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SNAPSHOTS OF STRUGGLE: SAVING THE FAMILY HOME AFTER A DEATH OR DIVORCE

Successors Still Face Major Challenges in Obtaining Loan Modifications

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By

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ABOUT THE AUTHOR

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ABOUT THE NATIONAL CONSUMER LAW CENTER

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

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TABLE OF CONTENTS

INTRODUCTION

One of the still-unsolved problems of the recent foreclosure crisis is the challenge faced by people who are trying to save a home that they inherited or were awarded in a divorce. Often these homeowners were not the original borrower on the loan but have lived in the house for years, or even decades. These homeowners are called "successors in interest" or "successors" because they succeed to ownership of the home after a death or family breakup. The stories that you will read in this report are of five successors—real people who are domestic violence survivors, newly single parents struggling to raise children, and older adults mourning the loss of a long-time spouse—all desperately trying to save their homes from foreclosure. Unfortunately, there are thousands of other successors across the United States also at risk of losing their homes. While there are some rules already requiring mortgage servicers to work with these homeowners, the Consumer Financial Protection Bureau (CFPB) is poised to finalize more comprehensive, enforceable rules in this area, rules that would enable homeowners like these to stay in their homes. But before sharing their stories, some background about the successor experience is helpful.

Successor in Interest

A successor is a person who becomes the owner of a home through an intra-family transfer, such as a death or divorce. Federal law prevents the creditor from foreclosing based on the transfer. The successor is not the original borrower on the promissory note, but now owns the home secured by the mortgage.

Mortgages typically have a "due-on-transfer" clause that permits a creditor to foreclose if the property is transferred without its permission. However, federal law does not allow a creditor to exercise this clause when a successor becomes an owner of the home because of the death of a borrower, transfers resulting from a divorce or separation agreement, transfers to the spouse or child of the borrower, or transfers to a trust. Under federal law, the creditor cannot call the mortgage due and foreclose based on these intra-family transfers, as it would be able to do after an arms-length transfer of property to an unrelated third party.[1] Instead, the creditor must accept the new owner and allow the new owner to assume the mortgage payments, should the new owner (i.e. the successor) so choose.[2]

Many times, the transfer of ownership through a death or family breakup coincides with a loss of income that causes the successor to fall behind on the mortgage payments. Often the successor needs a loan modification, to bring the loan current and adjust the payment to an affordable level, and could qualify for one under existing modification programs. These modifications not only benefit the homeowner but also provide community stability through reduced foreclosures and vacancies, as well as financial benefits to investors through performing loans. Yet, a substantial number of these successors are currently facing foreclosure due to widespread confusion about their rights and options.[3] Attorneys and counselors representing homeowners continue to cite successor problems as among the most difficult problems they face as they work to save homeowners from foreclosure.[4]

Too often servicers require documents from successors that are difficult or impossible to obtain, such as a probate court order when probate is not required under state law. Probate court filing fees can range from upwards of $100 to several thousand dollars.[5] These fees vary state by state and sometimes are tied to the value of estate assets. Other costs include serving and publishing notice to other heirs and any creditors of the estate, accounting and appraisal fees, and fees paid to the executor.[6] The cost of an attorney in a probate case can be prohibitive, leading many heirs to file probate cases without a lawyer. Probate lawyers may charge an hourly rate (typically $150 to $200 per hour), a flat fee, or a fee equal to a percentage of gross estate assets.[7] In California, for example, an estate with a gross value of $500,000 could incur legal fees of $13,000.[8]

Even where reduced income or other economic hardship qualifies them for a loan modification, successors face additional hurdles that too often result in avoidable foreclosures. This is true despite rules built into the federal Home Affordable Modification Program (HAMP) and rules that apply to loans owned by the Government Sponsored Enterprises (GSEs) Fannie Mae and Freddie Mac and insured by the Federal Housing Administration (FHA) that require mortgage servicers to evaluate successors for a loan modification as if they were the original borrowers.

This report highlights the problems faced by successors and the need for regulatory protections to help them stave off foreclosure of the family home. We include several stories of real people who were harmed by abusive servicer practices, results of two surveys documenting this national problem, and key recommendations.[9]
We recommend six policies:

1. Communication
2. Reasonable Document Requirements
3. Workouts with Assumptions
4. Access for Domestic Violence Survivors
5. Foreclosure Protections
6. Enforceable Rights

Urgent change is needed. The CFPB has proposed rules that incorporate many of these policies and that would help successors avoid unnecessary foreclosures. **The CFPB should finalize and implement its proposed servicing rules on successors as soon as possible.** The rules will prevent unnecessary foreclosures and preserve housing stability among some of the nation's most vulnerable families.

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Why Action is Needed

Policymakers and the public need to understand the specific hurdles blocking successors from obtaining affordable loan modifications. By describing the experiences of these homeowners, we pull back the curtain on the policies and procedures of mortgage servicers that can lead to unnecessary foreclosures. Based on the National Consumer Law Center's work with attorneys nationwide who represent successors, these stories are typical of the challenges faced by so many.

While four of these five homeowners eventually obtained permanent loan modifications allowing them to remain in their homes, they had strong legal advocates and counselors. Many unrepresented successors are not so fortunate, and indeed, these examples show why an unrepresented successor would have almost no chance of success. But they also show that in the end, there was no impediment to these successors obtaining affordable modifications other than the servicers' failure to properly and timely review their applications for assistance.

The following homeowner stories are grouped by three common problems:

- **The brick wall**: Servicers claiming no modification is possible for a non-borrower;
- **The treadmill**: Servicers requesting unnecessary and nonexistent documentation of home ownership; and
- **The trap door**: Servicers refusing to honor modifications they have extended to a successor without the absent borrower's signature.

In our experience, these are the three largest problems facing successors in interest. And even when successors manage to get access to account information, servicer delays result in substantially higher amounts due and eroded home equity. Qualifying for a loan modification under those circumstances is unnecessarily difficult.

Understanding these impediments imposed by servicers, and their impact on vulnerable homeowners trying to save their homes, makes it clear that the additional regulatory protections proposed by the CFPB are essential.

THE BRICK WALL: CLAIMING NO LOAN MODIFICATION IS POSSIBLE

An assumption is a legal document in which the successor in interest formally takes on the loan obligation as a borrower, while the modification results in an affordable payment.

Successors are often told by servicers that as a non-borrower, it is not possible for them to obtain a loan modification. Typically, this is not true. Loan modification rules that apply to the vast majority of residential mortgages, including GSE and FHA loans, and loans eligible for HAMP modifications, require a successor in interest after a death or divorce to be evaluated for a modification under the same rules that apply to the borrower. If he or she qualifies for the modification based on documented household income, the servicer should approve the successor for a simultaneous loan modification and assumption. An assumption is a legal document in which the successor in interest formally takes on the loan obligation as a borrower, while the modification results in an affordable payment. These two steps are supposed to happen in tandem.

