

# STATE OF NEW YORK

6577

2023-2024 Regular Sessions

## IN SENATE

April 27, 2023

Introduced by Sen. KAVANAGH -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to amend the real property actions and proceedings law, the real property law, the criminal procedure law, and the civil practice law and rules, in relation to the theft of real property and protections for victims of real property theft

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The real property actions and proceedings law is amended by  
2 adding a new section 756-a to read as follows:

3 § 756-a. Stay of action or proceeding when a party's claim to title is  
4 in dispute. 1. (a) A federal, state or local government agency may move  
5 for a stay of any proceeding to recover possession of or quiet title to  
6 real property relating to a residential dwelling unit or property, based  
7 on a pending good faith investigation into the theft or fraud in the  
8 title to, or the financing of, the premises that is the subject of any  
9 proceeding. Upon the agency's showing of the pendency of a good faith  
10 investigation, the court shall issue a stay of the proceeding, including  
11 staying execution of a warrant of eviction or enforcement of a judgment  
12 so long as the investigation is ongoing.

13 (b) Every six months, the court shall schedule a status conference  
14 with the government agency and any other parties to the action to review  
15 any stay and to determine if the investigation is still continuing in  
16 good faith and shall continue the stay of the proceeding until the  
17 government investigation is closed. If it should deem necessary, a  
18 court may review any supporting documents filed by the government agency  
19 in camera and to be filed under seal if deemed necessary by the govern-  
20 ment agency.

21 2. The court shall stay all proceedings to recover possession of or  
22 quiet title to real property relating to a residential dwelling unit or

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

LBD10874-02-3

1 property, where a charging instrument is filed against a party to such  
2 proceeding for deed theft, larceny, offering a false instrument for  
3 filing, criminal possession of stolen property or any other law assert-  
4 ing theft or fraud in obtaining title to property and said charging  
5 instrument relates to the premises that are the subject of such proceed-  
6 ing. The stay shall remain in effect until resolution of such criminal  
7 action.

8 3. The court shall stay all proceedings to recover possession of or  
9 quiet title to real property relating to a residential dwelling unit or  
10 property, where a federal, state or local government agency has  
11 commenced a civil action or proceeding relating to the theft or fraud in  
12 the title to, or the financing of, the premises that are the subject of  
13 such proceeding.

14 4. The court shall stay all proceedings under section seven hundred  
15 eleven or seven hundred thirteen of this article for ninety days to  
16 allow a party to file a complaint in the appropriate forum when the  
17 court makes a determination that there is a bona fide dispute between  
18 parties purporting to own the property that is the subject of the  
19 proceeding.

20 (a) A rebuttable presumption that a bona fide dispute to title exists  
21 shall be created when the party disputing petitioner's title, owns or  
22 owned the property that is the subject of the court proceeding during  
23 the last three years, or is a person interested in the property, as  
24 defined by section one hundred three of the surrogate's court procedure  
25 act.

26 (b) A party may seek an additional stay of the proceeding beyond the  
27 initial ninety day stay by the court if they were unable to file a  
28 complaint or seek a stay from another forum. In extending the stay, the  
29 court shall consider, without limitation, the totality of the circum-  
30 stances including steps the parties have taken to resolve the dispute,  
31 the harm to the parties of a further stay, and the ability of the  
32 parties to advocate for themselves or retain counsel.

33 (c) This section shall not apply to any proceeding commenced pursuant  
34 to subdivision ten of section seven hundred thirteen of this article.

35 5. Nothing in this section shall diminish the court's own discretion  
36 to further stay a proceeding in the interests of justice.

37 6. Nothing in this section shall limit a party from seeking relief,  
38 including a stay of a proceeding under this article, in another court.

39 7. For purposes of this section, a proceeding to recover possession of  
40 or quiet title to real property shall include any proceeding under  
41 section seven hundred eleven or seven hundred thirteen of this article,  
42 an ejectment action or a writ of assistance pursuant to section two  
43 hundred twenty-one of this chapter, a foreclosure action, an action to  
44 enforce a mortgage note, or any other action affecting title to or  
45 encumbrance upon real property, or any other judicial or administrative  
46 proceeding to recover possession of or quiet title to real property.

47 8. For purposes of this section, a party shall include:

48 (a) a corporation, limited liability company, partnership or other  
49 entity where a charging instrument has been filed against an individual  
50 who has a financial or controlling interest in the entity that holds  
51 title to the property; or

52 (b) where a charging instrument has been filed against a seller of the  
53 property, including an individual or corporation, limited liability  
54 company, partnership or other entity, or where a charging instrument has  
55 been filed against an individual who has a financial or controlling  
56 interest in the entity that sold the property.

