r. Since the lottery intercept program began in 1996, it has recovered more than \$33 million from lottery winnings as public assistance reimbursement. 12 INF-01, available at <http://otda.ny.gov/policy/directives/2012/INF/12-INF-01.pdf> (last updated January 20th, 2012).

⁷ N.Y. Soc. Serv. Law §106; SSL §360. SSL §360(1) provides in pertinent part:

"The ownership of real property by an applicant or...recipient....shall not preclude the granting of family assistance or the continuance thereof if he or they are without the necessary funds to maintain themselves. The social services official may...require, as a condition to the granting of aid or the continuance thereof, that he be given a deed or a mortgage on such property in accordance with the provisions of section one hundred and six."

⁸ C.S.G.A. §17b-93 (2012). Two other states allow mortgages to be taken only when assistance is paid for with local funds. New Hampshire permits the taking of a mortgage when assistance is provided by a town or city. N.H. Rev. Stat. §165:28 (2013). Two counties in Florida, Miami-Dade County and Palm Beach County, permit the taking of a mortgage when assistance is provided by the county. Miami-Dade County Code of Ordinances, Part III, Chap. 2, Art. XI, §2-88.1 (2012); Palm Beach County Code of Ordinances, Vol. II, App. G, Ch. 14, Art. III, §14-51 (2012).

⁹ N.Y. Soc. Serv. Law §106(1). The mortgage provisions also appear in New York State regulations at 18 NYCRR §352.27.

¹⁰ *Id.* at SSL §106; 18 NYCRR 352.23(d).

¹¹ See Section V, Just how extensive is the use of SSL §106?

¹² 18 NYCRR 352.27(b); N.Y. Soc. Serv. Law §360(2).

¹³ 18 NYCRR 352.4(e)(2).

¹⁴ N.Y. Soc. Serv. Law §106(2)(a)(5)(e).

¹⁵ N.Y. Soc. Serv. Law §106(2)(a)(5)(b); 18 NYCRR 352.4(e)(2).

¹⁶ 18 NYCRR 352.4(e)(3).

¹⁷ *First National Bank of Herkimer v. Dise*, 161 Misc. 488, 489 (Sup.Ct. Herkimer County 1937).

¹⁸ *Snell v. Wyman*, 281 F. Supp. 853, 863-869 (SD NY 1968), *aff'd*, 393 U.S. 323 (1969). Citing to the Magna Carta, the dissent in *Snell* would have found that the recovery provisions violated a liberty interest of the due process clause, opining that "(N)o principle has firmer roots in that tradition than that the security of meager property interests is an aspect of self-care; that the goals of participatory democracy are furthered by an independent and secure citizenry. We err if this tradition is forgotten." *Id.* at 870-71. (J. Kauffman, dissent).

¹⁹ 42 U.S.C. §602(a)(7)(b). See also 45 C.F.R. §233.20(a)(3)(I)(B). This provision was repealed as part of Pub. L 104-193, 110 Stat 2105 [104th Cong, 2d Sess, January 3, 1996][termed the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996"].

²⁰ *Ford v. Weinstock*, 1996 WL 148320, *3 (E.D.N.Y., Mar. 25, 1996, No. CV-93-2830 (CPS)).

²¹ *Id.* at *6.

²² *Id.* at *7.

²³ *Goldberg v. Kelly*, 397 U.S. 254, 267(1970), quoting *Grannis v. Ordean*, 234 U.S. 383, 394 (1914).

²⁴ *Matthews v. Eldridge*, 424 U.S. 319, 349 (1976), quoting *Joint Anti-Fascist Comm. v. McGrath*, 341 U.S. 123, 171-72 (1951) (Frankfurter, J., concurring).

²⁵ *Goldberg*, 397 U.S. at 267, quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, (1965).

²⁶ *Matthews*, 424 U.S. at 350 quoting *Goldberg*, 397 U.S. at 268-69.

²⁷ 18 NYCRR 352.27(a); 18 NYCRR 352.30(d)(1)(ii).

²⁸ New York State Office of Temporary and Disability Assistance (OTDA), Temporary Assistance Source Book, Chap. 13, Sec. N (1)(b), Chap. 19, Sec. E (2); See *Bujnicki v. Buscaglia*, 77 A.D. 2d 809 (4th Dept 1980), *aff'd*, 53 N.Y. 2d 906 (1981). *Bujnicki* held that recipient children cannot have their aid discontinued or reduced based upon their parents' failure to comply with the mortgage provisions. In *Bujnicki*, the Court affirmed a 4th Department Appellate Division ruling that the local Social Services District was required to provide minor children who are not the title holders of real property with assistance grants where their mother refused to execute a mortgage on her residence. The State attempted to confine the holding in *Bujnicki* to recipients, but subsequent litigation made clear that the rule applied to both applicants and recipients. *Johnson v. Blum*, 83 A.D. 2d 731 (3d Dep't 1981), *rev'd*

on other grounds, *Johnson v. Blum*, 58 N.Y. 2d 454 (1983); see also *Matter of A.T.*, FH # 0335622Z (Clinton County, 5/27/83) available at the Fair Hearing Bank of the Online Resource Center at <http://onlineresources.wnylc.net/welcome.asp?index=Welcome>.

²⁹ N.Y. Soc. Serv. Law §349, 348; Ch. 53 of the Laws of 2013, 490. Prior to April, 2011 Family Assistance was funded with 50% federal, funds, 25% state funds and 25% local funds.

³⁰ 42 U.S.C. 608(a)(7)(A).

³¹ “Temporary need shall mean need which, at the time of the application, is expected to terminate within three months...[A]n emergency or short-term case is a case in which need is presumed to continue for a period of less than three months.” New York State Office of Temporary and Disability Assistance, Temporary Assistance Source Book, Chap. 19, Sec. A (3) (a), (3)(b).

³² 18 NYCRR 352.23(d); NY Dept of Social Servs Admin Directive 91 ADM-43 at 2, available at http://otda.ny.gov/policy/directives/1991/ADM/91_ADM-43.pdf.

³³ 18 NYCRR Part 397; Temporary Assistance Source Book, CHAPTER 19 – RESOURCES Section E – Real Property, 4(c), pg. 19-12.

³⁴ State regulations provide that, “No amounts for food stamp expenditures shall be reimbursable if such amounts were paid directly to the individual eligible to receive food stamps.” 18 NYCRR §637.2(c). See also *Matter of Joseph R.*, fh # 0692418Z (4/15/85), available at the Fair Hearing Bank of the Online Resource Center at: <http://onlineresources.wnylc.net/welcome.asp?index=Welcome>. Beginning in October 1, 1988 New York initiated an option program for counties called the Child Assistance Program (CAP). This program, which targeted working single parents with child support orders, provided enhanced work incentives and cashed out food stamps. N.Y. Soc. Serv. Law §131-z(9)(g). The cash provided instead of food stamps is not recoverable under a lien. Many Social Services District operated CAP programs initially, but the use of them dwindled after welfare reform. The CAP statute is still on the books.

³⁵ NY OTDA Admin Directive 02-ADM-02 at 6, available at http://otda.ny.gov/policy/directives/2002/ADM/02_ADM-02.pdf.

³⁶ Eligibility for child care services are determined pursuant to the requirements of 18 NYCRR § 404, 415. Section 404.5(d)(2) states that, “No lien or encumbrance of any kind shall be required from or be imposed against the property of any individual in connection with services rendered or to be rendered.” See also NY OCFS Admin Directive 05-OCFS-ADM-03 at 14, available at http://onlineresources.wnylc.net/pb/docs/05-ocfs-adm-03_child_care_subsidy_program.pdf.

³⁷ N.Y. Soc. Serv. Law §369 (2)(a)(ii).

³⁸ N.Y. Soc. Serv. Law §369(2)(b)(i)(B); NY DOH Admin Directive 02 ADM-3, at 7, (IV)(B)(1), available at http://www.health.ny.gov/health_care/medicaid/publications/docs/adm/02adm-3.pdf

³⁹ The Temporary Assistance Source Book, Chapter 19 – Resources, Section G, pg. 19-14; See *Shook v. Lavine*, 49 A.D. 2d 238, 240-241 (4th Dep’t 1975). See also *Wayman v. Breger*, 52 A.D. 2d 738, 738-739 (4th Dep’t 1976).

⁴⁰ 18 NYCRR §370.2(b)(6)(i). See *Memoli v. Toia*, 68 A.D. 2d 889 (2d Dep’t 1979) Transfer of an exempt homestead by a Home Relief (HR – now known as SNA) recipient did not disqualify her from receiving HR benefits. (HR was the predecessor program to SNA).

⁴¹ *Matter of DV*, fh # 4021257Q (Nassau County, 7/16/04) available at the Fair Hearing Bank of the Online Resource Center at: <http://onlineresources.wnylc.net/welcome.asp?index=Welcome>

⁴² *Flowers v. Perales*, 140 A.D. 2d 136, 144 (2d Dept 1988).

⁴³ *Id.* at 139.

⁴⁴ See, N.Y. Soc. Serv. Law §106; N.Y. CPLR §213; *Drzewucki v. New York State Dept. of Social Services*, 225 A.D. 2d 621, 622 (2d Dep’t 1996); *Gower v. Weinberg*, 184 A.D. 2d 844, 845 (3d Dep’t 1992).

⁴⁵ N.Y. CPLR §213(4); *In re Herman’s Will*, 43 Misc. 2d 309, 311 (Sur Ct, Kings County 1964); *In re Bustamante*, 256 A.D. 2d 463 (2d Dep’t 1998).

⁴⁶ *Baur v. Amrhein*, 138 Misc. 2d 926, 927 (Sup Ct, Suffolk County 1988).

⁴⁷ *Id.* at 931.

⁴⁸ *In re Herman’s Will*, 43 Misc. 2d 309, 311 (Sur Ct, Kings County 1964).

⁴⁹ 42 U.S.C. § 608 (a)(3), 42 U.S.C. §654 (5), 42 U.S.C. §657; N.Y. Soc. Serv. Law §158(5)(6) (Safety Net Assistance), N.Y. Soc. Serv. Law §349b (Family Assistance); SSL 131-a(v); 18 NYCRR 347.13; NY OTDA Admin. Directive 99-ADM-05 at 5, available at http://otda.ny.gov/policy/directives/1999/ADM/99_ADM-05.pdf.

⁵⁰ N.Y. Soc. Serv. Law § 131-a(8)(a)(v).

⁵¹ New York State Office of Temporary and Disability Assistance, Temporary Assistance Source Book, Chap. 18, Sec. N, \$100 Support Payments, pg. 18-29.

⁵² 08 ADM-08, available at: <http://otda.ny.gov/policy/directives/2008/ADM/08-ADM-08.pdf>

⁵³ 18 NYCRR 347.13(b)(2).