When told that it is not possible to obtain a loan modification, many people just give up. The following examples are successor homeowners who kept pushing and obtained legal assistance, and ultimately, were approved for loan modifications.

CALIE TAYLOR, Bridgeport, CT

Calie Taylor works as a UPS driver and lives in Bridgeport, Connecticut. He has a 14-year-old son. He and his wife bought their home in 2002, although she was the only borrower listed on the promissory note. They owned their home as joint tenants with right of survivorship.

Mr. Taylor's wife, Chacelyn Taylor, died on June 30, 2011. He temporarily stopped working to care for her while she was ill, but he only missed a few mortgage payments. He returned to work shortly after she died.

This was the only home Mr. Taylor's son had ever lived in, and it was very important to Mr. Taylor that his son grow up there. He wanted his son to have that bit of stability. So he contacted his mortgage servicer, Nationstar, right after his wife's death in 2011.

Nationstar insists that Mr. Taylor provide probate court documents

Nationstar initially refused to even speak to Mr. Taylor about the loan. Then, Nationstar said that he needed to file a probate case and get an order from the probate court allowing him to speak with Nationstar about the account.

In 2012, at Nationstar's urging, he filed a case to probate his late wife's estate. This was completely unnecessary as his wife's estate had no assets to probate and he already had title to the home by virtue of the right of survivorship deed. However, Mr. Taylor took the trouble to get an order from the probate court authorizing him to speak to Nationstar. Mr. Taylor paid approximately $230 in probate court filing fees. Like many low and moderate-income people, he filed the case without the assistance of a probate attorney. Yet, he still was told by Nationstar that it couldn't do anything for him because he wasn't the borrower.

Right of survivorship deed

When a property is conveyed by a deed to multiple people "with right of survivorship," it means that they own the property jointly while they are alive, but upon the death of any one of them, the deceased person's interest in the property passes solely to the remaining joint owners (called "joint tenants").

Nationstar files for foreclosure

Nationstar commenced a foreclosure action in April 2013. Mr. Taylor was able to participate in a court-supervised mediation program and attended five mediation sessions beginning in April 2013. He worked with a housing counselor throughout that time, who helped him submit a complete loan modification application and repeatedly update his financial information. Nationstar repeatedly requested information relating to the probate case. Mr. Taylor submitted what he had, even though legally it was irrelevant. Nationstar continued to delay, allowing the documents he submitted to become out of date. As a result, Nationstar avoided ever doing a review of Mr. Taylor's loan modification request.

Nationstar moved to terminate mediation, summarily claiming, "The Plaintiff cannot review the defendant for loss mitigation options because he is not the borrower."

Mr. Taylor submitted yet another complete loan modification application to Nationstar through his housing counselor on June 3, 2014. This submission included the death certificate of his wife and the right of survivorship deed. This was at least the third application he had submitted. On June 27, 2014, Nationstar moved to terminate mediation, summarily claiming, "The Plaintiff cannot review the defendant for loss mitigation options because he is not the borrower." Nationstar's position directly conflicted with the Treasury Department's Home Affordable Modification Program (HAMP) rules, which, as of August 2013, expressly allowed homeowners like Mr. Taylor, who have experienced a family death, to apply for a modification. Unaware of the HAMP requirements that applied to Mr. Taylor, the court granted Nationstar's request on July 17, 2014.

Mr. Taylor gets legal help

In August 2014, Mr. Taylor sought help from the Connecticut Fair Housing Center. With the Center's help, Mr. Taylor filed a complaint with the CFPB regarding Nationstar's conduct on September 9, 2014. Nationstar failed to respond to the substance of the complaint and did not address its ongoing refusal to review Mr. Taylor for a modification or its misrepresentations to him (and to the court) that no loss mitigation options were available because he was not the borrower. Mr. Taylor's attorney then contacted Nationstar's attorneys in the foreclosure action about these concerns, but received no response.

Mr. Taylor was approved for a HAMP trial period plan in April 2015, almost four years after he began seeking help to avoid foreclosure.

Two months later, Nationstar asked the court to enter a foreclosure judgment. Mr. Taylor's attorney from the Connecticut Fair Housing Center asked the court to allow him to participate once again in foreclosure mediation, based in part on Nationstar's misrepresentations to the court about Mr. Taylor's categorical ineligibility for a loan modification and the fact that he was, in fact, likely eligible. The court granted this request to return to mediation, and Nationstar did not go forward with a hearing seeking a foreclosure judgment.

Nationstar finally agrees to modify the loan

Even now, after he has received a permanent loan modification, Nationstar still refuses to speak to Mr. Taylor when he calls to get information about the account and continues to unnecessarily demand an order from the probate court.

With the help of his attorney, Mr. Taylor submitted a new loan modification application package to Nationstar on December 9, 2014. His attorney sent several detailed emails to Nationstar's counsel explaining that probate was unnecessary since Mr. Taylor already had sole title to the home. This finally seemed to clear up the issues. Mr. Taylor was approved for a HAMP trial period plan in April 2015, almost four years after he began seeking help to avoid foreclosure. (The HAMP program, like many modifications, requires a three month trial modification or "trial period plan" before the permanent modification will be processed.) Mr. Taylor made all of the trial payments. His loan was permanently modified effective July 2015. Mr. Taylor was extremely relieved that he could continue raising his son in the home he and his late wife had made for them.

Epilogue

Even now, after he has received a permanent loan modification, Nationstar still refuses to speak to Mr. Taylor when he calls to get information about the account and continues to unnecessarily demand an order from the probate court. This problem persists despite the fact that the CFPB's existing rules under the Real Estate Settlement Procedures Act (RESPA) clearly provide access for successors after a borrower's death.

VERONICA H., Philadelphia, PA

Veronica H. (last name not provided to protect her privacy) and her husband bought their home in Philadelphia in 2011. The couple took out a mortgage on the home, but for unknown reasons, the promissory note for the mortgage was in Mr. H.'s name alone. Ms. H. was attacked by her husband, becoming a victim of domestic violence. In response, she obtained a temporary and then a final protection from abuse order in 2012. The protective orders removed Mr. H. from the home. A spousal support order required Mr. H. to continue making the mortgage payments on the home where Ms. H. resided.

In 2013, Mr. H. stopped making the mortgage payments. Ms. H. had no attorney representing her at that time, and by the time she realized that Mr. H. was not complying with the court order, the loan was in foreclosure. She received a letter from the servicer, Wells Fargo, stating that the loan was four months in default. This was immediately followed by a pre-foreclosure notice letter. Ms. H. is disabled, and her only income comes from Social Security Disability and spousal support. The full mortgage payment was unaffordable as it consumed nearly half of her monthly income. Still, she attempted to make payments, but Wells Fargo refused to accept anything less than a full reinstatement.

