

## New Protections Added to Mortgage Servicing Rules to Protect Surviving Spouses and Heirs

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The death of a borrower too often brings the surviving spouse and other heirs to the brink of foreclosure. Surviving spouses and other grieving family members face steep hurdles in retaining a home when mortgage servicers refuse to communicate with family members, or demand documents that do not exist or are not readily available, to prove a family member's claim to an interest in the property. Family members are also stymied in their attempts to assume the mortgage or pursue loss mitigation or other options to prevent foreclosure. Those who take over a loan in default often seek loan modifications or other assistance to save the home. Transfer of the marital home to a non-borrower spouse through divorce may lead to the same problems.

A new Consumer Financial Protection Bureau (CFPB) mortgage servicing rule became effective on April 19, 2018, and should help ease the property transfer burden. The rule provides protections to “successors in interest”: homeowners who were not the original borrowers on a mortgage, but inherited a home after the borrower's death or were awarded the marital home in a divorce or other intra-family transfer. The final rule expands the coverage of mortgage servicing rules to protect successors in interest, regardless of whether they have assumed the obligation.<sup>1</sup> The current mortgage servicing rules generally require servicers to provide information on loss mitigation options, and properly evaluate applications for assistance. In addition, servicers must timely respond to complaints regarding errors and requests for information.

Once a servicer has confirmed the successor's identity and ownership interest in the property, the mortgage servicing rules provide certain protections.<sup>2</sup> The servicer cannot impose another requirement as a condition of “confirming” a successor in interest pursuant to the regulation. Once confirmed, the mortgage servicing rules apply even if the successor has not assumed personal liability for the mortgage loan under state law.

A servicer is generally required to respond to a written request for information from a borrower regarding the mortgage loan. The CFPB created a special limited “Request for Information” applicable to potential successors. If a servicer receives any written request from a person indicating the person may be a successor in interest, and the request contains the name of the transferor borrower and sufficient information to enable the servicer to identify the loan at issue, the servicer must respond by providing the potential successor in

1 See 81 Fed. Reg. 72160 (Oct. 19, 2016). The rules amend Regulation X of the Real Estate Settlement Procedures Act (RESPA), and Regulation Z, which implements the Truth in Lending Act (TILA). The new rules expand the definition of a “borrower” for the purposes of RESPA, and “consumer” for the purposes of TILA, to include a confirmed successor in interest. 12 C.F.R. § 1024.31 (eff. April 19, 2018).

2 Successor in interest means a person to whom an ownership interest in a property securing a mortgage loan is transferred from a borrower, provided that the transfer is: (1) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety; (2) A transfer to a relative resulting from the death of a borrower; (3) A transfer where the spouse or children of the borrower become an owner of the property; (4) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or (5) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property. 12 C.F.R. § 1024.31 (eff. April 19, 2018).

interest with a written description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest.<sup>3</sup>

Additionally, the servicer must acknowledge receipt within five business days and respond substantively within thirty business days. However, depending on the specific circumstances, a servicer may be required to respond more quickly in order to comply with the policies and procedures requirement in the mortgage serving law.

The new mortgage servicing protections may enable heirs and spouses to retain a home which would otherwise have been lost to foreclosure. Attorneys should be able to quickly make use of the rule's loss mitigation provisions to help clients receive clear communication regarding the status of the loan and the available options for saving the home.

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<sup>3</sup> 81 Fed. Reg. 72,160, at 72,372; 12 C.F.R. § 1024.36(i) (eff. Apr. 19, 2018).