HERA

housing and
economic
rights advocates

December 10, 2012

Thomas Curry
Comptroller of the Currency
Administrator of National Banks
Washington, DC 20219

Governor Sarah Bloom Raskin
Federal Reserve Board of Governors
20th Street and Constitution Avenue N.W.
Washington, D.C. 20551

Director Richard Cordray
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20552

RE: *Widows and orphans, joint tenants and loan modification challenges*

Dear Comptroller Curry, Governor Bloom Raskin, and Director Cordray

This letter is sent on behalf of the undersigned organizations concerning a growing problem – the unnecessary displacement of widows, widowers, and other similarly situated joint tenants. Members of the California Reinvestment Coalition (CRC) raised this issue directly with Comptroller Curry and Governor Bloom Raskin, and with colleagues of Director Cordray, during meetings and conversations in July of this year. At the time, we colloquially referred to the issue as "widows and orphans." The widows problem was further highlighted in a recent New York Times article that quoted a Housing and Economic Rights Advocates (HERA) attorney and discussed client stories.[1]

When we met in July, you and your staff graciously offered that we could send you additional information about this problem and explore whether solutions could be found. Below, we discuss the issues in greater detail, include case summaries, and proposed solutions.

[1] Jessica Silver-Greenberg, "Mortgage Catch Pushes Widows Into Foreclosure," New York Times, December 1, 2012.

We respectfully request that the OCC, FRB and CFPB respond immediately and issue any necessary guidance or rules so that not another widow loses her home when she should have been given a loan modification. Time is of the essence.

Specifically, we urge:

1. Amendments to HUD RESPA Rule, 24 C.F.R. §3500.21, in order to clarify and confirm that widows and similarly situated borrowers are entitled to basic information about the loan in question, so that they can make an informed decision about whether and how they can preserve their home; and
2. OCC Guidance, 12 C.F.R. Part 30 Appendix C, to clarify and confirm the duty of servicers to formally permit widows and similarly situated borrowers to assume loans and simultaneously secure loan modifications, so they can keep their homes.
3. Issuance of interagency guidance such that all regulated financial institutions and servicers abide by updated rules on the issue. This guidance should be incorporated into other agency rules when appropriate, for example, the CFPB servicing rules due out in January; and
4. Inclusion of a private right of action so that widows will not lose their homes due to continuing instances of servicers not following the rules to which they are ostensibly bound.

We are also copying this letter to other regulators with whom we have discussed this issue.

INTRODUCTION

This letter provides further context regarding the problems facing heirs striving to retain their homes when those homes are still encumbered by a mortgage that the heir is not a party to. The most common scenario involves when Husband and Wife are both on the title to their home, but only Husband's name is on the loan. When Husband dies, Wife cannot afford payments and seeks a loan modification. Servicer refuses to talk to Wife because her name is not on the loan. This is notwithstanding her legal interest in the underlying property. A 'Catch-22' results, where the Wife cannot get a modification without the Servicer acknowledging an assumption of the loan. However, to assume the loan, the Service requires that the Wife be able to afford the loan, which she cannot do without a modification. Nevertheless, the Servicer thwarts the assumption and modification process every step of the way by refusing to even speak to the Wife. Often, the Servicer simply proceeds to foreclose.[2]

The problem of servicer refusal to speak to heirs also arises when a child, grandchild or other relative becomes the titleholder of the property after the death of their loved one who was on the mortgage note. In addition, in the context of domestic violence, the victim is frequently female and frequently not on the loan; the abuser deliberately stops paying on the mortgage in order to cause further harm to the victim, but servicers are refusing to discuss assumption with the survivor, absent a court order of some kind.

One important aspect of this problem is the pattern and practice of brokers and lenders urging that one or more homeowners stay off of the loan, or taking homeowners off title or off the loan without the knowledge of the homeowner or with false promises to add them back onto title or the loan after the loan closing. This may reflect the broker or lender's view that one party has a better credit score or other aspect of their financial profile that makes the transaction more likely to go through if just in the name of the seemingly stronger candidate. Whatever the reasons for doing so, this very often damages the interest of spouses, and widows/widowers. We urge you to use your authority to investigate these abuses and to further protect consumers from the type of conduct that results in tragic situations we have documented here.

This letter is organized in three parts: First, we provide an analysis of client data to draw out common patterns and practices of mortgage servicers vis-à-vis the widows problem. Second, we include a discussion of the current legal and regulatory landscape relevant to this issue. Third, we propose regulations and guidelines that will allow widows, orphans, or other heirs to have a reasonable chance to keep their homes, even when those homes carry mortgage loans that they are not a party to.