Wells Fargo refuses to consider Ms. H. for a loan modification

When Ms. H. attempted to apply for a loan modification that would allow her to save her home from foreclosure, Wells Fargo refused to speak to her or consider her request, saying she was not the "borrower" on the loan. Nevertheless, Ms. H. submitted her first application for a loan modification in March 2014. Wells Fargo claimed its policies prohibited it from accepting an application from anyone but Mr. H., and, even then, only if he continued to reside in the property—notwithstanding that he had been evicted by court order as a perpetrator of domestic violence.

Ms. H. gets legal help, but Wells Fargo continues to claim she cannot get a modification

Ms. H. was referred to a housing counselor who in turn referred her to a lawyer at Community Legal Services. The lawyer assisted Ms. H. in negotiating with Wells Fargo through the court's foreclosure mediation program. He insisted that she should be evaluated for a loan modification, and provided Wells Fargo with a copy of the protection from abuse order. Wells Fargo asked for a copy of a divorce decree, and Ms. H.'s lawyer explained that she was not divorced, but was separated with a spousal support order. Wells Fargo claimed that it had reviewed all options, and Ms. H. could not be evaluated for a loan modification. Wells Fargo's lawyer asked for the case to be released from mediation so that it could proceed to foreclose on Ms. H.'s home. Ms. H.'s attorney objected, explaining that this case clearly needed to remain under court oversight.

The court intervenes

After months of inconclusive discussions with Wells Fargo's lawyer, Ms. H.'s attorney brought the case to the attention of Judge Annette Rizzo and the court administrator then in charge of the Foreclosure Diversion Program. Judge Rizzo refused to let the foreclosure proceed and insisted that a representative of Wells Fargo and Ms. H.'s husband both appear in court. Wells Fargo then agreed to let Ms. H. apply to assume the loan and seek a loan modification in her own name. Ms. H. submitted new financial information in September 2014 and again in October 2014. In December 2014, Wells Fargo claimed that Ms. H. could not be approved for an assumption and loan modification because she had not provided a final divorce decree. When Ms. H.'s attorney asserted that a divorce decree should not be required, Wells Fargo stated that Ms. H. could be considered if she provided a quitclaim deed signed by Mr. H. and a separation agreement.

Explaining no court-filed separation agreements in Pennsylvania

In January 2015, Ms. H.'s attorney explained to Wells Fargo's attorney by phone that although they could provide a quitclaim deed signed by Mr. H., separation agreements are not necessary in Pennsylvania in order for parties to be considered separated, and that courts do not approve separation agreements in Pennsylvania. Yet, after consulting with a family law attorney, Ms. H.'s attorney then prepared an ad-hoc separation agreement for Mr. and Ms. H. to sign, to satisfy Wells Fargo's requirements. On January 30, 2015, Ms. H.'s attorney provided Wells Fargo with the executed quitclaim deed and separation agreement. On February 9, 2015, Wells Fargo claimed that it needed a "court stamped copy of the separation agreement" in order for the underwriter to review Ms. H.'s application. Ms. H.'s attorney had to explain yet again that separation agreements are not filed in court in Pennsylvania, and there is no provision in the law allowing parties to do so. Only then was Wells Fargo satisfied with the documentation Ms. H. could provide.

The impossible becomes possible: Ms. H. receives a loan modification

Finally, in February 2015, Ms. H. was offered a trial plan for a possible modification under FHA-HAMP. She began making trial payments to Wells Fargo based on a percentage of her income. In June 2015, Wells Fargo sent Ms. H. a permanent loan modification, but it was in Mr. H.'s name alone. Then, in August 2015, Wells Fargo sent modification documents that could be signed by both Ms. H. and Mr. H.

> Even with a legal advocate in her corner, Ms. H. was told multiple times that it was not possible for her to get a loan modification.

At long last, after six months of trial payments and two full years after the foreclosure case was filed, the bank gave final approval to the assumption and loan modification and withdrew the foreclosure case. Ms. H. was finally secure in her home, no longer in fear of losing it, and no longer having to communicate with her spouse to try to save it. To get to that point, Ms. H. had to submit her financial information at least four times. Her lawyer had to engage in protracted communications about what documentation would suffice to show that Mr. H. had left the home and that Ms. H. should be considered for a modification on her own. Even with a legal advocate in her corner, Ms. H. was told multiple times that it was not possible for her to get a loan modification. Without the city mediation program, a concerned judge, and aggressive advocacy by her housing counselor and lawyer, Ms. H. would likely have lost her home.

THE TREADMILL: DOCUMENTATION PROBLEMS

Under federal law, a servicer has the right to ask a successor to provide documentation showing that she owns the house and that she became the owner of the house through an intra-family transfer that enables her to continue paying on the mortgage.[10] However, servicers often request proof of ownership that is difficult or impossible to obtain, refuse to accept a document that is legally sufficient to prove ownership, or request the same documents over and over again. These homeowners find themselves on a treadmill: they are trying to move the case forward but realize that they are just running in place. The following stories provide examples of this problem.

Homeowners find themselves on a treadmill: they are trying to move the case forward but realize that they are just running in place.

LUZ ORTIZ, Stockbridge, GA

Luz Ortiz is a 65-year-old widow. She and her husband, Angel Diaz, owned their home in Stockbridge, Georgia, as joint tenants with right of survivorship. Mr. Diaz was the sole borrower on the mortgage note. The mortgage is owned by Fannie Mae and serviced by Seterus.

Mr. Diaz died on July 27, 2012. Under Georgia law, when her husband died, his interest in the home passed automatically to Mrs. Ortiz because they had owned the home with right of survivorship. Mrs. Ortiz was then the sole owner of the property under Georgia law. Mrs. Ortiz did not file any probate action because there were no estate assets. She did file an affidavit in the county land records stating that Mr. Diaz had died (called an "affidavit of death of joint tenant").

Mrs. Ortiz continued to pay the mortgage, but she was struggling to make ends meet on her limited Social Security retirement income. About a year after her husband's death, she contacted Seterus to try to find out if she could obtain a loan modification to make her payment more affordable. She explained that Mr. Diaz had passed away.

Seterus insists on a probate court order

Seterus refused to communicate with Mrs. Ortiz regarding the mortgage loan and stated that in order to have access to information about the account, she needed to file a probate action and show herself to be the executrix or personal representative of her late husband's estate. Mrs. Ortiz provided Seterus with a copy of her husband's death certificate and the affidavit of death of joint tenant. Seterus wrote to her saying that Seterus "does not recognize a death certificate, signature on a Security Deed, or the Affidavit of Death of Joint Tenant," and that she would need to provide "fiduciary documents" issued by a court. In Georgia, filing a probate case typically requires court fees totaling $250–300, an $80 publication fee, and the costs of serving various parties by certified mail and sometimes personal service, in addition to attorney's fees.[11] After trying unsuccessfully for many months to get Seterus to communicate with her regarding the mortgage, Mrs. Ortiz contacted the Georgia Senior Legal Hotline for assistance.