1 § 2. Section 1501 of the real property actions and proceedings law is  
2 amended by adding a new subdivision 6 to read as follows:

3 6. Where a person, as defined in subdivision seven of section 10.00 of  
4 the penal law, has been convicted of a criminal offense in connection  
5 with a deed theft or fraudulent transaction involving real property, the  
6 conviction creates a rebuttable presumption that such deed transfer was  
7 fraudulent. This section also applies where a grantee of a fraudulent  
8 deed is an entity that is beneficially owned by such convicted person. A  
9 defendant may in such action produce proof to establish by a preponder-  
10 ance of the evidence that such deed was not procured through fraud.

11 § 3. Paragraph (g) of subdivision 2 of section 265-a of the real prop-  
12 erty law, as added by chapter 308 of the laws of 2006, is amended to  
13 read as follows:

14 (g) "Foreclosure" means that there is an active [~~lis pendens~~] notice  
15 of pendency filed in court pursuant to article thirteen of the real  
16 property actions and proceedings law, or a foreclosure action pursuant  
17 to article eleven or thirteen of the real property actions and  
18 proceedings law has been commenced against the subject property, or an  
19 action to enforce a mortgage note has been commenced against the borrow-  
20 er whose property is secured by a mortgage loan, or the subject property  
21 is on an active property tax or utility lien sale list.

22 § 4. Paragraph (d) of subdivision 1 of section 265-b of the real prop-  
23 erty law, as added by chapter 472 of the laws of 2008, is amended to  
24 read as follows:

25 (d) "Distressed home loan" means a home loan [~~that is in danger of~~  
26 ~~being foreclosed because the homeowner has one or more defaults under~~  
27 ~~the mortgage that entitle the lender to accelerate full payment of the~~  
28 ~~mortgage and repossess the property] for which an installment payment is  
29 more than sixty days past due, or a home loan where the lender has  
30 commenced a foreclosure action. For purposes of this paragraph, a "home  
31 loan" is a loan in which the debt is incurred by the homeowner primarily  
32 for personal, family or household purposes, and the loan is secured by a  
33 mortgage or deed of trust on property upon which there is located or  
34 there is to be located a structure or structures intended principally  
35 for occupancy of from one to four families which is or will be occupied  
36 by the homeowner as the homeowner's principal dwelling.~~

37 § 5. Section 266 of the real property law is amended to read as  
38 follows:

39 § 266. Rights of purchaser or incumbrancer for valuable consideration  
40 protected. This article does not in any manner affect or impair the  
41 title of a purchaser or incumbrancer for a valuable consideration,  
42 unless it appears that [~~he~~] such purchaser or incumbrancer had previous  
43 notice, whether actual or constructive, of the fraudulent intent of his  
44 immediate grantor, or of the fraud rendering void the title of such  
45 grantor. There shall be a rebuttable presumption that a purchaser or  
46 incumbrancer had notice of fraud or fraudulent intent in the case of a  
47 transfer of mortgaged real property, between a purchaser and seller who  
48 are not associated parties, that is not accompanied by the recording  
49 with the clerk of the county or with the commissioner of deeds in which  
50 the property is located, of a statement, executed by the mortgagee, and  
51 duly acknowledged, stating, substantially, that (a) a party is assuming  
52 the seller's indebtedness secured by the mortgage; or (b) that the  
53 indebtedness secured by the mortgage has been satisfied.

54 For the purposes of this section, "associated parties" means spouses,  
55 ex-spouses, parents and children, siblings, a homeowner and that home-

1 owner's family trust, or a homeowner and that homeowner's wholly-owned  
2 limited liability company.

3 § 6. Section 420.45 of the criminal procedure law, as added by chap-  
4 ter 167 of the laws of 2019, is amended to read as follows:

5 § 420.45 Post-trial motion relating to certain instruments affecting  
6 residential real property.

7 1. When a defendant has been convicted after a trial or pled guilty to  
8 [~~violating either section 175.30 or 175.35 of the penal law in~~  
9 ~~connection to~~] any crime that affects the title to, encumbrance of, or  
10 the possession of, real property and where there is an instrument that  
11 is material to [~~the~~] such encumbrance, transfer or purchase of [~~residen-~~  
12 ~~tial~~] said real property, the district attorney, the attorney general,  
13 or any law enforcement agency may file a motion in the supreme court in  
14 the county where the property that is the subject [~~to~~] of the instrument  
15 is located or the prosecution occurred on behalf of the victim to void  
16 [~~the~~] said instrument [~~that is the subject of such criminal information~~  
17 ~~or indictment~~]. Such motion must be in writing and [~~provide reasonable~~  
18 ~~notice to all persons who have an interest in the property affected by~~  
19 ~~such instrument. The motion papers must~~] state the county or borough, if  
20 in the city of New York, and block, lot, street address of such proper-  
21 ty, and a description of such property[~~. The motion papers must state~~  
22 ~~the grounds of the motion, must contain sworn allegations of fact~~  
23 ~~supporting such grounds~~], and include a copy of the [~~guilty disposition~~  
24 ~~attached to the document~~] judgment of conviction. Notice must be given  
25 to all persons who have an interest in the property.