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[2] Two other scenarios are common as well:

Scenario #2: One of two or more co-borrowers no longer resides in the home, yet the servicer requires a quit claim deed from the departing borrower in order to negotiate a loan modification with the remaining co-borrower occupant. Here the departing borrower might not be reachable, or might be willing to sign loan modification papers, but not willing to agree to a quit claim deed.

Scenario #3: A married person puts title in his or her own name and applies for a loan in his or her own name, falsely stating that he or she is single or widowed. Lenders make no inquiry beyond the title and ignore that property acquired during the marriage is community property in California. The unsuspecting spouse learns of the foreclosure and calls the lender/servicer, but the lender/servicer refuses to speak to them because they are not party to the loan. Many homeowners were duped into removing a spouse or partner's name from a loan by brokers and lenders who told them this would be necessary for loan approval—or who did not even tell the borrower that their spouse/partner's name had been removed.

I. FACTUAL ANALYSIS

CRC and HERA gathered stories from attorneys and advocates of homeowners facing the widows and orphans problem.[3] Eleven stories were submitted by advocates and provided here. While the stories provided different levels of detail and contained their own nuances, some themes are prominent. Summaries of the homeowner stories are located in Appendix A, attached to this report.

Out of eleven widows, all had a legal interest (such as title) to the underlying property. Nearly all of these borrowers needed loan modifications to afford their current mortgage payments, and nearly all were caught in the widows "Catch-22," whereby they could not get help because they could not prove their ownership interest in the eyes of loss mitigation staff. This despite the fact that most of the borrowers did in fact provide documentation to servicers - such as trust instruments, testamentary instruments and deeds - to show mortgage servicers that they owned the underlying house. Incredibly, in most of these eleven cases, mortgage servicers refused to even talk with widows, at least until legal service and other advocates took up representation.

Some widows had the means to pay the loan after their loved one died. A majority of widows made, or offered to make, loan payments to the servicer. In some of these cases, servicers refused to accept any payments because the payments were not coming from the person on the loan document, the deceased spouse. In some cases, servicers accepted payments from widows but later foreclosed on the property without returning the money. The stories strongly suggest that making payments or offering to do so did not affect the decision of a servicer to modify a loan or foreclose on a property.

Of concern from a fair housing standpoint, ten out of eleven of these borrowers were women, and most were widowed and seniors. Surviving children or grandchildren, constituted two of the victims. Of the stories gathered, the most common servicer to deny widows' assumptions was Wells Fargo, with four cases, followed by Bank of America and U.S. Bank, with two cases each. In a country with an aging populace, in which women and seniors are more likely to be adversely affected by servicer policies or practices that negatively affect their ability to keep the home that they inherited, the cases suggest that regulating mortgage servicers and clarifying their responsibilities is paramount.

In all cases, servicers either refused to talk to the widow or provided unclear or conflicting information on steps the widow could take to keep the home or try to assume the mortgage loan. Many of the outcomes for these borrowers were tragic. Those who were able to maintain their homes were most likely able to do so through the fortunate intervention of a legal aid lawyer.

[3] In this letter, the surviving spouse or child homeowner will be referenced as "widow" unless otherwise provided.

Unfortunately, the vast majority of borrowers with facts fitting the "widows" profile will never find their way to a counselor or legal service advocate, and will most likely therefore never stand a chance of keeping their homes if current servicing practices are allowed to continue. And as with all cases taken by HUD-approved counselors and legal service lawyers, the borrowers in the summarized cases had a reasonable chance of qualifying for a loan modification that they could afford and that would enable them to remain in their homes. Nonprofit advocates do not have the capacity, resources or the interest to represent consumers who cannot afford to keep their homes. We believe there are numerous widows, represented or otherwise, who could afford to keep their homes with loan modifications, if only servicers would evaluate them fairly for such relief.

II. LEGAL ANALYSIS

Currently, no single statute, regulation, case or administrative guidance perfectly addresses or resolves the widows and orphans problem. However, some rules and regulations provide a backdrop for future, recommended regulations. There are at least three primary challenges to widows seeking to assume and modify a loan and remain in the home: 1) accessing key information about the loan from the servicer in order to make an informed decision; 2) having a reasonable chance to assume the loan; and 3) securing a needed loan modification. Pertinent laws and guidance are discussed below.