On June 26, 2014, a lawyer from the Senior Legal Hotline wrote to Seterus on behalf of Mrs. Ortiz and explained that by virtue of the right of survivorship deed, Mrs. Ortiz was the sole owner of the home. She explained that there was no pending estate administration for Mr. Diaz because where were no estate assets to administer. The letter cited the CFPB's regulation requiring servicers to promptly identify and communicate with successors in interest of deceased borrowers and the compliance bulletin stating that the documents servicers require to establish legal ownership of the property after a death must be "reasonable in light of the laws of the relevant jurisdiction." This is the type of information that servicers can easily obtain from their local attorneys.

Seterus agrees to let Mrs. Ortiz apply for a modification and assumption

After the attorney's letter and repeated follow-up calls, Seterus finally sent Mrs. Ortiz paperwork to apply for a loan modification and assumption. Her attorney helped Mrs. Ortiz submit the application in September 2014. Then, in mid-October, Seterus informed Mrs. Ortiz that it had sent a request to the private mortgage insurance (PMI) company to review Mrs. Ortiz's application, because any assumption and modification would have to be approved by the insurer.

Seterus initiates foreclosure while the application is under review

Despite the pending application now under review with the PMI company, Seterus sent Mrs. Ortiz a certified letter in November 2014 stating that the home was scheduled for a foreclosure sale on the first Tuesday in January 2015. Mrs. Ortiz could not believe that Seterus would schedule the home for foreclosure when she had submitted an application to assume and modify the mortgage and Seterus was in the midst of reviewing that application. Her attorney contacted Seterus to demand that it immediately cancel the scheduled foreclosure sale. Seterus refused to do so at that time, stating it could evaluate the request to stay the sale closer to the sale date.

Seterus approves modification and assumption after again demanding probate court order

Soon thereafter, Seterus informed Mrs. Ortiz that the mortgage insurer had approved the loan modification and assumption request. However, Seterus stated that it would need a copy of the probate court order appointing Mrs. Ortiz as the representative of her husband's estate. The attorney had to direct Seterus back to her original letter explaining that no such order was necessary or appropriate. Finally, about a week later, Seterus confirmed that the foreclosure sale would be canceled and a loan modification could proceed.

Mrs. Ortiz begins paying on a trial modification; Seterus initiates foreclosure while apologizing for its own delay processing the permanent modification and assumption

Mrs. Ortiz received the documents for her trial modification in mid-January and made the first trial payment in February 2015. Mrs. Ortiz understood that after she made the trial payment for three months, she would receive the permanent loan modification. As the months went by, no permanent modification documents arrived. Mrs. Ortiz continued to make her trial payments. Her attorney contacted Seterus regarding the status. Seterus responded by letter dated July 13, 2015, apologizing for the delays and stating that Seterus was working on the final steps for the modification and assumption and the documents would be sent in a "timely fashion." Mrs. Ortiz was surprised and extremely anxious, therefore, when she received a letter by certified mail in September 2015 stating that her home was scheduled for a foreclosure sale the first Tuesday in November. The Seterus representative said he could see Mrs. Ortiz was making the trial modification payments and was not sure why the house had been scheduled for foreclosure yet again.

The Seterus representative said he could see Mrs. Ortiz was making the trial modification payments and was not sure why the house had been scheduled for foreclosure yet again.

Mrs. Ortiz receives the permanent modification and assumption

After further communications from her attorney, Seterus finally sent the permanent loan modification and assumption documents to Mrs. Ortiz and ceased foreclosure activity in mid-October, 2015, more than two years after she had first sought a modification.

ANTHONY CLARK, Philadelphia, PA

In 2007, Anthony Clark and his wife purchased a home together. However, Mr. Clark's wife was the sole borrower on the promissory note. In 2008, Mr. Clark and his wife divorced. In connection with their divorce agreement, Mr. Clark became the sole owner of the property, where he lives and cares for the couple's six children. Mr. Clark also cares for and has custody of his nephew, N., whose mother died in 2007. N. has a heart condition which has required multiple surgeries and a pacemaker since he was 11 years old.

After the divorce, Mr. Clark regularly made the mortgage payments. Mr. Clark worked as a sidewalk vendor, which provided sufficient income to pay the mortgage and care for his children and nephew. However, in 2011, Mr. Clark began experiencing medical problems, including progressive deterioration in the discs in his back and several seizures, which prevented him from working, and he fell behind on the mortgage payments.

Chase initiates foreclosure

Eventually, Chase began foreclosure proceedings. Mr. Clark elected to participate in Philadelphia's local mediation program, the Residential Mortgage Foreclosure Diversion Program. For more than a year, beginning in early 2013, Mr. Clark worked with his housing counselor to try and save his home. Throughout this process, Mr. Clark and his housing counselor were repeatedly asked to resubmit documents that were already submitted and were given misleading and inaccurate information about the process for modifying and assuming the mortgage.

Chase requests multiple, duplicative applications

In September 2013, the housing counselor assisted Mr. Clark in submitting a complete loan modification application to Chase. In December 2013, Mr. Clark and his counselor spoke with Chase, clarified certain expenses, and were told by Chase that no further information was needed. Shortly thereafter, Chase called the home and asked to speak with Mr. Clark's ex-wife. When Mr. Clark explained that he was the one applying for a loan modification, Chase refused to speak with him. When his housing counselor reached out to Chase again on his behalf, Chase claimed they needed a new application in order to proceed. The counselor submitted the new application on January 10, 2014. Chase then sent yet another application form for Mr. Clark to return, claiming this second (identical) application was for the assumption, and that the first one was for the modification. Despite the burdensome and illogical nature of this request, the counselor assisted Mr. Clark in submitting another complete packet (33 pages) on March 7, 2014. Chase claimed that it sent a denial letter (which neither Mr. Clark nor his housing counselor recalls receiving) rejecting his application due to alleged missing documents.

Chase claims Mr. Clark cannot authorize an attorney to speak with Chase

When an attorney with Philadelphia Legal Assistance began working with Mr. Clark, she submitted another complete loan modification application on his behalf in September 2014. Chase claimed it could not speak with Mr. Clark's attorney because it claimed only the original borrower, and not Mr. Clark, could authorize a third party to communicate on her behalf. This required a cumbersome system of communication where Mr. Clark talked with Chase and relayed information to his attorney, who then helped him to follow up and respond to Chase's additional requests for information.