⁵⁴ 09 ADM-19, *Changes to Assignment of Support Rights and Child Support Distribution for Recipients of Public Assistance*, available at: <http://otda.ny.gov/policy/directives/2009/ADM/09-ADM-19.pdf>

⁵⁵ N.Y. Soc. Serv. Law §§104(4), 104-b(14), 131-r(2).

⁵⁶ *Walker v. Shang*, 66 A.D.2d 6, 8 (2d Dep't 1979).

⁵⁷ *Id.* at 8.

⁵⁸ *Id.*

⁵⁹ *Id.* at 16.

⁶⁰ *Id.* at 16.

⁶¹ N.Y. Soc. Serv. Law § 336-c (3) (as amended by Chapter 453, §1 of the laws of 1990 provides) "...[A] social services official may not assert any lien under any provision of this chapter to recover payments of public assistance if such payments were included in the calculation of hours of participation in a work experience program under this section and to the extent of such hours that such person actually participated in a work experience project." Legislative efforts to restore the provisions of 336-c have been unsuccessful. See S.242(Squadron);A.2245 (Quart) (2013) which would require crediting the value of workfare against any public assistance debt.

⁶² Laws of 1997 (ch.436, pt. B, §148) ; See, *Matter of M.W.*, FH#2968732P, (Fulton County, 1998)(stated that the long standing policy which allowed the "working off" of the grant was based on Social Services Law 336-c (3), which prohibited the imposition of a lien for those portions of the grant which had been "worked off," was repealed by the Welfare Reform Act of 1997. Under the new law and regulations, a recipient does not "work off" the grant, but rather is required to participate in activities calculated to help them become self-sufficient).

⁶³ N.Y. Soc. Serv. Law §336-c (2)(b).

⁶⁴ *Elwell v. Weiss*, 2007 WL 2994308 (W.D.N.Y., Sept. 29, 2006, No. 03-CV-6121); *Matter of Carver v. State of New York*, 87 A.D. 3d 25 (2d Dep't 2011). See, *Stone v. McGowan*, 308 F. Supp. 2d 79 (N.D.N.Y. 2004) ("this Court is constrained to deny motions to dismiss on the ground that WEP participants are not employees within the meaning of FLSA." *Id.* at 86).

⁶⁵ *Matter of Anonymous*, FH # 5914014Y (NYC, 11/22/11) available at: http://www.otda.ny.gov/fair%20hearing%20images/2011-11/Redacted_5914014Y.pdf.

⁶⁶ *V.R.W., Inc. v. Klein*, 68 N.Y. 2d 560, 565 (1986).

⁶⁷ *Id.*

⁶⁸ *Goetz vs. Sloeby*, 76 A.D.3d 954, 956 (2nd Dep't 2010), quoting 24 N.Y. Jur. 2d, Cotenancy and Partition § 16, at 332–333.

⁶⁹ *Smith vs. Bank of America, N.A.*, 103 A.D.3d 21, 23 (2nd Dep't 2012).

⁷⁰ *Trotta vs. Ollivier*, 933 N.Y.S.2d 66, 69 (2nd Dep't 2011).

⁷¹ *Id.*

⁷² *People v. Rosenfeld*, 17 Misc.3d 253, 262 (Sup. Ct. of Kings Cty. 2007). See also 3 Warren's *Weed New York Real Property, Common Ownership of Property* § 27.02 (5th ed.).

⁷³ *Rosenfeld* at 263. See also Cribbet, *Principles of the Law of Property*, Ch. 6 at 103 (2d ed. 1975).

⁷⁴ N.Y. E.P.T.L. 6–2.2(a). See also *Rosenfeld*, 17 Misc.3d at 263-64.

⁷⁵ See *Cortelyou v. Dinger*, 62 Misc.2d 1007, 1010 (N.Y. Sup. Richmond Co. 1970).

⁷⁶ For potential answers to these questions, see N.Y. E.P.T.L. § 3-3.6(b); N.Y. Soc. Serv. Law § 106(2)(a)(5)(b). See also *Holmes v. Northern Pac. Ry. Co.*, 36 Misc. 266 (Sup. Ct. New York 1901), judgment aff'd, 71 A.D. 618 (1st Dep't 1902), judgment aff'd, 175 N.Y. 480 (1903), *Ganbaum v. Rockwood Realty Corp.*, 62 Misc. 2d 391 (Sup. Ct. Bronx Co. 1970), *Mutual Life Ins. Co. of N.Y. v. Bainbridge Bldg. Corp.*, 43 N.Y.S.2d 617 (Sup. Ct. New York Co. 1943), *Ross v. Davis*, 138 Misc. 863 (Sup. Ct. Erie Co. 1931), *Schwartz v. Cahill*, 220 N.Y. 174 (1917), *Schley v. Fryer*, 100 N.Y. 71 (1885), *Chase v. Brandis*, 238 A.D. 440 (4th Dep't 1933), *Onondaga County Sav. Bank v. Markson Bros.*, 182 Misc. 954 (Onondaga County Ct. 1941), aff'd, 263 A.D. 794 (4th Dep't 1941) judgment aff'd, 263 A.D. 792 (4th Dep't 1941); *Clonick v. Gordon*, 11 N.Y.S.2d 703 (Rochester City Ct. 1939); *Stith v. Hudson City Sav. Inst.*, 63 Misc.2d 863, 865 (Sup. Ct. Broome Co. 1970); *Jemzura v. Jemzura*, 36 N.Y.2d 496, 501(1975); *McLear v. Balmat*, 194 A.D. 827, 836 (3d Dep't 1921); *Jonap v. Norwick*, 83 A.D.2d 957(2d Dep't 1981); *Christ Protestant Episcopal Church v. Mack*, 48 Sickels 488, 1883 WL 12694, *1 (N.Y. App. Ct. 1883).

⁷⁷ See *V.R.W., Inc. v. Klein*, 68 N.Y. 2d at 565.

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² The Home Affordable Modification Program (HAMP), started in 2008 by the federal government, requires participating mortgage servicers to consider homeowners for loan modifications. Servicers have put into place their own systems to consider borrowers for loan modifications, as well. Both systems put the burden on borrowers to provide information and to ensure junior liens will subordinate in a timely manner. In addition, in 2009, New York State has mandated settlement conferences in all residential mortgage foreclosure cases with its own stated timelines.

⁸³ Letters from Paul Elisha, Records Access Officer, New York State Department of Social Services to Susan Antos,

date 4/16/90 and 4/25/90. On file with the author.

⁸⁴ See Fiscal Reference Manual, Version 1.0, Office of Temporary and Disability Assistance, Bureau of Financial Services, Vol. I, Policy and Procedures (2/10/13), available at: <http://otda.ny.gov/resources/fiscal-reference/FRM-1.pdf>

⁸⁵ Based on the responses to our FOIL request, only one Social Services District - Montgomery County, appears to use forms DSS-949 and DSS-712 provided by OTDA to record medical and public assistance liens.

⁸⁶ The five counties that did not respond to the FOIL request are: Hamilton, Lewis, Putnam, Seneca and Wayne.

⁸⁷ Letter from Sheila Smith, Clerk to the Cayuga County Legislature, dated January 24, 2013.

⁸⁸ Email from Amy Miller to Tamara S. Frazier, dated April 23, 2013. On file with author.

⁸⁹ Suffolk County data reflects the time period of January 1, 2006- June 30, 2012.

⁹⁰ This figure is reflective of data submitted by New York City's Human Resources Administration (HRA) for the time period of January 1, 2006 through October 15, 2012. The HRA data provided the aggregate number of liens filed per year for both public assistance and medical assistance. It was not separated to reflect the number of liens for each category separately.

⁹¹ Information for Nassau County is for the time period of January 10, 2006- December 14, 2012.

⁹² Time period of data: January 1, 2006- August 15, 2012.

⁹³ Chapter 53 of the Laws of 2011, 385; Chapter 53 of the Laws of 2012, 393; Chapter 53 of the Laws of 2013, 436.

⁹⁴ N.Y. Soc. Serv. Law §153(1)(d); (1)(e).

⁹⁵ *Id.*

⁹⁶ Chapter 53 of the Laws of 2011, 389; Chapter 53 of the Laws of 2012, 434; Chapter 53 of the Laws of 2013, 490.

⁹⁷ Letter from David Willer, Senior Attorney with St. Lawrence County Department of Social Services to Empire Justice Center, dated August 22, 2012.

CHART OF DATA GATHERED FROM FIFTY-THREE SOCIAL SERVICES DISTRICTS

The chart on the following pages reflects the information provided by the fifty eight local Social Services Districts in New York State in response to our FOIL requests. The data source for **Column 2** is the United States Census Bureau. The data for **Column 3** is extracted from the New York State Office of Temporary and Disability Assistance's website. The number of liens placed, amount of local Social Service District recoveries and distribution of recovered funds (**Columns 4-6**) were supplied by the districts solely. All percentages in **Column 6** were provided by the county. The final column (**Column 7**) includes any additional information provided by the county that sheds light on their use of SSL §106. All data is reflective of the time period of **January 2006-December 2012**, unless otherwise noted. Attempts to verify unclear information were made, through follow up correspondence with the individual District, when possible.