Statutes and Case Law

The Garn–St. Germain Depository Institutions Act of 1982

Mortgage loan servicers appear to be interpreting Garn St. Germain in the narrowest fashion possible. Codified at 12 USC § 1701j-3, Garn-St. Germain limits the ability of mortgagees to exercise due-on-sale clauses in certain situations. "Due-on-sale" means accelerating what is still owed on the loan to be paid immediately upon the occurrence of an event, such as a transfer of ownership. Id. § 1701j-3(a)(1). For example, transfers by devise, descent, or by operation of a joint tenancy; transfers to relatives resulting from death of the borrower; transfers to spouse or children; transfers from a decree of dissolution of marriage or legal separation; and transfer into an inter vivos trust where the borrower is the beneficiary must be allowed by mortgagees. Id. § 1701j-3(d). Servicers appear not be accelerating the mortgage loan based on these types of transfers, but they are frustrating the purpose of the Act by refusing to communicate with the person who has assumed the loan by devise, et cetera, as listed above. They are imposing a loan assumption process for the survivor that is not envisioned by or set forth in the Act. Servicers need to gather information from the widow or other survivor in order to be able to practically implement assumption, but they are refusing to do so.

Normally, due-on-sale does not mean the same as "assumption." Assumption occurs when one borrower affirmatively seeks to take over a spouse or parent's loan. However, at least one bankruptcy court has loosely interpreted due-on-sale to mean "assumption." See *In re Smith*, 469 B.R. 198, 201-03 (Bankr. S.D.N.Y. 2012); see also *In re Cady*, 440 B.R. 16, 20 n.9 (Bankr. N.D.N.Y. 2010) ("Because the Cadys transferred the Property to their son and daughter-in-law, and in light of the Garn-St. Germain Act, the due-on-sale clauses contained in the aforementioned mortgages are unenforceable."); *In re Jordan*, 199 B.R. 68 (Bankr. S.D. Fla. 1996) (citing Garn-St. Germain, "[t]he Debtor, having received his ownership interest from his mother, did not need the consent of the mortgagee.").

Civil litigation has not resolved the widows and orphans problem. This is an issue that requires further regulatory action that can adequately address the common issues beneficiaries face.

<u>The Gramm-Leach-Bliley Act, 15 U.S.C. § 6801, *et. seq*</u>.

Servicers sometimes raise the privacy of the borrower as a basis for their refusal to speak to the widow or other survivor. In 1999, Congress passed the Gramm-Leach-Bliley Act (GLB Act). The GLB Act provides that financial institutions have affirmative obligations to "protect the security and confidentiality of […] customers' nonpublic personal information" by prohibiting disclosure to third parties. 15 U.S.C. § 6801(a). Servicers have the same duty as long as they "perform services for the financial institution or […] function on its behalf."[4]

"Nonpublic personal information" is information "(i) provided by the consumer to a financial institution; (ii) resulting from any transaction with the consumer or any service performed for the consumer; or (iii) otherwise obtained by the financial institution." Id. § 6809(4)(A). Loan information that a widow or other heir may need for purposes of considering applying for a loan modification and assumption, such as whether payments are current or the balance on the loan, would be an example of nonpublic personal information. See 16 CFR §313.(0)(2)

However, the GLB Act defines "consumer" as an "individual who obtains, from a financial institution, financial products or services which are to be used primarily for personal, family, or household purposes, ***and also means the legal representative of such an individual*.**" 15 U.S.C. § 6809(9) (emphasis added). Black's Law Dictionary (5th ed.1983) defines legal representative as "[a] person who oversees the legal affairs of another. Examples include the executor or administrator of an estate."[5] Other laws define "legal representative" to mean an executor of an estate. See 20 CFR § 404.503(d) (Social Security); Conn. Gen. Stat. § 45a-557a(8); *Chao v. Cmty. Trust Co.*, 474 F.3d 75, 84 (3d Cir. 2007) (legal representative also means an entity that has power of attorney).

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[4] CFPB, Consumer Laws and Regulations: Privacy of Consumer Financial Information – Gramm-Leach-Bliley Act, *found at* http://www.consumerfinance.gov/guidance/supervision/manual/glba-narrative/#fn:4.

[5] It is a principle of statutory construction that where a statute does not contain a specific definition of a term, its ordinary, usual meaning should apply. *California Teachers Assn. v. San Diego Community College Dist.*, 28 Cal.3d 692, 698 (1981).