Chase repeatedly requests divorce decree, already provided

The requests for information and documents were numerous. In November 2014, Mr. Clark was informed that Chase's underwriting department had rejected his application because the application for assistance form needed the signature of his ex-wife. Mr. Clark had to explain, yet again, that his ex-wife was not involved in the application and was not living in the home. Then in December 2014, Chase requested a copy of the divorce decree. Mr. Clark had provided both the divorce decree and a quitclaim deed to Chase in the past, when he was working with the housing counselor. Nonetheless, Chase continued to insist that it needed this document. Mr. Clark's attorney faxed the divorce decree to Chase on January 1, 2015. A month later, on February 5, 2015, Chase yet again requested the divorce decree. Mr. Clark's attorney explained that it had already been provided. Only after demanding to speak with a person with more authority did she realize that Chase was rejecting the divorce decree that had been provided several times because no property settlement agreement was attached. Mr. Clark, however, already had provided a quitclaim deed demonstrating his ownership of the property. He did not have a property settlement agreement because the divorce attorney who handled Mr. Clark's divorce advised him to deal with the marital property separately, through

> Chase was continually holding up the loan modification application because it wanted an additional document that did not exist.

the quitclaim deed. Therefore, Chase was continually holding up the loan modification application because it wanted an additional document that did not exist. Because of Chase's failure to communicate clearly with Mr. Clark or his attorney, this back and forth created months of additional delay. When Chase finally acknowledged that the documentation Mr. Clark had long ago provided was sufficient to show he became the owner of the home in connection with a divorce, the company then requested a new credit authorization form because the one provided previously was now out of date.

Chase denies FHA modification because Chase will not extend a trial plan

Finally, Chase told Mr. Clark that he would be reviewed for its Loan Assumption and Modification Program (LAMP). However, Chase later notified him that he was being denied for the program because the modification program required a trial period payment, and "LAMP modifications enter directly into a permanent modification without a trial period." Mr. Clark's mortgage was insured by the Federal Housing Administration (FHA), and therefore governed by FHA rules. Chase initially claimed that Mr. Clark did not meet FHA requirements for a loan modification and assumption. Only after getting through to someone in Chase's general counsel's office did Mr. Clark's counsel learn that it was Chase's policy not to allow a non-borrower like Mr. Clark to enter into a trial plan that had created the barrier. Chase claimed that FHA would not waive the requirement of a trial payment plan, and Chase would not allow Mr. Clark to enter into one. After persistent advocacy by his attorney with both Chase and FHA, Mr. Clark obtained a waiver of the trial plan requirement from FHA and finally received a permanent loan modification and assumption.

Epilogue

The process of obtaining an affordable loan modification took over two years from the date of his first application for assistance, and Mr. Clark had to submit an application packet at least five times, as well as multiple duplicative follow-up requests for individual documents. Attorney Joanne Werdel reflected on the whole saga, "I don't know how anyone could have navigated this process without a lawyer. I seriously wonder how many people have been unable to get a loan modification and assumption when they should have been entitled to one."

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— Attorney Joanne Werdel
Philadelphia Legal Assistance

THE TRAP DOOR: DEMANDING A SIGNATURE FROM THE ABSENT BORROWER

Sometimes a successor in interest gets so far in the modification process as to actually receive a trial period plan and make payments pursuant to that plan, only to have the frustrating experience of receiving a modification agreement in the name of the absent (or deceased) borrower. Servicers sometimes refuse to correct this mistake, and insist that the modification will not be honored without the original borrower's signature. The following story illustrates this problem.

LUCIA RANGEL, Chicago, IL

Lucia Rangel married her husband in Mexico in 1992. By 1999, they moved to Chicago and purchased a home together. While Ms. Rangel was on the title to the home and signed the mortgage, she was not on the promissory note. In 2012, after experiencing domestic abuse at the hands of her husband, Ms. Rangel filed for divorce. Her husband moved out, and, without his income, she soon fell behind on the mortgage. The mortgage servicer, Chase, filed for foreclosure in November 2012. A judgment for divorce was entered in September 2013 and she was granted full title to the home. A protective order was entered against her ex-husband for the next 18 months. Carrying out the terms of the divorce decree, her ex-husband executed a quitclaim deed transferring the property to her in January 2014.

Ms. Rangel gets legal help

In November 2013, with the assistance of the legal services organization LAF (the Legal Assistance Foundation of Metropolitan Chicago), Ms. Rangel started applying for a loan modification with Chase. The first challenge for LAF attorneys and paralegals was getting authorization to speak to Chase representatives about the account. LAF repeatedly submitted the divorce decree and quitclaim deed and explained that Ms. Rangel had always been on the title and even signed the mortgage as a borrower. Because she was not on the note, Chase refused to speak with LAF or to allow Ms. Rangel to apply for a modification. LAF continually insisted that Ms. Rangel was entitled to apply for a modification and assumption.

From November 2013 until July 2014, LAF submitted documents for Ms. Rangel's loan modification application many times. In August 2014, Chase sent an assumption package to Ms. Rangel, although Chase representatives had given LAF conflicting information regarding whether Ms. Rangel needed to apply for an assumption. Ms. Rangel submitted the assumption application. The loan modification and assumption applications only listed Lucia Rangel. All of the supplemental documentation, such as income verification documents, only pertained to Ms. Rangel.

Chase sends a trial modification in ex-husband's name

On May 19, 2015, 18 months after Ms. Rangel began the application process, LAF was notified that Chase had everything it needed for the application and that Ms. Rangel's file was in underwriting. On August 13, 2015, Chase sent Ms. Rangel a trial period plan offer letter. Although all of the application documents had included only Ms. Rangel's information, the trial payment plan was in her ex-husband's name. The trial period plan started in September and was supposed to conclude in November 2015, when it would be converted to a permanent modification. Ms. Rangel has made all of the trial payments on time. Chase has accepted every payment.

Chase claims it no longer approves assumption applications after a divorce

During the trial period plan, Chase stated by phone that it would no longer be processing assumptions in divorce situations as of September 15, 2015. Chase refused to provide this information in writing. LAF explained that Ms. Rangel's ex-husband was no longer on title to the home and would not cooperate with a modification. Chase asked that Ms. Rangel submit assumption paperwork yet again, stating that perhaps it could get her application approved before the policy changed. Ms. Rangel submitted the application as requested by Chase on August 29, 2015 and continued to make the trial payments. On October 22, 2015, Chase confirmed that it had a complete loan modification and assumption application from Ms. Rangel. Chase denied Ms. Rangel's application for an assumption and modification by phone on October 26, 2015, claiming that it had stopped accepting assumption applications for divorced non-borrower spouses. Neither Ms. Rangel nor LAF received a written denial letter.

