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Memorandum of Support

A.1408/S.6171

Protects New York Homeowners by Preventing Deed Theft Scams and Foreclosure Rescue Scams

Empire Justice Center strongly supports A.1408(Weinstein)/S.6171(Hamilton) which would amend the real property law, the civil practice law and rules, and the criminal procedure law, in relation to distressed home loans. By updating multiple provisions of law, the bill comprehensively addresses ever evolving deed theft and foreclosure prevention scams.

The Home Equity Theft Prevention Act (RPL sec. 265-a) was passed in 2006 to address an early version of “deed theft” scams, where distressed homeowners were being targeted to sign over their deeds with the promise of assistance to get them out of default or foreclosure and buy back their home in a year’s time. While the law has been effective in keeping out a certain kind of transaction in New York State, in recent years newer versions of the scam have emerged. The bill addresses variations of these scams by broadening the type of transaction that is covered under the law. In addition, the bill extends a right of rescission for homeowners who may unwittingly sign a contract for “assistance,” and the deed of their home, from five days to fourteen days. The extended right of rescission is critical because often homeowners are not even aware that they have signed over their deed.

The second law amended under this bill is the “Distressed Property Consultant Law” (RPL sec. 265-b) passed in 2008 as part of an omnibus program bill addressing subprime mortgage lending, foreclosure and related issues of the day. The law prescribes terms and conditions for individuals who promise to provide services for a fee to distressed homeowners to help them negotiate with their mortgage servicer when they are in default. Attorneys are excluded from coverage, though housing advocates have seen many schemes over the years where rescue scammers hide behind a law license to evade coverage while failing to provide any meaningful legal representation. The bill amends the definition of attorneys who would be exempt from coverage under the law to clarify that only those lawyers who are representing homeowners pursuant to a retainer agreement and who have entered an appearance on behalf of the

homeowner would be covered. In other words, lawyers providing real representation would not be impacted by the law. Lawyers providing the same level of service provided by foreclosure rescue companies would be covered.

It is important to note that the law does not prohibit reputable, professional assistance. Rather, the law sets forth the terms of the agreement and basic standards for conduct that must be met. The law does prohibit nefarious conduct and the current bill expands the list of prohibited conduct to include scams and new terms of misconduct that have emerged over the years.

The bill also exempts homeowners who have to seek preliminary injunctions, often a necessary legal step victims of deed theft transactions have to take when trying to stop a deed theft transaction, from having to post a bond. This requirement costs money and can be prohibitive for homeowners seeking legal redress when their home is stolen from them. An amendment to Civil Practice Law and Rules, Rule 6312 is included which would exempt homeowners bringing an action under the Home Equity Theft Prevention Act (RPL 265-a) from having to post such bond.

The final set of revisions in the bill amends New York Criminal Procedure Law section 420.45. Even when criminal liability has been found on the part of a bad actor in a deed theft scam, aggrieved homeowners, the underlying property transaction involving the unlawful transfer of the deed still must be addressed. This involves a separate and often complicated process for the wronged homeowner to get the deed to their property back in their name. The bill provides new language which allows the district attorney who prosecutes the case and receives a criminal conviction to file a motion in supreme court to void the property transfer instrument. Due notice and a court hearing are required. The new procedure provides true justice and meaningful redress for the homeowner by efficiently and more easily undoing the illegal transaction, putting the homeowner back to the position they were in prior to the crime.

Empire Justice Center strongly supports A.1408/S.6171 and urges its immediate passage.

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