Furthermore, the Federal Trade Commission (FTC) interprets the GLB Act to include "persons holding a legal or beneficial interest relating to the consumer" and "persons acting in a fiduciary or representative capacity on behalf of the consumer." 12 CFR § 313.15(iv)-(v). In addition, some states also have clear language providing that a person acting in a fiduciary or representative capacity or holding a legal or beneficial interest for a consumer may receive nonpublic personal information. (See Cal. Fin. Code § 4056(b)(3)(D)-(E)). Thus, it appears that servicers are not obligated by federal privacy law (and may not be by state laws) to withhold non-public information on the deceased mortgagor's account from widows and/or other heirs, executors, beneficiaries or other personal or legal representative of the deceased mortgagor. In fact, a financial institution may disclose information "as necessary to effect, administer, or enforce a transaction […] in connection with servicing or processing a financial product." 15 U.S.C. § 6802(e)(1)(A). Further, it should be noted that much of the information sought by widows, such as the existence of a mortgage and foreclosure notices, is already in the public domain, and the information that is not, is directly related to the widow's obligations. There is, thus, not a credible, legal privacy issue to be raised.

The Health Insurance Portability and Accountability Act (HIPAA)

An instructive parallel on the issue of privacy is in the medical records context. HIPAA's exceptions to its privacy standards allow executors to obtain information about decedents. Much like the GLB Act provides for with regard to other consumer records, "[a] covered entity *must* comply with the requirements of [HIPAA] with respect to the protected health information of a deceased individual." 45 CFR § 164.502(f) (emphasis added). But unlike the GLB Act, it is clearly mandatory under HIPAA that medical providers and other covered entities give requested information to personal representatives of the decedent. Under HIPAA, personal representatives stand in the shoes of deceased individuals for purposes of the statute (such as being able to request personal information). Id. § 164.502(g)(1). HIPAA regulations broadly define "personal representative" as a person who has "authority to act for the individual," id. § 164.508(c)(viii), and a "person responsible for the care of the individual of the individual's location, general condition, or death." Id. § 164.510(1)(ii). HIPAA expressly grants personal representative status to executors or other persons with authority to act "on behalf of a deceased individual." 45 CFR § 164.502(g)(4). Black's Law Dictionary defines "personal representatives" as "executors and administrators" as well as "heirs, next of kin, [and] descendants."

Arguably, nothing is more personal to a consumer than his or her medical information. In this most personal of contexts, Congress saw fit to provide explicitly for a personal representative of the decedent to obtain access to that information. It is reasonable and no less important to craft and implement regulations to give an affirmative right to the personal representative, successor in interest, executor, or other representative of the deceased mortgagor about the mortgage account in question. Allowing legal or personal representatives to "stand in the shoes" of borrowers would be a powerful, and simple way to prevent use of "privacy rights" by servicers as a general excuse for not providing necessary information to the widow, or other heir, successor in interest or other representative of the deceased.

The Equal Credit Opportunity Act (ECOA) and the Fair Housing Act (FHA)

ECOA makes it unlawful for any creditor to discriminate with respect to any credit transaction on the basis of, amongst other characteristics, marital status and age. 15 U.S.C. § 1691(a)(1). Generally, marital status as a prohibited basis includes any discrimination against an individual because that individual is single, divorced, separated, married, or *widowed*. The ECOA was meant to protect women, among others, from arbitrary denial or termination of credit. See *Anderson v. United Finance Co.*, 666 F.2d 1274, 1277 (9th Cir. 1982). Moreover, violating a regulation promulgated under ECOA constitutes discrimination, regardless of intent. *Id.* The Fair Housing Act prohibits discrimination based on race, color, religion, national origin, sex and disability with regard to various housing related activities, including the provision, denial, and terms and conditions of housing. 42 U.S.C. § 3601 et seq.

Servicers' detrimental treatment of heirs after the death of the mortgagor would appear to have a disparate impact on women and widows and persons of a certain age. Women in the United States have a longer life expectancy than men, and, whether married or not to their partner, are more likely to be the surviving spouse or partner in a relationship. The female and aged survivor suffers the brunt, therefore, of servicer practices that negatively affect their ability to retain their home. In 2009, there were 975,517 widows in the United States, as compared to 414,887 widowers.[6] As illustrated in the summary of stories at the beginning of this report, the surviving widow may, in fact, be on the title to the home and may have contributed to the payments made on the mortgage for the entire life of the mortgage, but may not be recognized by the servicer as someone the servicer must work with to possibly modify the mortgage. With our aging populace nationally, this phenomenon will occur with even greater frequency. This may constitute both a fair lending and a fair housing problem.[7]

The Violence Against Women Act of 1994

Designed to improve the effectiveness of and improve the response to the crimes of domestic violence, dating violence, sexual assault and stalking, the Violence Against Women Act of 1994

[6] *See Marital Events of Americans: 2009*, American Community Survey (August, 2011) *at* http://www.census.gov/prod/2011pubs/acs-13.pdf

[7] Please note that cases of divorce and domestic violence may also entail the spouse or partner (frequently female) being awarded or left with title to the home but not being on the mortgage. To avoid unnecessary displacement, additional regulatory guidance may be necessary to address servicers' refusing to communicate with the ex-spouse or partner who holds title to the property about the related mortgage that the person is not a party to. This issue exceeds the scope of this report.