26 2. Within ten days after filing a motion pursuant to subdivision one  
27 of this section, the [~~district attorney~~] agency filing the motion shall  
28 record a copy of the notice of motion in the office of the clerk of the  
29 county in which the property is situated. The notice shall be indexed by  
30 the clerk in the manner prescribed by subdivision (c) of rule sixty-five  
31 hundred eleven of the civil practice law and rules for a notice of  
32 pendency of action and shall have the same effect as such notice.

33 3. The supreme court must conduct a hearing and make findings of fact  
34 essential to the determination whether to declare the instrument  
35 described in subdivision one of this section void ab initio. [~~All~~  
36 ~~persons providing factual information at such hearing must testify under~~  
37 ~~oath.~~] There will be a rebuttable presumption that where a party is  
38 convicted after a trial [~~in criminal court~~] or a guilty plea to [~~either~~  
39 ~~section 175.30 or section 175.35 of the penal law in connection with~~]  
40 any crime that affects the title to, encumbrance of, or the possession  
41 of, real property and where there is an instrument that encumbers or is  
42 material to the transfer or sale of [~~residential~~] real property, that  
43 such instrument is void ab initio.

44 4. Upon the defendant's conviction of or guilty plea [~~to section~~  
45 ~~175.30 or section 175.35 of the penal law~~] as described in subdivision  
46 one of this section, and after conducting a hearing pursuant to subdivi-  
47 sion three of this section, a court shall make a determination and if  
48 appropriate shall order that the instrument described in subdivision one  
49 of this section be declared void ab initio or grant other appropriate  
50 relief to the victim. The order of the court shall describe the nature  
51 of the false statement or false information contained in such instru-  
52 ment. A copy of such instrument shall be attached to the order of the  
53 court.

54 5. If the order relates to an instrument that has been filed with,  
55 registered, or recorded in a public office, [~~the district attorney shall~~  
56 ~~record~~] a certified copy of such order shall be recorded in the office

1 of the recording officer of the county in which such property is situ-  
2 ated[~~, in the same manner as a conveyance duly acknowledged or proved~~  
3 ~~and certified so as to entitle it to be recorded. Such recording officer~~  
4 ~~shall record the same in his or her said office~~].

5 6. For purposes of this section, "all persons who have an interest in  
6 the property affected by such instrument" shall mean all parties who  
7 have recorded an instrument affecting the real property that is the  
8 subject of the instrument described in subdivision one of this section,  
9 [~~including~~] any last record owner and anyone in residence during the  
10 pendency of the prosecution and any party [~~or entity~~] with a lien  
11 against the property that is unsatisfied, or any other party that may  
12 claim to have liens [~~of interest on~~] or an interest in the property, and  
13 any current residents of the property, as of the date of the filing of  
14 the criminal information or indictment.

15 7. Nothing in this section shall be deemed to inhibit or prevent (a)  
16 relief otherwise provided by law, or (b) a party's right to appeal such  
17 order.

18 § 7. Section 6501 of the civil practice law and rules, as amended by  
19 chapter 657 of the laws of 1993, is amended to read as follows:

20 § 6501. Notice of pendency; constructive notice. (a) A notice of  
21 pendency may be filed in any action in a court of the state or of the  
22 United States in which the judgment demanded would affect the title to,  
23 incumbrance of, or the possession, use or enjoyment of, real property,  
24 except in a summary proceeding brought to recover the possession of real  
25 property. The pendency of such an action is constructive notice, from  
26 the time of filing of the notice only, to a purchaser from, or incum-  
27 brancer against, any defendant named in a notice of pendency indexed in  
28 a block index against a block in which property affected is situated or  
29 any defendant against whose name a notice of pendency is indexed. A  
30 person whose conveyance or incumbrance is recorded after the filing of  
31 the notice is bound by all proceedings taken in the action after such  
32 filing to the same extent as a party.

33 (b) Notwithstanding any provision of subdivision (a) of this section  
34 to the contrary, a notice of pendency may be filed by a district attor-  
35 ney's office or the office of the attorney general upon a determination  
36 after investigation that there is probable cause that a crime has  
37 occurred that affects the title to, incumbrance of, or possession of  
38 real property, in the county where the real property is located. Such  
39 notice of pendency shall remain in effect for a period of six months but  
40 may be renewed twice.

41 (c) Notwithstanding any provision of subdivision (a) of this section  
42 to the contrary, a notice of pendency may be filed by a district attor-  
43 ney's office or the office of the attorney general upon the filing of a  
44 criminal complaint or indictment that allege charges affecting the title  
45 to, incumbrance of or possession of real property, in the county where  
46 the real property is located. A notice of pendency filed will remain in  
47 effect until the prosecution of a criminal case is either dismissed, or  
48 otherwise disposed of at sentencing and is not subject to a three year  
49 period of expiration under section six thousand five hundred thirteen of  
50 this article.

51 § 8. This act shall take effect on the thirtieth day after it shall  
52 have become a law.