Chart Key:

N/A= Not Available

FA= Family Assistance

SN= Safety Net

TA= Temporary Assistance

EAA= Emergency Assistance to Adults

EAF= Emergency Assistance to Families

TANF= Temporary Assistance for Needy Families

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District
Albany	304,206	2006: 5,781/\$19,642,389 2011: 6,525/\$24,373,052 2012: 6,373/\$22,828,861	2006: 15 2007: 10 2008: 11 2009: 6 2010: 4 2011: 4 2012: 5 Total: 55	(# liens recovered/ amt. of recovery) 2006: 6/\$30,535.18 2007: 3/\$32,420.64 2008: 6/\$46,464.99 2009: 4/\$29,146.02 2010: 2/\$26,972.42 2011: 4/\$30,196.90 2012: 3/\$11,981.81 Total: 28/\$207,717.96	FA/FAF 100% Federal SN 29% State/71% Local EAA 50% State/50% Local	Jan 2006 - July 2012	Albany County submitted a form entitled "Note & Mortgage Open 2006-2012." Each entry for dates ranging in this time period was for the amount of \$55,000. In total, there were 27 separate date entries.
Allegany	48,946	2006: 1,058/\$2,439,092 2011: 1,132/\$3,247,648 2012: 1,117/\$3,181,999	2006: 1 2007: 7 2008: 7 2009: 9 2010: 6 2011: 16 2012: 8 Total: 54	2006: \$13,341.47 2007: \$11,156.51 2008: \$13,973.77 2009: \$55,987.72 2010: \$10,845.24 2011: \$3,152.42 2012: \$12,216.41 Total: \$120,673.54	Allegany County responded that all funds were recorded and returned to Federal, State and Local governmental entities in accordance with OTDA Claiming Standards.	Jan 2006 - Dec 2012	
Broome	200,600	2006: 5,259/\$15,205,575 2011: 7,442/\$24,137,142 2012: 7,370/\$24,038,263		2006: \$188,499.14 2007: \$226,423.34 2008: \$351,866.19 Total: \$766,788.67		2006 - 2009	Broome County stated that they have recovery data for other years, but it is not segregated in the manner requested, so they did not supply that data.
Cattaraugus	80,317	2006: 1,240/\$3,401,542 2011: 818/\$2,937,069 2012: 845/\$2,971,984	Total: 65	(# liens recovered/ amt. of recovery) Total: 22/\$54,599.66	Federal: 42.42% State: 30.7% Local: 26.88%	Jan 1, 2006 -July 31, 2012	
Cayuga	80,026	2006: 966/\$2,773,093 2011: 1,198/\$4,196,808 2012: 1,356/\$4,630,889	Total: 0	N/A	It is not the policy of Cayuga County DSS to file liens.	N/A	

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District			
Chautauqua					<p><u>TANF</u> (federal/state/local) 2006: 50%/25%/25% 2007: 50%/25%/25% 2008: 50%/25%/25% 2009: 50%/25%/25% 2010: 50%/25%/25% 2011: 99.6%/0%/0.4% 2012: 99.8%/0%/0.2%</p> <p><u>SN</u> (federal/state/local) 2006: 1.5%/49.3%/49.2% 2007: 2.4%/48.8%/48.8% 2008: 0.4%/49.8%/49.8% 2009: 1.1%/49.5%/49.4% 2010: 0.5%/49.8%/49.7% 2011: 1.2%/28.7%/70.3% 2012: 0.8%/28.7%/70.5%</p>	<p>2006: \$20,909.03 2007: \$11,035.14 2008: \$9,172.20 2009: \$4,016.10 2010: \$145.98 2011: \$19,905.57 2012: \$16,508.90 Total: \$81,692.92</p>	<p>2006: 25 2007: 33 2008: 26 2009: 43 2010: 40 2011: 36 2012: 27 Total: 230</p>		<p>Jan 2006 - July 31, 2012</p>	
Chemung	134,905	<p>2006: 4,127/\$10,713,771 2011: 6,082/\$17,803,988 2012: 5,987/\$17,441,743</p>	<p>2006: 29 2007: 23 2008: 19 2009: 16 2010: 6 2011: 21 2012: 9 Total: 123</p>	<p>N/A</p>	<p>N/A, but some records redacted as "personal liens of the stated commissioner."</p>	<p>Jan 1, 2006 - July 20, 2012</p>				
	88,830	<p>2006: 3,032/\$7,804,531 2011: 1,852/\$5,964,785 2012: 1,546/\$5,282,132</p>								

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District
Chenango			(# liens/ amt. of lien) 2007: 7/\$30,928.06 2008: 6/\$2,454 2009: 7/\$15,409.89 2010: 11/\$7,843.97 2011: 8/\$19,578.13 2012: 11/\$21,632.72 Total: 50/\$64,464.71	(# liens recovered/ amt. of recovery) 2007: 6/\$16,291.90 2008: 3/\$488.40 2009: 0 2010: 10/\$5,941.47 2011: 10/\$7,970.29 2012: 22/ \$4,735.00 Total: 51/\$35,427.06	2007: \$13,495.30 (FA)/\$2,796.60 (SN) 2008: \$488.40 (SN) 2009: \$0 2010: \$5,941.47 2011: \$7,970.29 2012: \$3,523.27 (FA)/\$1,211 (SN)	Jan 1, 2007 - Dec 31, 2012	
Clinton			2007: 7 2008: 11 2009: 14 2010: 10 2011: 9 2012: 7 Total: 58	2007: \$34,915.39 2008: \$7,755.75 2009: \$15,669.00 2010: \$2,093.66 2011: \$3,191.75 2012: \$18,349.61 Total: \$81,975.16	(federal/state/local) 2007: \$7,751.33/\$13,582.03/\$13,582.03 2008: \$3,877.87/\$1,938.9/\$1,938.94 2009: \$1,268.00/\$7,200.50/\$7,200.50 2010: \$1,046.83/\$523.42/\$523.42 2011: \$0/\$925.61/\$2,266.14 2012: \$0/\$5,321.39/\$13,028.22	Jan 1, 2007 - Dec 31, 2012	N/A
Columbia			Total: 23	Recovered from 5 of the 23 Liens a total of \$10,392.39	For 5 of 23: Fed = \$514.17 or ~5% State = \$4,925.79 or 47.4% Local = \$4,952.43 or 47.7%	Jan 1, 2006 - July 23, 2012	
		2006: 595/\$2,139,128 2011: 1,064/\$4,787,683 2012: 1,019/\$4,114,080		During this time Columbia County recovered 4 liens filed prior to 2006 Total: 9/\$100,293.44	Prior to 2006: Fed = \$39,678.10 or 39.6% State = \$30,307.66 or 30.2% Local = \$30,307.68 or 30.2%		

Appendix 1

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District
Cortland	49,336	2006: 953/\$2,802,777 2011: 1,110/\$3,725,159 2012: 1,110/\$3,717,080	2006: 22 2007: 29 2008: 17 2009: 24 2010: 21 2011: 24 2012: 16 Total: 153	2006: \$32,140.53 2007: \$30,817.97 2008: \$42,816.69 2009: \$14,464.39 2010: \$23,450.22 2011: \$32,137.87 2012: \$35,486.30 Total: \$211,313.97	N/A	Jan 2006 - Dec 2012	Liens recovered in 2008: 12 2009: 22 2010: 8 2011: 11 2012: 10 Total: 63
Delaware	47,989	2006: 268/\$783,946 2011: 413/\$1,452,654 2012: 461/\$1,602,592	2007: 16 2008: 6 2009: 17 2010: 18 2011: 12 2012: 15 Total: 84	2007: \$14,393.54 2008: \$18,019.80 2009: \$5,471.63 2010: \$4,202.50 2011: \$4,842.99 2012: \$7,433.61 Total: \$54,364.07	50% Federal 25% State 25% Local District	Jan 2007- Dec 2012	
Dutchess	297,474	2006: 2,345/\$11,000,229 2011: 2,981/\$14,267,913 2012: 2,944/\$13,966,690	2006: 24 2007: 17 2008: 33 2009: 37 2010: 28 2011: 46 2012: 10 Total: 177	(# liens recovered/ amt. of recovery) 2006: 15/\$28,208.57 2007: 9/\$18,524.26 2008: 6/\$20,337.08 2009: 6/\$26,398.40 2010: 5/\$15,465.58 2011: 8/\$20,512.83 2012: 2/\$8,901.47 Total: 186/\$338,348.19	(federal/state/local) 2006: 50%/25%/25% 2007: 50%/25%/25% 2008: 50%/25%/25% 2009: 50%/25%/25% 2010: 50%/25%/25% 2011: 73.9%/13%/13% 2012: 99%/0.5%/0.5%	Jan 2006 - Aug 3, 2012	
Erie	919,042	2006: 26,021/\$70,983,362 2011: 27,494/\$76,432,297 2012: 28,021/\$78,580,737	2006: 285 2007: 260 2008: 235 2009: 340 2010: 346 2011: 314 2012: 135 Total: 1,915	Total: \$ 1,621,946.64	Federal: \$15,723.87 State: \$734,275.36 Local: \$829,776.06 Information provided is 2006-2011.	Jan 2006 - Dec 2012	Forms LDSS-712, 723 and 949 EL are not used in Erie County.

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District
Essex	39,372	2006: 371/\$1,000,365 2011: 238/\$989,314 2012: 232/\$971,918	2007: 13 2008: 6 2009: 4 2010: 7 2011: 3 2012: 3 Total: 36	2007: \$18,028.89 2008: \$33,367.62 2009: \$40,447.61 2010: \$1,607.93 2011: \$10,364.70 2012: \$1,749.43 Total: \$105,566.18	Federal: \$30,585.91 State: \$37,187.07 Local: \$37,793.20	Jan 2007 - Dec 2012	
Franklin	51,597	2006: 742/\$1,906,687 2011: 765/\$2,434,328 2012: 885/\$2,942,697	2006: 6 2007: 23 2008: 22 2009: 16 2010: 2 2011: 24 2012: 17 Total: 110	2006: \$0 2007: \$0 2008: \$4,188.79 2009: \$2,903.67 2010: \$0 2011: \$399 2012: \$13,423.77 Total: \$20,915.23	(federal/state/local) 2006: 0 2007: 0 2008: 50%/25%/25% 2009: 15.6%/42.2%/42.2%/ 2010: 0 2011: 0/50%/50%/ 2012: 95.9%/2.9%/1.2%	Jan 2006 - Dec 2012	
Fulton	55,531	2006: 555/\$1,794,850 2011: 691/\$2,383,448 2012: 595/\$2,121,926	2006: 14 2007: 21 2008: 9 2009: 0 2010: 41 2011: 11 2012: 19 Total: 115	2006: \$12,730.95 2007: \$18,935.43 2008: \$22,606.81 2009: \$25,764.96 2010: \$769.80 2011: \$5,436.71 2012: \$8,569.06 Total: \$94,813.72	N/A	Jan 2006 - Dec 2012	
Genesee	60,079	2006: 694/\$2,150,037 2011: 598/\$2,015,586 2012: 620/\$2,250,137	2006: 3 2007: 1 2008: 4 2009: 0 2010: 6 2011: 7 2012: 4 Total: 25	2006: \$10,644.38 2007: \$6,229.63 2008: 0 2009: 0 2010: \$19,635.18 2011: 0 2012: \$3,400.00 Total: \$39,909.19	(federal/state/local) 2006: \$4,828.75/\$2,907.82/\$2,907.81 2007: \$1,429.70/\$2,399.97/\$2,399.96 2008: 0 2009: 0 2010: \$9,531.99/\$5,045.87/\$5,057.32 2011: 0 2012: \$3,400 (fed)	Jan 2006 - Dec 2012	

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District
Greene	49,221	2006: 815/\$2,397,199 2011: 1,156/\$4,117,136 2012: 1,139/\$4,098,716	2006: 1 2007: 2 2008: 5 2009: 8 2010: 9 2011: 13 2012: 10 Total: 48	2006: \$8,329.25 2007: \$40,500 2008: 0 2009: \$5,212.28 2010: \$1,700.00 2011: 0 2012: \$2,628.40 Total: \$58,369.93	(federal/state/local) 2006: 50%/25%/25% 2007: 50%/25%/25% 2008: 0 2009: 50%/25%/25% 2010: 50%/25%/25% 2011: 0 2012: 100%/0/0	Jan 2006 - Dec 2012	
Hamilton	4,836	2006: 34/\$69,019 2011: 20/\$56,494 2012: 23/\$76,203			N/A		
Herkimer	64,520	2006: 627/\$1,988,795 2011: 887/\$2,801,530 2012: 937/\$3,095,770		(# liens recovered/ amt. of recovery) 2006: 3/\$4,267.69 2007: 7/\$5,606.72 2008: 2/\$6,253.66 2009: 3/\$6,912.34 2010: 4/\$7,920.28 2011: 1/\$6,853.72 2012: 1/\$5,324.41 Total: 21/\$43,138.92		Jan 2006 - Dec 2012	
Jefferson	116,229	2006: 1,236/\$4,696,579 2011: 1,386/\$5,514,670 2012: 1,436/\$5,749,762	Total: 173	Total: \$293,038.03	FA/EAF: \$105,763.05 Safety Net: \$187,275.03	Jan 2006 - Aug 22, 2012	
Lewis	27,087	2006: 227/\$598,878 2011: 153/\$626,759 2012: 169/\$659,494	N/A	N/A	N/A	N/A	
Livingston	65,392	2006: 920/\$2,792,834 2011: 1,148/\$4,287,669 2012: 1,237/\$4,405,312	N/A	N/A	N/A	N/A	The county does not maintain electronic files or statistics; therefore they are unable to reply to our request.

