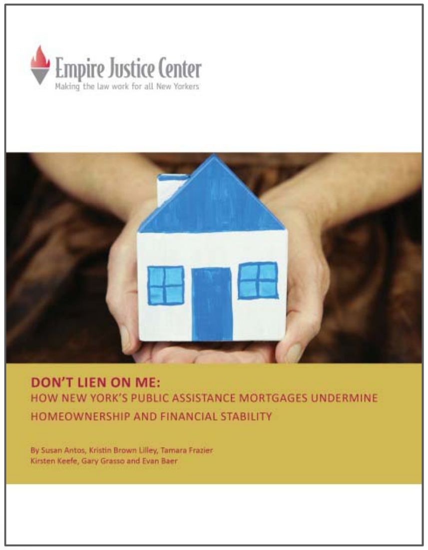
Don’t Lien on Me: How New York’s Public Assistance Mortgages Undermine Homeownership and Financial Stability



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By Empire Justice Center
Susan Antos, Tamara Frazier, Saima Akhtar

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Public Assistance is a Debt

Recovery is limited to

- Lottery winnings
- Windfalls such as inheritances
- Child support
- Mortgages and liens

Social Services Law 106

- Permits Social Services Districts to require applicants and recipients who own their homes to give the district a mortgage against the property as a condition of receiving public assistance.
- From 2006-2012, 12,156 mortgages were taken in New York State, with $25.4 million recovered from former recipients.
- Only two districts report not taking liens.

Homeowners most often impacted

- 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
- Homeowners seeking to refinance to avoid foreclosure or to obtain home equity loans for things such as home maintenance or medical costs

Only cash assistance is recoverable. This includes:

- Basic needs and rent
- Utility and heating allowances, including emergency allowances for heating costs unless paid with HEAP or EAA
- Emergency Assistance (except Emergency Assistance to Adults, which provides benefits to those who are disabled or low income over the age of 65)
- Special payments for mortgage arrears, taxes or water bills

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Benefits which are not recoverable

- Supplemental Nutrition Assistance Program (SNAP) benefits
- Home Energy Assistance Payments (HEAP)
- Child care subsidies
- Generally, Medicaid benefits are not recoverable (exceptions are long term institutional care and limited circumstance for persons who receive Medicaid after age 55)

Credits Against the Debt

- Child support – upon application, the right to receive child support is assigned to the district; the amount over the "pass-through" is a credit against assistance paid
- Tax intercepts for child support
- Lottery winnings
- Payments made

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Rights of Applicants

- There must be a signed mortgage for it to be effective
- Applicant can refuse to sign a mortgage and receive a smaller benefit for children in the household
- For a household of one adult, the refusal will mean no grant at all
- The mortgage provision does not apply if the only recipients in the household are children

Ways to Avoid a Mortgage

- Don’t sign, but assess the consequences
- Transfer the property, but remember that you will be giving up title and control

Value of Workfare

- Most public assistance recipients are required to "work off" their public assistance grants
- Hours assigned to recipients equal the amount of public assistance received plus food stamps (SNAP), divided by the minimum wage
- The matter is in litigation, but most districts will settle when a claim is raised

Jointly Owned Property

- A local district can require a person who owns property jointly to sign a mortgage
- However, the right of the district to recover is very limited depending on how the property is held (joint tenancy, tenancy in common, tenancy by the entirety)
- Best idea is to have an attorney assess

How does the Property Owner Determine the Amount of the Debt?

- The mortgage document does not list a loan amount
- The mortgage holder will have to contact the county attorney (in NYC, contact the Real Property Unit at the Human Resources Administration) and ask for an accounting
- The amount of the loan can be incorrectly calculated by:
  - Not crediting child support
  - Wrongly charging benefits such as SNAP, child care and HEAP against the debt

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How many people are affected by Welfare Mortgages?

- Between January 2006- December 2012, over 12,000 mortgages were filed against the homes of homeowners whose income was so low that they qualified for public assistance.
- During that same period, over $25 million was recovered by social services districts who recovered the value of those mortgages when the homeowner moved, died, sold the property or refinanced.
- In 2010 2,271 mortgages were filed against low income homeowners in New York State.

Recovery Data: 2006-2012

- In Suffolk County, over $10 million was recovered between 2006 and 2012
- New York City reported nearly $4.8 million in recoveries
- Nassau County recovered nearly $1.8 million, and Erie County recovered nearly $1.6 million
- Broome County recovered $766,788 between 2006-2008 (no data provided for other years)
- Onondaga recovered $613,644
- Monroe recovered $497,924
- Oneida recovered $445,201.14
- Niagara recovered $346,601.22

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Chart 1: Social Services Districts with the Greatest Numbers of Welfare Mortgages		
County	Number of Mortgages	Time Period
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.

Problem: Homeowners Facing Foreclosure

- Mortgage servicers now require all other liens on the property to subordinate before they will modify a loan to make it affordable for the homeowner and allow them to resume payments in order to stay in the home.
- District policies vary regarding whether they will consent to the subordination. Some refuse, resulting in the homeowner being unable to modify the loan and likely losing their home.

What do you do if you think the amount of your mortgage is wrong?

- You cannot request a fair hearing
- You can ask for an accounting from the local district
- Be sure to ask for a guide to codes, as you may get a computer printout filled with them.

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New Law Makes the Rules Clear

- As part of this year's budget, Social Services Law 106 was amended to clearly state that HEAP, child care and SNAP cannot be charged against welfare mortgages.
- Effective May 30, 2014, applicants and recipients who are asked to sign a welfare mortgage must be provided with a form which states that:
  - HEAP, child care and food stamps cannot be charged against the mortgage;
  - child support retained by the district as well as any other payment (lottery winnings, etc.) must be applied to reduce the mortgage;
  - that a person can refuse to sign a mortgage and still get a grant for their children.
  - Mortgage is not valid unless this is done.

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New Law Requires Accountings

- Effective February 1, 2015, social services districts will be required to send biennial accountings to all persons who have property subject to a welfare mortgage.
- No recovery will be permitted for that period unless an accounting is provided.
- If the person is no longer on assistance, the penalty will be applied against the last two years that the person was on public assistance.
- The text of the new law can be found in the 2014-15 Enacted Budget, A.8556d/S.6356d- Education, Labor and Family Assistance bill, Part S.

Suggestions for Further Reform

- Repeal: A.543 (Gibson)/S.2816 (Adams) which limits its reach to one, two or three family homes. This bill was introduced in 2013, but is no longer active as the sponsors have left the legislature.
- Repeal: S.3269 (Krueger).
- Allow persons with welfare mortgages to have fair hearings to contest the calculation of their mortgages. Currently the fair hearing regulations exclude challenges to the correct calculation of welfare mortgages from the fair hearing process.

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“Don’t Lien on Me” on our Website:

- http://www.empirejustice.org/publications/reports/new/dont-lien-on-me-how-new.html#.UwN72bTJZC8
    - Contains an Advocates’ toolkit and data on county by county practices

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