Chase continues to accept Ms. Rangel's payments, sends modification documents in ex-husband's name

Despite these developments, Chase continued to accept Ms. Rangel's trial payments, and on December 4, 2015, Chase sent the permanent loan modification documents. The documents were delivered to LAF but required the signature of Ms. Rangel's ex-husband. Since she was the one who had applied for the modification and the only person communicating with Chase about a modification of the mortgage, Ms. Rangel signed the documents and sent them back to Chase. By this time, Ms. Rangel had already sent Chase the first payment on the permanent modification. Chase had confirmed its receipt of that first modified payment on December 4, 2015. On December 21, 2015, Chase stated by phone that the modification documents were not approved because they were missing Ms. Rangel's ex-husband's signature. LAF reiterated to Chase that due to the nature of this case, Ms. Rangel's ex-husband would not be signing the documents.

Ms. Rangel has worked very hard to do everything she can to save her home. She has sent in documents numerous times since 2013 and has made all the trial and permanent modification payments since September 2015. In return, Chase has given her nothing but distress and false hope. Her case remains unresolved today, and she is still facing foreclosure.

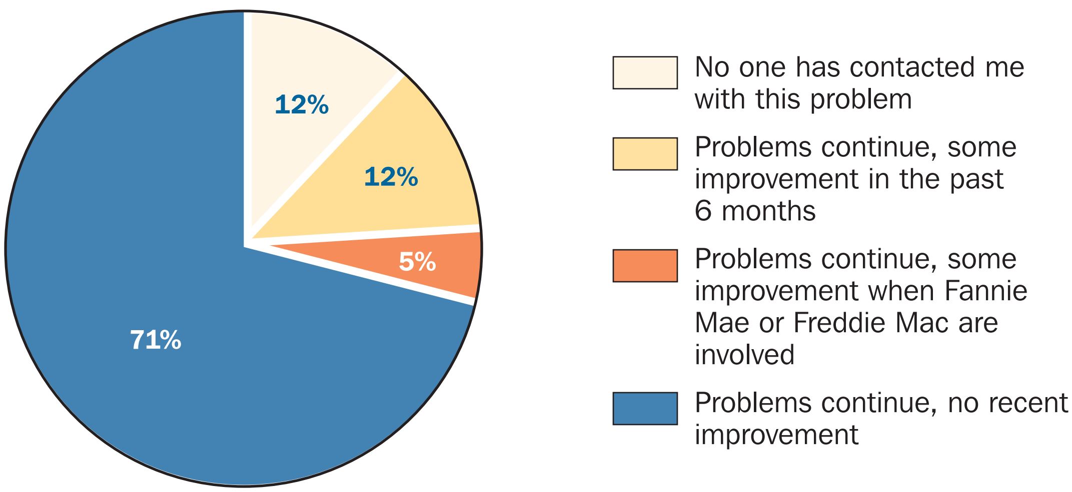
NATIONWIDE SURVEYS DOCUMENT SCOPE OF THE PROBLEM

The servicing issues documented in the case studies above are not isolated examples; they are typical of a nationwide problem affecting thousands of homeowners. NCLC documented this problem in a national survey in 2015 of attorneys and housing counselors representing homeowners.[12] One hundred and three advocates from 24 different states responded to the NCLC survey, showing significant ongoing mortgage servicing problems around the nation, especially where successors in interest are concerned. The results indicate an urgent need for enforceable protections for successors. Reports from the field and a recent survey by the National Housing Resource Center confirm ongoing challenges and the pressing need for strong, uniform legal protections.

Loss mitigation out of reach. Loss mitigation is the term for a workout agreement, such as a payment plan or loan modification, allowing a homeowner to become current on the mortgage and avoid foreclosure. The NCLC survey demonstrated that successors face widespread challenges in obtaining loss mitigation. When asked generally about their experiences representing successors in interest, 71% of respondents answered that people are contacting them with this problem, they are still having a great deal of difficulty getting loan modifications for successors, and they have not seen any recent improvement. Twelve percent of respondents said they had seen some improvement on these issues in the preceding six months. Five percent of respondents said they are having an easier time helping successors with Fannie Mae and Freddie Mac owned loans, but still have trouble with other loans. The following chart summarizes these results.

CHART 1

Experiences of Foreclosure Counselors and Attorneys with Successors Seeking Mortgage Modifications



Source: National Consumer Law Center, *Mortgage Servicing Survey* (2015)

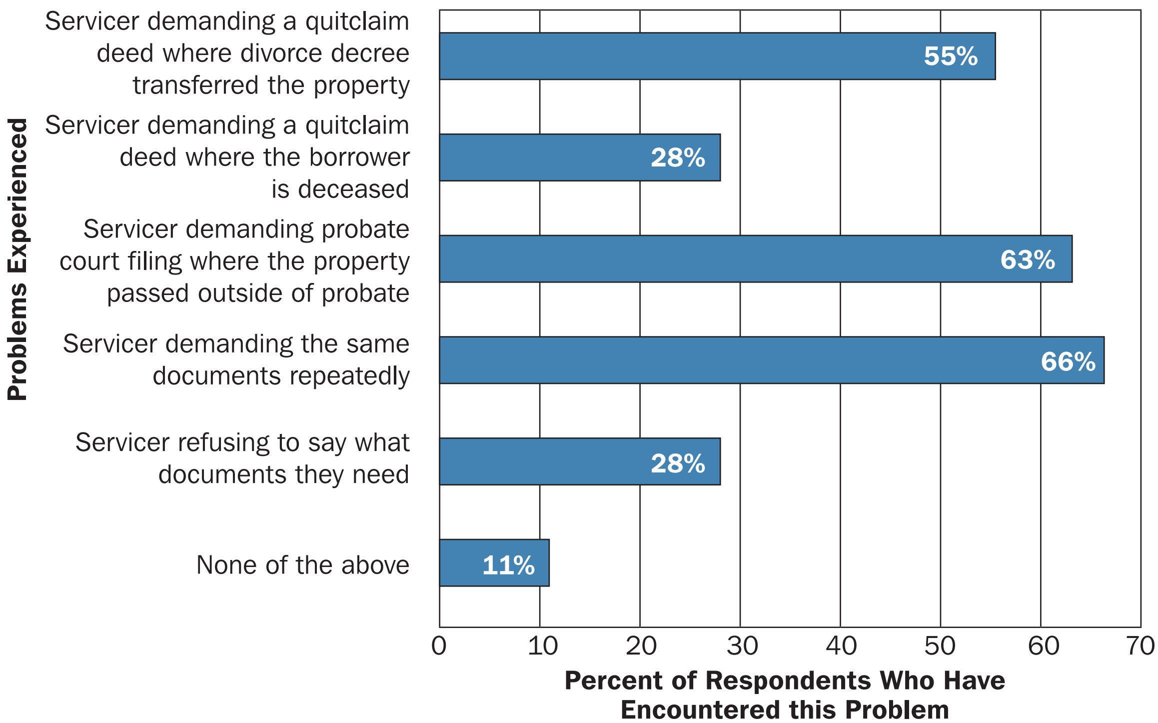
Document burdens persist. The NCLC survey showed that successors are having particular problems with servicers requesting duplicative or unreasonable documentation to show successor status.