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District
Madison	73,440	2006: 350/\$1,092,835 2011: 785/\$2,477,829 2012: 763/\$2,449,085	2006: 19 2007: 19 2008: 20 2009: 25 2010: 23 2011: 17 2012: 17 Total: 140	2006: \$1,020.68 2007: \$4,128.04 2008: \$2,157.63 2009: \$11,697.97 2010: \$ 3,157.28 2011: \$7,883.47 2012: \$8,051.85 Total: \$38,096.92	(federal/state/local) 2006: \$398.90/\$310.89/\$310.89 2007: \$1,110.98/\$1,508.53/\$1,508.53 2008: \$1,035.62/\$561.01/\$561.01 2009: \$2,811.67/\$4,443.15/\$4,443.15 2010: \$1,226.73/\$965.28/\$965.28 2011: \$1,815.90/\$1,759.60/\$4,307.97 2012: \$1,140.71/\$2,004.23/\$4,906.91	N/A	
Monroe	744,344	2006: 30,277/\$88,895,187 2011: 32,396/\$103,346,945 2012: 32,604/\$103,402,707	2006: 79 2007: 77 2008: 84 2009: 82 2010: 107 2011: 110 2012: 83 Total: 622	2006: \$86,123.99 2007: \$119,964.57 2008: \$67,754.53 2009: \$82,486.29 2010: \$63,013.56 2011: \$50,067.22 2012: \$28,514.72 Total: \$497,924.88	N/A	Jan 2006 - June 30, 2012	
Montgomery	50,219	2006: 712/\$2,258,422 2011: 1,204/\$3,588,236 2012: 1,239/\$3,705,593	2006: 2 2007: 1 2008: 0 2009: 0 2010: 0 2011: 0 2012: 0 Total: 3	2006: \$9,953.15 2007: \$9,176.38 2008: 0 2009: 0 2010: 0 2011: 0 2012: 0 Total: \$19,129.53	April 2006: 50% Fed/25% State/25% Local May 2006: 50% Fed/25% State/25% Local Sept. 2007: 50% State/50% Local (SN case)	Jan 2006 - Dec 2012	
Nassau	1,339,529	2006: 9,211/\$41,299,324 2011: 15,361/\$74,247,167 2012: 14,887/\$69,586,323	2006: 20 2007: 24 2008: 27 2009: 27 2010: 39 2011: 35 2012: 17 Total: 189	2006: \$606,763.18 2007: \$283,338.26 2008: \$303,451.75 2009: \$273,830 2010: \$120,726.36 2011: \$126,314 2012: \$74,851.20 Total: \$1,789,274.75	N/A	Jan 2006 - Dec 14, 2012.	

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District
New York City	8,175,136	2006: 391,929/\$1,250,804,000 2011: 346,186/\$1,282,514,814 2012: 348,017/\$1,325,582,648	2006: 281 2007: 147 2008: 303 2009: 559 2010: 1,387 2011: 1,011 2012: 666 Total: 4,354	2006: \$1,648,983 2007: \$807,411 2008: \$688,936 2009: \$291,631 2010: \$373,994 2011: \$611,318 2012: \$476,470.18 Total: \$4,898,743.18		Jan 2006 - Dec 2012.	The number of liens in column 4 includes both Medical Assistance and Public Assistance. The recovery amount referenced in column 5 reflects only Public Assistance.
Niagara	216,469	2006: 4,817/\$12,422,378 2011: 5,359/\$16,036,889 2012: 5,707/\$17,216,710	2006: 19 2007: 15 2008: 11 2009: 14 2010: 11 2011: 16 2012: 8 Total: 94	Total: \$346,601.22	Niagara County does not share in the recovered funds, and as such, the state and federal government each receive 50% of the recovery.	Jan 2006 - Aug 2012	
Oneida	234,877	2006: 5,639/\$14,929,167 2011: 7,869/\$22,304,513 2012: 9,283/\$24,929,436	2006: 24 2007: 53 2008: 39 2009: 52 2010: 69 2011: 81 2012: 37 Total: 355	(# liens recovered/ amt. of recovery) 2006: 15/\$133,034.05 2007: 23/\$92,636.67 2008: 10/\$18,374.09 2009: 10/\$27,266.48 2010: 15/\$95,531.68 2011: 15/\$71,923.42 2012: 6/\$6,434.75 Total: 94/ \$445,201.14	(federal/state/local) Safety Net: 0%/50%/50% TANF: 50%/25%/25% EAF: 50%/25%/25%	Jan 1, 2006 - June 30, 2012	Distribution of recovered funds: Federal: \$138,366.03 (31%) State: \$153,417.56 (34.46%) Local: \$153,417.56 (34.46%)

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District
Onondaga		2006: 10,905/\$29,905,615 2011: 14,837/\$44,582,109 2012: 15,302/\$45,091,685	2006: 161 2007: 117 2008: 107 2009: 129 2010: 25 2011: 77 2012: 23 Total: 639	2006: \$89,346.58 2007: \$125,773.45 2008: \$66,026.56 2009: \$138,991.11 2010: \$112,333.13 2011: \$29,799.04 2012: \$51,374.15 Total: \$613,644.02	<u>SN</u> Local: 71% State: 29% <u>FA</u> Local: 25% State: 25% Federal: 50%	Jan 1, 2006 - Aug 15, 2012	Mortgages taken out after 1/1/06 and closed by 8/15/12: 2006: 38 2007: 25 2008: 18 2009: 12 2010: 9 2011: 2 2012: 0 Total: 104 (16.27% taken & closed within period of time)
Ontario	467,026	2006: 1,354/\$4,171,514 2011: 1,466/\$5,538,865 2012: 1,431/\$5,340,164	Total: 35	Total in TANF Liens: \$4,294.34	TANF Liens: Federal 50% State 25% Local 25%	Jan 2006 - Sept 11, 2012	
Orange	107,932	2006: 4,643/\$18,779,334 2011: 7,183/\$32,668,339 2012: 7,189/\$32,592,025	2006: 1 2007: 6 2008: 4 2009: 16 2010: 8 2011: 16 Total: 51	(# liens recovered/amt. of recovery) 2006: 8/\$78,170.00 2007: 7/\$68,605.00 2008: 4/\$40,407.59 2009: 1/\$4,016.27 2010: 1/\$4,145.40 2011: 2/\$76,390.21 Total: \$271,734.47	(federal/state/local) <u>FA</u> 2006: 50/25/25 2007: 50/25/25 2008: 50/25/25 2009: 50/25/25 2010: 50/25/25 2011: 100/0/0 <u>SN</u> 2006: 0/50/50 2007: 0/50/50 2008: 0/50/50 2009: 0/50/50 2010: 0/50/50 2011: 0/29/71	Jan 2006 - Dec 2011	Percentages for Non-Reimbursable Expenses: (federal/state/local) 2006 - 2011: 100% for Local No knowledge of forms referenced in FOIL request (LDSS-7-712, 723 or 949EL)
	372,813						

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District
Orleans	42,883	2006: 902/\$2,648,910 2011: 1,164/\$3,676,087 2012: 1,124/\$3,617,341	2006: 1 2007: 23 2008: 10 2009: 10 2010: 19 2011: 14 2012: 13 Total: 90	2006: \$11,664.88 2007: \$4,652.58 2008: \$1,946.25 2009: \$5,413.91 2010: \$5,493.21 2011: \$6,367.89 2012: \$12,982.19 Total: \$48,520.91	The distribution of all liens recovered were forwarded to the state of NY, the U S federal government, and Orleans County local social services department as percentages, depending on the program involvement of each individual client as set by the New York State social services law.	Jan 2006 - Dec 2012	
Oswego	122,112	2006: 1,575/\$4,587,085 2011: 2,311/\$7,714,903 2012: 2,877/\$8,840,000	Total: 157	Total: \$186,990.32	N/A	Jan 2006 - Dec 2011	
Otsego	62,253	2006: 250/\$1,123,500 2011: 311/\$2,116,436 2012: 343/\$2,035,401	Total: 82	2006: \$17,308.06 2007: \$1,184.30 2008: \$14,424.86 2009: \$29,211.87 2010: \$12,278.17 2011: \$5,312.07 2012: \$5,141.10 Total: \$84,860.43	N/A		
Putnam	99,724	2006: 158/\$897,624 2011: 163/\$1,037,042 2012: 145/\$1,074,569	N/A	N/A	N/A	N/A	
Rensselaer	159,429	2006: 3,271/\$9,710,648 2011: 3,916/\$12,079,273 2012: 4,010/\$12,260,591	N/A	N/A	N/A	N/A	
Rockland	311,687	2006: 2,313/\$7,820,963 2011: 3,329/\$13,068,973 2012: 3,425/\$12,742,893	2006: 4 2007: 5 2008: 5 2009: 9 2010: 2 2011: 1 2012: 2 Total: 28	2006: \$0 2007: \$83,312.16 2008: \$71,000.00 2009: \$26,879.09 2010: \$37,612.70 2011: \$9,837.94 2012: \$0 Total: \$228,641.89	N/A	Jan 2006 - Aug 8, 2012	

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District
Saratoga	219,607	2006: 450/\$1,892,632 2011: 578/\$3,428,499 2012: 558/\$3,128,522	(# liens/ amt. of lien) 2006: 0 2007: 0 2008: 0 2009: 1/\$1 2010: 0 2011: 0 2012: 0 Total: 1/\$1	2006: 0 2007: 0 2008: 0 2009: 0 2010: 0 2011: 0 2012: 0 Total: 0	Unable to determine.	Jan 2006 - Dec 2012	
Schenectady	154,727	2006: 2,657/\$9,243,010 2011: 3,392/\$12,569,377 2012: 3,389/\$12,143,770	Total: 0	Total: \$15,849.96	N/A	Jan 2006 - Dec 2010	
Schoharie	32,749	2006: 213/\$794,885 2011: 274/\$1,137,806 2012: 269/\$1,154,345	N/A	N/A	Many records were lost during Hurricane Irene. If anyone calls, Schoharie County is telling them that they will discharge the mortgage.	N/A	
Schuyler	18,344	2006: 313/\$828,144 2011: 407/\$1,412,772 2012: 395/\$1,433,943	N/A	N/A	N/A	N/A	
Seneca	35,248	2006: 253/\$831,446 2011: 243/\$881,107 2012: 322/\$1,146,247	N/A	N/A	N/A	N/A	
St. Lawrence	111,944	2006: 1,892/\$4,848,116 2011: 2,339/\$7,344,440 2012: 2,335/\$7,518,915	Total: 501	Total: \$319,525.00	"Recovered funds are used to offset what would otherwise be claimed against the State and Federal government. The money is not distributed to the local social services district. State and Federal government split the money equally."	Jan 2006 - Aug 20, 2012	
Steuben	98,989	2006: 2,160/\$5,730,090 2011: 1,748/\$5,463,287 2012: 1,802/\$5,799,891	Total: 213	Total: \$183,518.91	Local: \$71,499.53 Federal: \$46,372.34 State: \$65,647.04	Jan 2006 - July 25, 2012	

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District
Suffolk	2006: 13,508/\$71,136,623 2011: 20,216/\$111,099,431 2012: 20,701/\$113,831,609	Total: 558	Total: \$10,482,971	N/A	Jan 2006 - June 30, 2012		
	1,493,350		(# liens recovered/ amt. of recovery) 2006: 7/\$31,194.26 2007: 3/\$3,595.35 2008: 1/\$195.51 2009: 3/\$428.33 2010: 2/\$19,500 2011: 1/\$6,838.60 2012: 0 Total: 17/\$61,752.05	Federal: \$15,621.44 State: \$21,629.20 Local: \$24,501.41	Jan 2006 - Dec 2012		
Sullivan	2006: 1,596/\$5,434,049 2011: 2,086/\$8,437,762 2012: 2,273/\$8,458,094	Total: 95	Total: \$87,309.08	N/A	Jan 2006 - Aug 3, 2012		
	77,545				N/A		
Tioga	2006: 722/\$2,081,416 2011: 598/\$2,425,026 2012: 616/\$2,628,847	Total: 81	N/A	N/A	N/A		
	51,125						
Tompkins	2006: 1,491/\$5,064,571 2011: 1,513/\$5,680,791 2012: 1,528/\$5,659,388	N/A	N/A	N/A	N/A		
	101,564						
Ulster	2006: 2,406/\$8,986,677 2011: 3,562/\$14,852,407 2012: 3,695/\$15,422,885	Total: 91	2006: N/A 2007: \$8,597.96 2008: \$50,915.07 2009: \$36,806.11 2010: \$10,589.21 2011: \$17,273.21 2012: N/A Total: \$124,181.56	N/A	Jan 2007 - Dec 2011		
	182,494						
Warren	2006: 4 2007: 0 2008: 6 2009: 7 2010: 2 2011: 7 2012: 3 Total: 29	Total: 29	2006: \$7,830.72 2007: \$5,432.67 2008: \$37,703.08 2009: \$19,494.02 2010: 0 2011: \$11,813.65 2012: \$562.23 Total: \$82,836.37	N/A	Jan 2006 - Dec 2012		
	65,705						

County	County Population (as of 2010)	Total Number of TA Recipients/County Expenditure	Number of Liens Placed 2006 - 2012	Local Social Services District Recoveries 2006 - 2012	Distribution of Recovered Funds	Time Period of Data Submitted	Additional Information Supplied By Local District
Washington	63,216	2006: 572/\$2,757,185 2011: 468/\$2,696,080 2012: 515/\$2,806,218	N/A	2007: \$17,612.34 2008: \$4,518.53 2009: \$20,325.09 2010: \$6,138.96 2011: 0 2012: \$6,557.37 Total: \$55,152.29	N/A	January 2006 - December 2012	
Wayne	93,772	2006: 1,028/\$3,194,652 2011: 1,068/\$3,626,228 2012: 1,026/\$3,599,117	N/A	N/A	N/A	N/A	
Westchester	949,113	2006: 13,935/\$73,365,826 2011: 14,512/\$89,792,323 2012: 13,744/\$80,751,843	Total: 6	2007: \$116,270.598 2008: \$47,723.15 2009: \$687.50 2010: \$59,931.53 2011: \$92,708.47 2012: \$15,564.03 Total: \$332,885.27	50% Federal 50% State	January 2007 - September 6, 2012	
Wyoming	42,153	2006: 352/\$1,022,755 2011: 338/\$1,084,729 2012: 327/\$1,035,560	Total: 100	2006: \$13,826.21 2007: \$10,659.95 2008: \$37,820.41 2009: \$4,570.31 2010: \$26,564.11 2011: \$3,960.10 2012: \$2,609.04 Total: \$100,010.13	(federal/state/local) 2006: 2,164/5,400/6,262.21 2007: 4,543/3,058/3,058.95 2008: 4,807/15,148/17,865.41 2009: 1,905/1,333/1,332.41 2010: 8,889/7,720/9,955.11 2011: 1,980/990/990.1 2012: 1,958/326/325.04 Total: 26,246/33,975/39,789.13	January 2006 - December 2012	
Yates	25,348	2006: 235/\$691,698 2011: 147/\$592,860 2012: 228/\$912,060	Total: 0	Total: 0	N/A	N/A	

A.7780 (Titus)/S.5498 (Savino)

S T A T E O F N E W Y O R K

7780
2013-2014 Regular Sessions

I N A S S E M B L Y

June 4, 2013

Introduced by M. of A. TITUS -- read once and referred to the Committee on Social Services

AN ACT to amend the social services law, in relation to the powers of social services officials to receive and dispose of a deed, mortgage, or lien

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Section 106 of the social services law, as amended by chap-
2 ter 200 of the laws of 1946, the section heading as amended, subpara-
3 graph 5 of paragraph (a) of subdivision 2 as renumbered and paragraphs
4 (e) and (f) of subdivision 2 as added by chapter 1080 of the laws of
5 1974, subdivision 1 and paragraph (a) of subdivision 2 as amended by
6 chapter 764 of the laws of 1972, paragraph (b) of subdivision 2 as
7 amended by chapter 150 of the laws of 1955, paragraph (c) of subdivision
8 2 as amended by chapter 310 of the laws of 1962, paragraph (d) of subdivi-
9 sion 2 as added by chapter 43 of the laws of 1952, subdivision 3 as
10 amended by chapter 271 of the laws of 1948 and subdivision 4 as added by
11 chapter 340 of the laws of 2003, is amended to read as follows:

12 S 106. Powers of social services official to receive and dispose of a
13 deed, mortgage, or lien. 1. A social services official responsible, by
14 or pursuant to any provision of this chapter, for the administration of
15 assistance or care granted or applied for may accept a deed of real
16 property and/or a mortgage thereon on behalf of the public welfare
17 district for the assistance and care of a person at public expense but
18 such property shall not be considered as public property and shall
19 remain on the tax rolls and such deed or mortgage shall be subject to
20 redemption as provided in paragraph (a) of subdivision [two] SIX hereof.
21 2. ANY INCONSISTENT PROVISION OF THIS CHAPTER OR ANY OTHER LAW
22 NOTWITHSTANDING, A SOCIAL SERVICES OFFICIAL MAY NOT ASSERT ANY CLAIM
23 UNDER ANY PROVISION OF THIS CHAPTER TO RECOVER PAYMENTS MADE AS PART OF
24 SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP), CHILD CARE SERVICES,

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD11116-01-3

A. 7780

2

1 EMERGENCY ASSISTANCE TO ADULTS OR THE HOME ENERGY ASSISTANCE PROGRAM
2 (HEAP).

3 3. ANY INCONSISTENT PROVISION OF THIS CHAPTER OR OF ANY OTHER LAW
4 NOTWITHSTANDING, A SOCIAL SERVICES OFFICIAL MAY NOT ASSERT ANY CLAIM
5 UNDER ANY PROVISION OF THIS CHAPTER TO RECOVER PAYMENTS OF PUBLIC
6 ASSISTANCE IF SUCH PAYMENTS WERE REIMBURSED BY CHILD SUPPORT

7 COLLECTIONS.

8 4. ANY INCONSISTENT PROVISION OF THIS CHAPTER OR OF ANY OTHER LAW
9 NOTWITHSTANDING, A SOCIAL SERVICES OFFICIAL MAY NOT ASSERT ANY CLAIM
10 UNDER ANY PROVISION OF THIS CHAPTER TO RECOVER PAYMENTS OF PUBLIC
11 ASSISTANCE UNLESS, BEFORE IT HAS ACCEPTED A DEED OR MORTGAGE FROM AN
12 APPLICANT OR RECIPIENT, IT HAS FIRST RECEIVED A SIGNED ACKNOWLEDGMENT
13 FROM THE APPLICANT OR RECIPIENT ACKNOWLEDGING THAT:

14 (A) THE APPLICANT OR RECIPIENT UNDERSTANDS THAT BENEFITS PROVIDED AS
15 PART OF SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM (SNAP), CHILD CARE
16 SERVICES, EMERGENCY ASSISTANCE TO ADULTS OR THE HOME ENERGY ASSISTANCE
17 PROGRAM (HEAP) MAY NOT BE INCLUDED AS PART OF THE RECOVERY TO BE MADE
18 UNDER THE MORTGAGE;

19 (B) IF THE APPLICANT OR RECIPIENT DECLINES TO PROVIDE THE LIEN OR
20 MORTGAGE THE CHILDREN IN THE HOUSEHOLD REMAIN ELIGIBLE FOR PUBLIC
21 ASSISTANCE.

22 5. (A) UNTIL SUCH PROPERTY OR MORTGAGE IS SOLD, ASSIGNED OR FORECLOSED
23 PURSUANT TO LAW BY THE SOCIAL SERVICES OFFICIAL, OR UNTIL SUCH MORTGAGE
24 HAS BEEN PAID OFF, THE PERSON GIVING SUCH DEED OR MORTGAGE, OR HIS OR
25 HER ESTATE OR THOSE ENTITLED THERETO, SHALL RECEIVE AN ANNUAL ACCOUNTING
26 OF THE PUBLIC ASSISTANCE INCURRED AND REPAIRS AND TAXES PAID ON PROPER-
27 TY. THE DISTRICT SHALL PROVIDE SUCH ACCOUNTING NO LATER THAN FOUR MONTHS
28 AFTER THE END OF THE COUNTY'S FISCAL YEAR.