- 55% of respondents were asked to supply a quitclaim deed where one was not needed or available because a divorce decree clearly transferred the property;
- 63% were asked to provide probate documents or proof that the client is the estate representative where such proof was irrelevant because the property passed through a right of survivorship deed or tenancy by the entireties (a type of joint ownership that is available to married couples);
- 66% were asked to submit the same documents repeatedly in an attempt to prove their ownership interest to the servicer.

The following chart shows the prevalence of these problems and other burdensome document requests.

CHART 2

Common Documentation Problems Faced by Successors



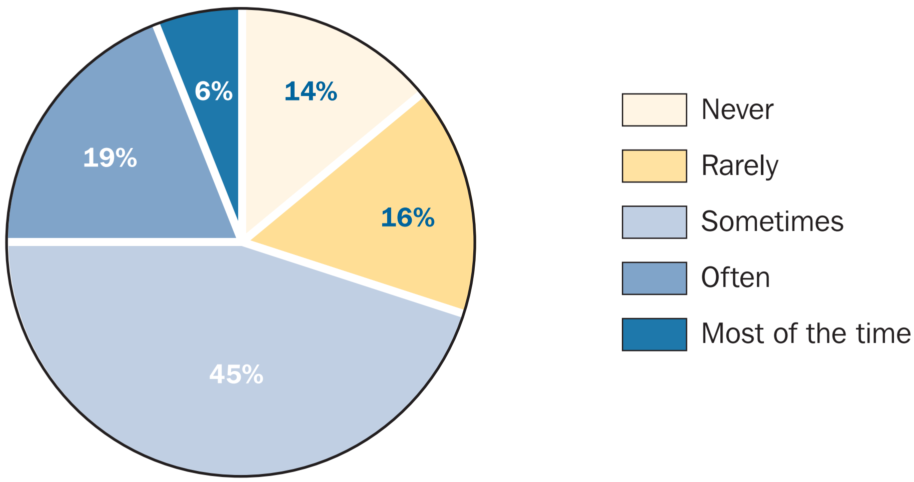
Source: National Consumer Law Center, *Mortgage Servicing Survey* (2015)

Servicers refuse to acknowledge successors' rights. Even after providing all of the documentation servicers requested to show successor status, many successors find that the servicer still refuses to provide information about the loan or allow them to apply for a loan modification. Seventy percent of respondents said this happened sometimes, often, or most of the time in their successor cases.

Foreclosure protections are often unavailable. The NCLC survey responses also revealed serious problems with getting servicers to postpone a foreclosure sale in order to review a successor for a potential loan modification. Forty-four percent of respondents said that the servicer refused to stop the foreclosure until the case was appealed to a higher authority within the company, and an additional seventeen percent said they had to seek a court order or file a bankruptcy case to prevent the foreclosure sale. The following charts depict the difficulty successors face getting servicers to acknowledge their rights and keeping foreclosure at bay.

CHART 3

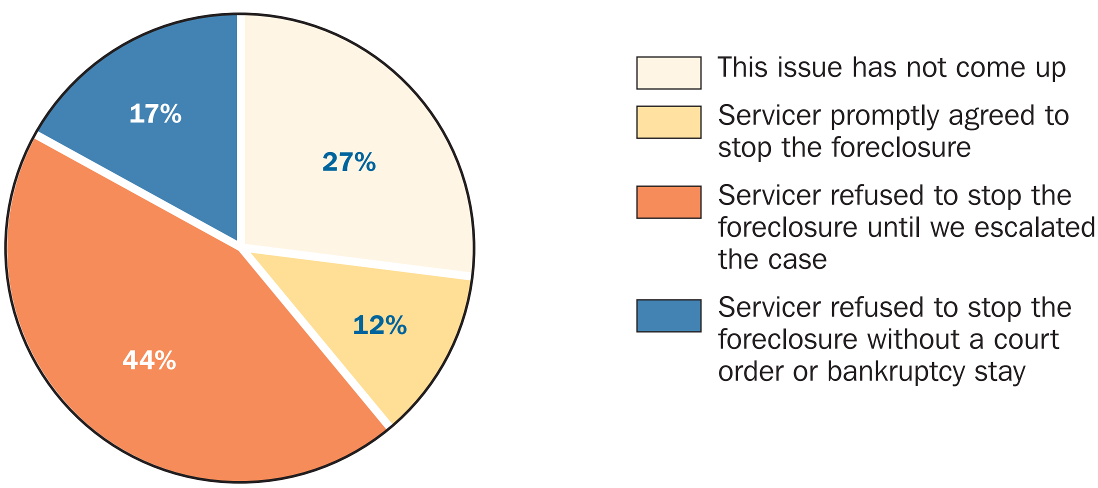
Frequency of Servicers Refusing to Provide Loan Information or Review a Modification Application after Proof of Successor Status Was Provided



Source: National Consumer Law Center, *Mortgage Servicing Survey* (2015)

CHART 4

Experiences of Successors Applying for a Mortgage Modification while Facing the Risk of Foreclosure



Source: National Consumer Law Center, *Mortgage Servicing Survey* (2015)

Successor problems persist. A 2016 survey conducted by the National Housing Resource Center (NHRC) shows that housing counselors and attorneys representing homeowners are still having difficulty getting servicers to identify and communicate with successors in interest after the death of a borrower.[13] This is true despite a regulation issued by the CFPB, effective January 2014, which requires servicers to identify and communicate with successors after the death of a borrower.[14] The NHRC survey asked 200 housing counselors and attorneys to rank how well each of 11 servicers were complying with the CFPB's regulation requiring communication with successors, with a one indicating poor compliance and a five indicating strong compliance. The servicer with the highest averaged score among these 11 major servicers received a 2.25 out of 5. The median score for servicers' compliance with this regulation was a 1.98 out of 5.[15] As these results make clear, successor issues remain a pressing and significant problem in need of a solution.

POLICY RECOMMENDATIONS

Despite an array of current rules requiring servicers to communicate with successors and to evaluate them for loan modifications, intractable problems persist nationwide. These challenges are the rule, not the exception, despite guidelines built into the federal HAMP program and others that apply to Fannie Mae, Freddie Mac, and FHA insured loans. These rules require servicers to evaluate successors for a loan modification as if they were the original borrower.