29 (B) SUCH ACCOUNTING SHALL INCLUDE INFORMATION REGARDING THE DEBT OWED,
30 INCLUDING, BUT NOT LIMITED TO:

31 (1) AN ENUMERATION OF ALL ASSISTANCE INCURRED BY THE PERSON GIVING
32 SUCH DEED OR MORTGAGE OR HIS OR HER HOUSEHOLD TO DATE;

33 (2) THE CURRENT AMOUNT OF RECOVERABLE ASSISTANCE UNDER THE DEED OR
34 MORTGAGE;

35 (3) THE AMOUNT OF ANY CREDITS AGAINST ASSISTANCE INCLUDING BUT NOT
36 LIMITED TO:

37 A. THE AMOUNT OF CHILD SUPPORT COLLECTED AND RETAINED BY THE DISTRICT
38 AS REIMBURSEMENT FOR ASSISTANCE;

39 B. RECOVERIES UNDER SECTION ONE HUNDRED FOUR OF THIS TITLE;

40 C. RECOVERIES UNDER SECTION ONE HUNDRED THIRTY-ONE-R OF THIS CHAPTER.

41 (4) SAID ACCOUNTING SHALL ALSO PROVIDE INFORMATION REGARDING THE
42 MANNER IN WHICH PAYMENTS MAY BE MADE TO THE SOCIAL SERVICES DISTRICT TO
43 REDUCE THE AMOUNT OF THE MORTGAGE.

44 (C) IN THE EVENT THAT AN ANNUAL ACCOUNTING IS NOT PROVIDED TO THE
45 PERSON GIVING SUCH DEED OR MORTGAGE OR HIS OR HER ESTATE OR THOSE ENTI-
46 TLED THERETO, WITHIN THE FOUR MONTH PERIOD REQUIRED IN PARAGRAPH (A) OF
47 THIS SUBDIVISION, NO ASSISTANCE SHALL BE RECOVERABLE FOR THAT FISCAL
48 YEAR. IN THE EVENT THAT THE PERSON GIVEN THE DEED OR MORTGAGE HAS
49 RECEIVED NO RECOVERABLE ASSISTANCE IN ANY YEAR, THE ANNUAL ACCOUNTING
50 MUST CONTINUE TO BE PROVIDED, REFLECTING ANY CREDITS THAT HAVE BEEN
51 APPLIED AGAINST THE ACCOUNT.

52 (D) NO DEED OR MORTGAGE TAKEN ON OR BEFORE JANUARY FIRST, TWO THOUSAND
53 FOURTEEN SHALL BE VALID UNLESS A SOCIAL SERVICES OFFICIAL PROVIDES AN
54 ACCOUNTING TO THE PERSON GIVING SUCH DEED OR MORTGAGE OR HIS OR HER
55 ESTATE OR THOSE ENTITLED THERETO, PURSUANT TO THIS SUBDIVISION, ON OR
56 BEFORE NOVEMBER FIRST, TWO THOUSAND FOURTEEN.

A. 7780

1 6. (a) (1) Until such property or mortgage is sold, assigned or fore-
2 closed pursuant to law by the social services official, the person
3 giving such deed or mortgage, or his estate or those entitled thereto,
4 may redeem the same by the payment of all expenses incurred for the
5 support of the person, and for repairs and taxes paid on such property,
6 provided, however, that a social services official may enter into a
7 contract for such redemption, subject to the provisions of this para-
8 graph, and containing such terms and conditions, including provisions
9 for periodic payments, [with or] without interest, [as the social
10 services official shall deem appropriate,] for an amount less than the
11 full expenses incurred for the support of the person and for repairs and

12 taxes paid on such property (hereinafter called a "lesser sum"), which
13 lesser sum shall in no event be less than the difference between the
14 appraised value of such property and the total of the then unpaid prin-
15 cipal balance of any recorded mortgages and the unpaid balance of sums
16 secured by other liens against such property.

17 (2) In the case of a redemption for a lesser sum, the social services
18 official shall obtain (i) an appraisal of the current market value of
19 such property, by an appraiser acceptable to both parties, and (ii) a
20 statement of the principal balance of any recorded mortgages or other
21 liens against such property (excluding the debt secured by the deed,
22 mortgage or lien of the social services official). Any expenses incurred
23 pursuant to this paragraph shall be audited and allowed in the same
24 manner as other official expenses.

25 (3) Every redemption contract for any lesser sum shall be approved by
26 the department upon an application by the social services official
27 containing the appraisal and statement required by subparagraph two, a
28 statement by the social services official of his reasons for entering
29 into the contract for such lesser sum and any other information required
30 by regulations of the department.

31 (4) So long as the terms of the approved redemption contract are
32 performed, no public sale of such property shall be held.

33 (5) The redemption for a lesser sum shall reduce the claim of the
34 social services official against the recipient on the implied contract
35 under section one hundred four of this chapter or under any other law,
36 to the extent of all sums paid in redemption.

37 (b) In order to allow a minimum period for redemption, the public
38 welfare official shall not sell the property or mortgage until after the
39 expiration of one year from the date he received the deed or mortgage,
40 but if unoccupied property has not been redeemed within six months from
41 the date of death of the person who conveyed it to him by deed the
42 public welfare official may thereafter, and before the expiration of
43 such year, sell the property.

44 (c) Except as otherwise provided in this chapter, upon the death of
45 the person or his receiving institutional care, if the mortgage has not
46 been redeemed, sold or assigned, the public welfare official may enforce
47 collection of the mortgage debt in the manner provided for the foreclo-
48 sure of mortgages by action.

49 (d) Provided the department shall have given its approval in writing,
50 the public welfare official may, when in his judgment it is advisable
51 and in the public interest, release a part of the property from the lien
52 of the mortgage to permit, and in consideration of, the sale of such
53 part by the owner and the application of the proceeds to reduce said
54 mortgage or to satisfy and discharge or reduce a prior or superior mort-
55 gage.

A. 7780

1 (e) While real property covered by a deed or mortgage is occupied, in
2 whole or in part, by an aged, blind or disabled person who executed such
3 deed or mortgage to the social services official for old age assistance,
4 assistance to the blind or aid to the disabled granted to such person
5 before January first, nineteen hundred seventy-four, the social services
6 official shall not sell the property or assign or enforce the mortgage
7 unless it appears reasonably certain that the sale or other disposition
8 of the property will not materially adversely affect the welfare of such
9 person. After the death of such person no claim for assistance granted
10 him shall be enforced against any real property while it is occupied by
11 the surviving spouse.

12 (f) Except as otherwise provided, upon the death of a person who
13 executed a lien to the social services official in return for old age
14 assistance, assistance to the blind or aid to the disabled granted prior
15 to January first, nineteen hundred seventy-four, or before the death of
16 such person if it appears reasonably certain that the sale or other
17 disposition of the property will not materially adversely affect the

18 welfare of such person, the social services official may enforce such
19 lien in the manner provided by article three of the lien law. After the
20 death of such person the lien may not be enforced against real property
21 while it is occupied by the surviving spouse.

22 [3.] 7. The sale of any parcel of real property or mortgage on real
23 property by the public welfare official, under the provisions of this
24 section, shall be made at a public sale, held at least two weeks after
25 notice thereof shall have been published in a newspaper having a general
26 circulation in that section of the county in which the real property is
27 located. Such notice shall specify the time and place of such public
28 sale and shall contain a brief description of the premises to be sold,
29 or upon which the mortgage is a lien, as the case may be. Unless in the
30 judgment of the public welfare official, it shall be in the public
31 interest to reject all bids, such parcel or mortgage shall be sold to
32 the highest responsible bidder.

33 [4. Any inconsistent provision of this chapter or of any other law
34 notwithstanding, a social services official may not assert any claim
35 under any provision of this chapter to recover payments of public
36 assistance if such payments were reimbursed by child support
37 collections.]

38 8. IT IS PERMISSIBLE FOR SOCIAL SERVICES OFFICIALS TO SUBORDINATE A
39 MORTGAGE TAKEN ON BEHALF OF THE PUBLIC WELFARE DISTRICT PURSUANT TO THIS
40 SECTION. THE SOCIAL SERVICES OFFICIAL SHALL SUBORDINATE A MORTGAGE WITH-
41 IN THIRTY DAYS OF RECEIPT OF WRITTEN NOTICE THAT THE HOMEOWNER IS
42 ATTEMPTING TO MODIFY A MORTGAGE HELD BY A MORTGAGEE WITH SUPERIOR LIEN
43 RIGHTS AND SUBORDINATION OF THE PUBLIC WELFARE DISTRICT'S MORTGAGE IS
44 REQUIRED BY THE SUPERIOR LIEN HOLDER IN ORDER FOR IT TO APPROVE OR
45 COMPLETE THE MODIFICATION.

46 S 2. This act shall take effect on the sixtieth day after it shall
47 have become a law.

This toolkit is meant to be a practical guide to dealing with the most frequent problems encountered by welfare applicants and recipients who own their own homes.

- **Your client is a recipient of public assistance or former recipient of public assistance who has given the local Social Services District a mortgage against his or her home. S/he wants to know the amount of the debt.**

Persons who give the local Social Services District a mortgage have no way of knowing the amount of their debt. They do not receive periodic statements. The mortgage document does not list the accurate amount of the debt because the amount of the mortgage increases as public assistance is paid out, and is reduced as credits are made against the debt. The mortgage document may or may not include a dollar amount and it never reflects the actual amount of the mortgage. For example in New York City, mortgages typically say \$200,000. In other counties mortgages have general language such as “so much money as may be advanced to the mortgagor by the mortgagee.” Therefore, to find out the amount owed, you will have to:

- Ask the Social Services District for the payoff amount. This request is usually made to the County Attorney outside of the City of New York.
- In the City of New York, the request should be made to:

Ms. Iris Jackson
 Real Property Unit
 New York City Commissioner of Social Services
 250 Church Street
 New York, New York 10013

- **Once you get the payoff amount, how do you verify that it is correct?**

First: Make sure that all the charges are correct.

- Step one: Ask the Social Services District for a detailed accounting as to how the amount of the lien was calculated. Be sure to ask the district for a list of codes used in the accounting so that you can decipher the print out. This request is usually made to the County Attorney in Social Services Districts outside the City of New York. In the City of New York the request should be made to Ms. Jackson at the address above.
- You receive the accounting – what next? There are many things to review to determine if the mortgage was correctly calculated.