The Consumer Financial Protection Bureau has proposed a rule to address these problems.[16] The proposed rule will create uniform requirements marketwide that provide successors who can demonstrate their status with needed access to the mortgage servicing system. The proposal goes almost all of the way in reaching the six policy goals discussed below. It should be enhanced to better ensure successors can avail themselves of the rules once they have documented their status and to meet the needs of survivors of family violence. The rule should be finalized and implemented as soon as possible.

Successors need six essential rules to better navigate mortgage servicing.

1. **Communication.** Successors need to be able to access information about their home's mortgage loan, including monthly payment amounts, outstanding principal balances, insurance information and payment histories. Successors should have a clear path to confirming their status and receiving loan information without having to provide documents that do not exist or cannot be produced.
2. **Reasonable Document Requirements.** Successors need a clear path to confirming their status while servicers need to be able to rely on documented proof of a successor's position. Clear, reasonable requirements can protect both parties while preventing the never-ending loop of document submissions. Successors only should be required to document their status as needed under state law and should not be required to face additional legal hurdles, such as opening a probate case where none is needed.
3. **Workouts with Assumptions.** Successors facing a sudden decrease in family income need access to loss mitigation. They must be able to apply for loan modifications and be

evaluated for new loan terms. In addition, successors seeking a loan modification will need to assume the loan once a modification is approved. These assumptions, however, should be processed alongside a modification. Successors should not be required to assume a loan prior to modification, as they will not know whether they will be able to afford the payments.

4. **Access for Domestic Violence Survivors.** Successors who are domestic violence survivors face additional barriers in trying to save their homes. While many are divorced or otherwise have sole ownership of the property, some are in the process of a divorce or transfer of title. The rules must accommodate these successors, especially where there is a court order of protection, without endangering them by requiring involvement of the abuser.
5. **Foreclosure Protections.** Like other homeowners, successors applying for hardship assistance are trying to avoid the loss of their home. Protections that pause the foreclosure process and any sale during the loss mitigation application and review period are essential, especially in light of the additional procedures successors face in proving their status.
6. **Enforceable Rights.** Even when there are rules on the books intended to help successors obtain loan modifications, successors still run into roadblocks because servicers do not comply with those rules. The CFPB's proposed regulations will create uniform requirements and also will promote compliance and enable successors to save their homes from unnecessary foreclosures by giving borrowers the ability to enforce those requirements. The proposal should be enhanced, however, to ensure that homeowners who document their successor status can avail themselves of the protections.

CONCLUSION

Homeowners who were not on the original loan but now find themselves needing to take over the mortgage payments due to death of the original borrower or divorce face myriad challenges, despite the patchwork of current rules meant to improve these situations. The brick wall of flat out refusal to evaluate a modification, the treadmill of duplicative or unnecessary document requests, and the trap door of modification agreements bearing the names of absent borrowers have thwarted many successors who were desperate to save their homes. As a result, many successor homeowners experience unnecessary foreclosures. These stories demonstrate that while some manage to work it out with their servicer, most cannot overcome the hurdles. Those who do find a resolution often only do so after months or years of delay, increasing their debt, cutting into any equity they may have, and creating unneeded stress.

The CFPB's proposed rules to address successor issues are an essential solution to this problem and should be finalized and implemented as soon as possible. Until then, additional vulnerable families, many already having experienced tragedy and trauma, will continue to unnecessarily lose their homes.

The CFPB's proposed rules to address successor issues are an essential solution to this problem and should be finalized and implemented as soon as possible.

ENDNOTES

1. 12 U.S.C. § 1701j-3(d).
2. Sarah Bolling Mancini and Alys Cohen, Surviving the Borrower: Assumption, Modification, and Access to Mortgage Information after a Death or Divorce, 43 Pepp. L. Rev. 345 (2016), *available at* http://digitalcommons.pepperdine.edu/plr/vol43/iss2/.
3. *Are Mortgage Servicers Following the New Rules? A Snapshot of Compliance with CFPB Servicing Standards*, National Council of La Raza and National Housing Resource Center (Jan. 9, 2015), *available at* http://www.nclr.org/Assets/uploads/Publications/mortgageservicesreport_11215.pdf; *Chasm Between Words and Deeds X: How Ongoing Mortgage Servicing Problems Hurt California Homeowners and Hardest-Hit Communities*, California Reinvestment Coalition (May 2014), http://www.calreinvest.org/publications/california-reinvestment-coalition-research.
4. *Id*. *See also* National Consumer Law Center, Supplemental Comments to the Consumer Financial Protection Bureau, Docket No. CFPB-2014-0033 (Jan. 26, 2016), *available at* http://www.nclc.org/servicing-policy-analysis/servicing-policy-comments.html; National Consumer Law Center, NCLC Survey Reveals Ongoing Problems with Mortgage Servicing (May 2015), *available at* http://www.nclc.org/media-center/nclc-survey-reveals-ongoing-problems-with-mortgage-servicing.html; National Consumer Law Center, Examples of Cases Where Successors in Interest and Similar Parties Faced Challenges Seeking Loan Modifications and Communicating with Mortgage Servicers (July 1, 2014), *available at* http://www.nclc.org/images/pdf/foreclosure_mortgage/mortgage_servicing/successor-stories-2014.pdf.
5. Pavel Leshchinskiy, "The Cost of Probate: A State Comparison," Legal Match, *available at* http://www.legalmatch.com/law-library/article/the-cost-of-probate-a-state-comparison.html.
6. *id.*
7. Mary Randolph, "Paying a Probate Lawyer: Costs & Types of Fees," All Law, *available at* http://www.alllaw.com/articles/nolo/wills-trusts/paying-probate-lawyer-costs-types-fees.html
8. *id.*
9. Our full recommendations can be found in the comments NCLC submitted to the CFPB on March 16, 2015, and supplemental comments submitted January 26, 2016, *available at* http://www.nclc.org/servicing-policy-analysis/servicing-policy-comments.html.
10. *See* 12 U.S.C. § 1701j-3(d).
11. Interview with J. Rachel Scott, Attorney, Atlanta Legal Aid Society, Inc. (March 18, 2016); Georgia Counsel of Probate Judges, Schedule of Costs and Fees, *available at* https://www.glynncounty.org/1699/Costs-and-Fees.
12. National Consumer Law Center, NCLC Survey Reveals Ongoing Problems with Mortgage Servicing (May 2015), *available at* http://www.nclc.org/media-center/nclc-survey-reveals-ongoing-problems-with-mortgage-servicing.html.
13. National Housing Resource Center, Servicer Compliance with CFPB Servicing Regulations (February 2016) ("NHRC Survey"), *available at* http://www.hsgcenter.org/research-reports-relevant-to-housing-counseling/.
14. *See* 12 U.S.C. § 1024.38(b)(1)(vi).
15. NHRC Survey at 2.
16. Amendments to the 2013 Mortgage Rules Under the Real Estate Settlement and Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z), 79 Fed. Reg. 74,176 (Dec. 15, 2014).

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