It is important to check for duplicate entries and math errors.

- Did any of the mortgage debt accrue more than 10 years before the mortgage was executed?
 - a. If yes, all debt that accrued more than 10 years before the mortgage was signed must be deducted from the payoff amount.

- Does the amount of the debt include HEAP, food stamps, child care assistance, Emergency Assistance to Adults or Medicaid?
 - a. If yes, all debt that stems from payments of HEAP, SNAP, EAA or child care assistance must be deducted from the payoff amount. Medicaid charges should be closely examined to determine whether they are recoverable.
- You received a computer printout. How do you tell if the amount of the debt include HEAP, EAA, SNAP or child care assistance?
 - a. You will have to look at the coding in the printout. If you asked for the list of codes along with your printout, you should be able to identify they type of benefits that is associated with each debit entry.

Second: Make sure that all credits have been properly applied.

➤ **Child support order:**

- a. If your client has a child support order, ask the client to get a “payment and disbursement history” (sometimes called “child support printout”) that goes back to the first year that the client was on public assistance and continues to the present, even if the client has not been a recipient of public assistance for a number of years.
- b. Because of very complicated child support distribution rules, the local Department of Social Services may be entitled to retain child support collected after the client’s public assistance case was closed, including income tax interceptions which continue until arrears are paid in full. Review the printout to determine how much in collected support was disbursed to the Social Services District. That total should be applied to reduce the lien.
- c. To get a child support payment and disbursement history, your client will have to call the New York State Child Support Helpline at 888-208-4485 (TTY: 1-866-875-9975 Monday - Friday, 8am - 7pm).

➤ **Workfare:**

- a. If your client worked off his or her public assistance grant, he or she should be entitled to a credit against the mortgage in an amount which equals the total number of hours worked times the federal minimum wage. Workfare programs keep time sheets which you will have to request from the Social Services District. You will have to review the time sheets from the period of time that your client was on public assistance and multiply the total number of hours times the minimum wage. The federal minimum wage is \$8.00 as of January 1, 2014 and has been \$7.25 per hour since July 24, 2009. A history of the federal minimum wage for cases where workfare was performed before that date is at:

<http://www.dol.gov/whd/minwage/chart.htm>

- **Applicants for assistance who own a home ask:**

Do I have to give DSS a mortgage as a condition of receiving assistance?

What happens if I refuse to sign the mortgage?

What you need to know to answer these questions:

➤ **Are there children in the household?**

- a. **If yes**, advise the applicant that he or she can get a grant for the children only without having to sign a mortgage. This will be a smaller grant than if the client gets a grant for themselves and the children. You can provide your client with the following information in order to help them make this important financial decision.

- First, you will have to work out two budgets – one for the children only and one for the household with the adult included so your client can make the decision whether it is feasible to support themselves with a grant only for the children. Budgeting standards for every county are available on the Empire Justice Center web page at: <http://www.empirejustice.org/issue-areas/public-benefits/cash-assistance/2012-standard-by-county.html>
- For example, in Albany County a mother with three children and no income, who owns her house, would receive \$510 per month in public assistance for her children only, and \$698 if she is included in the grant. In making her decision, your client can consider how child support and employment income is treated:

-If the absent parent pays child support, it will go to the local Social Services District to reimburse the District for public assistance paid. However, if the child support is paid on time, the District will “pass through” up to \$100 of the support paid (if one child) or \$200 (if more than one child).¹ The parent will receive this “pass through” amount in addition to the public assistance grant. This additional amount may make it possible to refuse to sign a mortgage.

-The \$200 pass through applies if the children have different fathers and even if only one pays support on time, so long as the amount of current support collected equals or exceeds \$200.²

-If the parent is employed, the first \$90 of earnings will be disregarded. The rest will reduce the public assistance grant dollar for dollar.³

¹ New York State Office of Temporary and Disability Assistance, Temporary Assistance Source Book, Chap. 18, Sec. N, \$100 Support Payments, pg. 18-29.

² NY OCFS Admin Directive 10 ADM-04 at 10, available at <http://otda.ny.gov/policy/directives/2010/ADM/10-ADM-04.pdf>

³ New York State Office of Temporary and Disability Assistance, Temporary Assistance Source Book, Chap. 18, Sec. J, Earned Income Disregards, pg. 18-18 (“\$90 Income Disregard”).

- **Effect on SNAP/Food Stamps**

The effect of an individual's refusal to sign a mortgage on the food stamp grant depends on whether the person is an applicant for or recipient of Temporary Assistance (TA) at the time of the refusal.

- If the individual is a TA recipient at the time he or she refuses to sign the lien:
 - a. The failure or refusal of an individual to sign a lien is not itself a violation of any food stamp requirement, and so does not result in a sanction on the food stamp side. However, for food stamp purposes, if a TA recipient is sanctioned because of a failure to comply with a TA requirement that is not also a food stamp requirement; federal rules prohibit an increase in the food stamp grant to compensate for the decrease in TA income.⁴ That means the food stamp grant will remain what it was before the TA sanction was imposed even though the household's income has been reduced.
- If the individual is an applicant for TA at the time he or she refuses to sign the lien:
 - a. In this case the food stamp grant will be based on the actual amount of the TA grant with the sanction imposed. This means the food stamp grant will compensate, to some degree, for the reduction in the TA income the family would otherwise have been eligible for if the lien had been signed. How this works in practice (the grant amounts used in the example are not actual):

-Let's say a household of three is eligible for \$600 in TA benefits and, based on the TA income, for \$300 in food stamps. Let's also say the refusal to sign the lien will result in a reduction of TA benefits to \$500 a month, reflecting the removal of the person who refused to sign the lien from the TA grant. Finally, let's say that a monthly income of \$500 would ordinarily qualify a household of three for \$335 in food stamps. If, at the time of refusal to sign the lien, the household is first applying for TA, the household will get \$500 a month in TA and the full amount, \$350 a month, in food stamps. However, if the household is receiving a full TA grant of \$600 a month when the head of the household is asked to sign the lien and refuses, the food stamp grant will not increase from \$300 to \$350. It will remain at the \$300 level rather than increasing to reflect the reduction in household income from \$500 to \$600. The rationale is that when the TA income of a household is reduced because of the failure of an individual to comply with a TA requirement that is not also a food stamp requirement, although the household will not be sanctioned on the food stamp side, it will not be "rewarded" by having its food stamps increased to reflect the reduction in monthly income.⁵

⁴ Office of Temporary and Disability Assistance, Supplemental Nutrition Assistance Program (SNAP) Source Book, Section 15, Certification Periods/Issuing Benefits, Issuing Benefits, POLICY, 5(a), pg. 318.

⁵ NY Dept of Social Servs Informational Letter 01 INF-01 at 4, available at http://www.otda.ny.gov/policy/directives/2001/INF/01_INF-12.pdf

- **An applicant for assistance is purchasing a home pursuant to a land contract and has been asked to sign a mortgage against the property. Can they refuse?**

Yes. They do not actually own the home until the conditions of the contract are fulfilled, and since they do not have legal title to the property, the deed is not in their name and they cannot be compelled to execute a mortgage against a property that she does not yet own. (*Matter of Joseph R.*, fh # 06924182 (4/15/85), available at the Fair Hearing Bank of the Online Resource Center available at:

<http://onlineresources.wnyc.net/welcome.asp?index=Welcome>)

- **You determine that the Social Services District improperly calculated the amount of the mortgage imposed against your client's home.** The County failed to credit child support collected, failed to credit the value of workfare your client performed and erroneously included the value of child care, SNAP and HEAP in the lien. You write to the County Attorney and point out these errors but they refuse to reduce the amount of the mortgage. What do you do?

Bring an action under CPLR 5239 to have the lien declared invalid.

A sample petition is attached.

SAMPLE PETITION

At a Special Term of the Supreme Court of the State of New York,
held in and for the County of _____, at the Courthouse thereof
located at _____, New York, on the ____ day of _____, 20__.

-----X
In the Matter of JANE DOE

Petitioner,

-against-

ORDER TO SHOW CAUSE

JOHN ROE, as Commissioner of the _____ County
Department of Social Services,

Respondent.
-----X

On the reading and filing of the petition of Jane Doe verified on the ____ day of _____, 20__, and the affirmations of _____, Esq. dated _____, 20__ and _____, Esq. dated _____, 20__, and the exhibits attached hereto, and upon all other papers heretofore had herein, it is hereby

ORDERED that the respondent show cause before the Honorable _____, Justice of the New York State Supreme Court, County of _____, located at _____ New York, on the ____ day of _____, 20__, at ____ o'clock in the _____ of that day, or as soon thereafter as counsel can be heard, why an order should not issue

GRANTING judgment in favor of the Petitioner and against the Respondent:

- a) Declaring that the lien filed by the respondent against the property owned by Jane Doe located at _____, _____, New York, _____, is invalid insofar as it attempts to recover public assistance correctly paid to the petitioner which she earned by performing a job assigned to her under the Work Experience Program (WEP) by _____ County for a number of hours corresponding to the amount of her grant plus food stamps divided by the minimum wage.
- b) ANNULLING the lien filed by the County of _____ against the aforementioned property owned by Jane Doe, to the extent such lien attempts to recover public assistance that has been earned through petitioner's participation in WEP.
- c) Declaring that the lien filed by the Respondent against the property owned by Jane Doe located at _____, _____, New York, _____, is invalid insofar as the County failed to credit child support collected from Jane Doe against the value of the mortgage.
- d) ANNULLING the lien filed by the County of _____ against the aforementioned property owned by Jane Doe, to the extent such lien fails to credit child support collected from Jane Doe against the value of the mortgage.
- e) Declaring that the lien filed by the Respondent against the property owned by Jane Doe located at _____, _____, New York, _____, is invalid insofar as the County erroneously included the value of child care, Supplemental Nutrition Assistance Program ("SNAP") funds, and Home Emergency Assistance Program ("HEAP") funds in the lien.
- f) ANNULLING the lien filed by the County of _____ against the aforementioned property owned by Jane Doe, to the extent such lien the erroneously includes the value of child care, SNAP and HEAP funds in the lien.
- g) AWARDING the Petitioner costs, including reasonable attorneys' fees pursuant to 42 USC §1988, 29 USC 209 and/or Article 86 of the Civil Practice Law and Rules, and
- h) GRANTING such further relief as is just and proper.

IT IS ORDERED that Jane Doe be permitted to proceed as a poor person in this matter pursuant to CPLR 1101(e), and that all fees relating to filing and service in this matter are waived.

SUFFICIENT CAUSE THEREFORE APPEARING, service of the verified petition, and a copy of this ORDER, together with the papers on which it is granted, be made:

1. personally upon Respondent _____ or her authorized representative at the _____ County Department of Social Services located in _____, New York; and

Service made before ___ o'clock in the ___ noon of _____, 20___, shall be deemed good and sufficient service of this order.

Dated: _____, 20___

Entered:

Justice of the New York State Supreme Court

Petitioner's Attorneys

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____**

-----X
In the Matter of JANE DOE

Petitioner,

-against-

JOHN ROE, as Commissioner of the
_____ County Department of Social Services

**ATTORNEY'S
AFFIRMATION
AND
CERTIFICATION**

Respondents.
-----X

_____, duly admitted to practice in the State and Federal Courts of New York, under penalty of perjury hereby affirms that:

1. I am _____, and the attorney for Jane Doe in the above captioned matter.

2. I am fully familiar with the facts and circumstances of this case, and submit this affirmation in support of the petition and poor person's relief for the petitioner.

3. _____ operates on a very tight budget and is without funds to obtain an index number for this proceeding.

4. I certify that the petitioner is unable to pay the costs, fees and expenses necessary to prosecute this proceeding. Jane Doe is eligible for free legal services _____, because she is indigent.

5. Ms Doe's only source of income currently is public assistance and she has no assets other than her personal household effects.

6. I therefore request waiver of all fees and costs related to the filing and service of this matter pursuant to CPLR 1101(e).

7. I have examined the facts of the above-entitled proceeding and I believe that there is merit to this case and a strong likelihood of success. I will prosecute this proceeding without compensation from the petitioner.

8. No prior application for the relief sought herein has been made.

9. I hereby certify under penalty of perjury and as an officer of the Court that I have no knowledge that the substance of any of the factual submissions contained in this document is false.

10. I hereby certify under penalty of perjury and as an officer of the Court that, to the best of my knowledge, information and belief, formed after an inquiry reasonable under the circumstances, the presentation of the papers or the contentions herein are not frivolous as defined in subsection (c) of section 130-1.1 of the Rules of the Chief Administrator (22 NYCRR).

WHEREFORE, it is respectfully requested that the petitioner be permitted to prosecute this proceeding as a poor person, and that she be awarded all of the relief requested in her petition.

Dated: _____
_____, 20__

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF _____**

-----X
In the Matter of JANE DOE

Petitioner,

-against-

**VERIFIED
PETITION**

JOHN ROE, Commissioner of the
_____ County Department of Social Services

Respondents.

-----X

The petition of JANE DOE, by her attorney _____, _____ of counsel,
respectfully alleges:

PARTIES

1. The petitioner, JANE DOE, resides at _____, _____, New York in _____ County.
2. Respondent JOHN ROE is the Commissioner of the _____ County Department of Social Services (hereinafter referred to as the "County") and is, by virtue of the Social Services Law, responsible for the County's compliance with the law.

PRELIMINARY STATEMENT

3. Petitioner Doe brings this proceeding to declare the validity of a lien under Civil Practice Law and Rules 5239. The County defendant seeks to assert a lien in the amount of at least \$_____ to recover public assistance provided to Ms. Doe under §104-b of the Social Services Law. Ms. Doe asserts that this lien is not valid for several reasons - the County has already recovered the value of the benefits provided to her through the labor she has provided to the County in exchange for those benefits, the County failed to accurately credit the amount of child support it collected from Ms. Doe against the lien, and the County erroneously included the value of child care, Supplemental Nutrition Assistance Program ("SNAP") and Home Energy Assistance Program ("HEAP") funds in the lien.

4. Ms. Doe has been a recipient of public assistance since _____ of _____. Prior to that time, _____
_____.

STATUTORY SCHEME

5. New York Social Services Law (SSL) §106 permits social services districts to require homeowners who receive public assistance to sign a mortgage in favor of the social services district as a condition of eligibility for benefits. This size of the mortgage is equal to the amount of public assistance received.

6. Title 3 of Article 5 of the New York State Social Services Law, (SSL), §157 through 165, establishes the Safety Net Assistance program, a state-administered program to provide financial assistance to all persons in the State of New York who are unable to provide for themselves and who are not receiving needed assistance from any other assistance or source.

7. Article 5, Title 9-B, §§330-341 of the New York State Social Services Law (SSL) governs Public Assistance (PA) Employment and permits assignments to a variety of work related activities.

8. The work activities to which public assistance recipients may be assigned include: job skills training, and job readiness assistance, assignment to community service programs, vocational training, education directly related to employment, attendance at high school or a GED program, placement in subsidized or unsubsidized employment and work experience. SSL §336.

9. Social services districts may require recipients of public assistance to participate in work experience in the public or non-profit sector if sufficient private sector employment is not available. SSL 336(1)(d).

10. Social services districts may assign recipients to work experience if the hours assigned do not exceed a

number which equals the amount of assistance payable to such individual, including food stamps, divided by the higher of the state or federal minimum wage. SSL 336-c(2)(b).

11. The federal minimum wage is \$7.25 per hour. 29 U.S.C. 206(d), as amended. The New York minimum wage is also \$7.25 per hour. Labor Law § 652.

12. Work experience is precisely defined under New York State law.

a. It may include performance of work for a federal office or agency, county, city, village or town, or for the state or in an activity of a non-profit agency or institution. SSL 3 §336-c(l)(b).

b. Assignments must meet federal and state standards of health, safety and other work conditions. SSL §336-c(2)(a).

c. Participants must be provided appropriate workers' compensation coverage. SSL §§330(5); 336-c(2)(c).

d. Assignments may not result in the displacement of currently employed workers. SSL §336-c(2)(e)(i).

e. Assignments may not be used to replace workers on strike or subject to lock out. SSL §332-c(2)(f).

13. New York State Constitution, Article I, §17 provides the right of persons performing under public works contracts or subcontracts to be paid the "prevailing wage," stating, in relevant part, that no "laborer, workman, or mechanic in the employ of a contractor or subcontractor of any public works shall be...paid less than the wages prevailing in the same trade or occupation in the locality..." Persons assigned to Work Experience Program activities are performing public works in the employ of contractors or subcontractors as defined by this section.

14. Under the Fair Labor Standards Act, an employer is "any person acting directly or indirectly in the interest of an employer in relation to an employee...29 USC §203(e), and to employ means "to suffer or permit to work." 29 USC §203(g).

15. Notwithstanding any inconsistent provision of the Social Services Law or other law, a social services official may not assert any claim under any provision of the Social Services Law to recover payments of public assistance if such payments were reimbursed by child support collections. N.Y. Soc. Serv. Law §§ 104(4), 104-b(14), 106(4), 131-r(2).

16. The value of SNAP, HEAP, and childcare assistance, cannot be included when calculating the amount of the mortgage due. See 02 ADM-2, p.6, available at

http://otda.ny.gov/policy/directives/2002/ADM/02_ADM-02.pdf

State regulations provide that, "No amounts for food stamp expenditures shall be reimbursable if such amounts were paid directly to the individual eligible to receive food stamps." 18 NYCRR §637.2(c).

17. Eligibility for child care services are determined pursuant to the requirements of 18 NYCRR §404, 415. Section 404(d)(2) states that, "No lien or encumbrance of any kind shall be required from or be imposed against the property of any individual in connection with services rendered or to be rendered."

STATEMENT OF FACTS

FIRST CAUSE OF ACTION

39. The taking of a lien to recover payment of public assistance that has been earned pursuant to Social Services Law §336-c(2)(b) violates due process under the laws of New York State and the United States Constitution.

SECOND CAUSE OF ACTION

40. The taking of a lien to recover the payment of public assistance that has been earned pursuant to Social Services Law §336-c(2)(b) violates the New York State Constitution, Article I, §17.

THIRD CAUSE OF ACTION

41. The taking of a lien to recover the payment of public assistance that has been earned pursuant to Social Services Law §336-c(2)(b) violates the Fair Labor Standards Act. 29 U. S. C. 201 et. seq.

FOURTH CAUSE OF ACTION

42. The taking of a lien to recover the payment of public assistance without accurately crediting child support collected from the recipient by the County violates N.Y. Soc. Serv. Law §§ 104(4), 104-b(14), 106(4), 131-r(2), and unjustly enriches the Defendant.

FIFTH CAUSE OF ACTION

43. The taking of a lien to recover the payment of public assistance that erroneously includes the value of child care, SNAP and HEAP funds in the lien violates 18 NYCRR §637.2(c) and 18 NYCRR §404(d)(2) and unjustly enriches the Defendant.

SIXTH CAUSE OF ACTION

42. The taking of a lien to recover the payment of public assistance that has been earned pursuant to Social Services Law §336-c(b)(2), unjustly enriches the defendant.

WHEREFORE it is respectfully requested that this Court issue Judgment in favor of the petitioner:

A. DECLARING that the lien filed by the respondent against the property owned by Jane Doe located at _____, _____, New York _____, is invalid insofar as it attempts to recover public assistance correctly paid that was worked off and earned under the Work Experience Program.

B. ANNULLING the lien filed by the County of _____ against the aforementioned property owned by Jane Doe to the extent that it attempts to recover public assistance paid that has been worked off and earned under the Work Experience Program.

C. DECLARING that the lien filed by the respondent against the property owned by Jane Doe located at _____, _____, New York _____, is invalid insofar as it fails to accurately credit the amount of child support it collected from Ms. Doe against the lien .

D. ANNULLING the lien filed by the County of _____ against the aforementioned property owned by Jane Doe insofar as it attempts to recover public assistance funds that were already reimbursed through the collection of child support.

E. DECLARING that the lien filed by the respondent against the property owned by Jane Doe located at _____, _____, New York _____, is invalid insofar as the County erroneously included the value of child care, Supplemental Nutrition Assistance Program (“SNAP”) and Home Energy Assistance Program (“HEAP”) funds in the lien..

F. ANNULLING the lien filed by the County of _____ against the aforementioned property owned by Jane Doe insofar as the County erroneously included the value of child care, Supplemental Nutrition Assistance Program (“SNAP”) and Home Energy Assistance Program (“HEAP”) funds in the lien.

G. AWARDING petitioners reasonable attorneys’ fees and costs pursuant to 42 USC §1988, 29 USC §209 and/or Article 86 of the Civil Practice Law and Rules.

H. DIRECTING such other and further relief as to this Court may seem just and proper.

Dated: _____, New York
_____, 20__

VERIFICATION

STATE OF NEW YORK
COUNTY OF _____: ss

JANE DOE, being duly sworn, deposes and states that:

1. I am the petitioner in the within proceeding;
2. I have read the forgoing petition and know the contents thereof.
3. The facts alleged in the petition with respect to me are true to my knowledge, except as to those matters therein stated to be alleged upon information and belief, and, as to those matters, I believe them to be true.

Jane Doe

Sworn to before me this ____ day of
_____, 20__



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