(VAWA) acknowledges the prevalence and damage caused by this criminal activity. A VAWA reauthorization bill is currently winding its way through Congress. An aspect of domestic violence abuse that may not arise to the level of criminal activity entails the effort by the abuser to force the victim from the home by ceasing to make payments on the mortgage. The victim may not be on the mortgage and may, in order to ensure continued payment on the mortgage, need to achieve a loan assumption. There may be domestic violence temporary restraining orders outstanding at the point when the victim seeks assumption, but there may not be a pending family law case in court. We would ask that regulators take up consideration of regulations and guidance governing lenders and servicers to address when servicers/lenders should communicate with the victim of abuse regarding loan assumption.

Regulations

12 C.F.R. § 191.5

The Office of the Comptroller of the Currency (OCC) promulgated a regulation that is very similar to Garn-St. Germain. It prohibits servicers from exercising due-on-sale clauses upon borrowers who transfer their legal interests to family, by devise, or resulting from death. See 12 C.F.R. § 191.5(b)(1)(i)-(vi).

Although, the regulation does not specifically forbid mortgagees from prohibiting assumptions, its language strongly suggests that it is anticipated that the servicer will consider an assumption and may have some related requirement, such as maintenance of mortgage insurance. See id. § 191.5(c) ("[p]aragraph (b) of this section does not prohibit a lender from requiring, as a condition to an *assumption*, continued maintenance of mortgage insurance *by the existing borrower's successor in interest*.") (emphasis added); Id. § 191.4(d)(4) ("[t]he lender's right to exercise a due-on-sale clause […] is in addition to any other rights afforded the lender by state law regulating window-period loans with regard to the exercise of due-on-sale clauses *and loan assumptions*.") (emphasis added). Moreover, the regulation recognizes that a lender and "successor in interest" of an *existing* (i.e. not deceased) borrower may agree to transfer loan ownership. Id. § 191.5(b)(4).

Because § 191.5 seems to contemplate that loan assumptions and due-on-sale clauses are related, and it uses language from Garn-St. Germain, it would be the most logical regulation to amend it with new rules to address the widows and orphans problem. To the extent these regulations only extend to OCC regulated national banks, they should be adopted in parallel by all of the prudential regulatory agencies.

24 C.F.R. § 203.512

A helpful parallel is the FHA insured loan program, for which HUD promulgated the above-listed regulation discouraging restrictions on assumability. "A mortgagee *shall not* impose, agree to or enforce legal restrictions on *conveyance* […]*or restrictions on assumption* of the insured mortgage, unless specifically permitted by this part or contained in a junior lien granted to the mortgagee after settlement on the insured mortgage." 24 C.F.R. § 203.512(a). Regulations provide further that sale or other transfer of the property cannot be approved unless:

"(1) At least one of the persons acquiring ownership is determined to be creditworthy under applicable standards prescribed by the Secretary;
(2) The selling mortgagor retains an ownership interest in the property; or
(3) The transfer is by devise or descent." Id. § 203.512(b)(3).

This language would appear to reflect a policy goal in the FHA-insured program of not imposing unduly burdensome restrictions on loan assumptions.

Servicing Guidelines

12 C.F.R. Part 30 Appendix C

Section 39 of the Federal Deposit Insurance Act (12 U.S.C. 1831p-1) authorizes the OCC to prescribe safety and soundness standards in the form of guidelines. If a bank fails to meet these guidelines, the OCC may require it to submit a plan that specifies how it can comply with the guideline. Id. § 1831p-1(e). If the bank fails to meet the plan, it may be subject to a federal injunction or civil money penalties. 12 C.F.R. § 170.5.

The OCC promulgated these guidelines to establish standards for residential lending practices. Multiple sections are relevant to the widows and orphans issue. One such section provides that a bank should not become "engaged in abusive, predatory, unfair, or deceptive practices, directly, indirectly through mortgage brokers or other intermediaries, or through purchased loans" 12 C.F.R. Part 30 Appx. C, IIB(2). Another section provides that a bank should not become "engaged, directly or indirectly, in residential mortgage lending activities involving abusive, predatory, unfair or deceptive lending practices, including, but not limited to: …(4) Encouraging a borrower to breach a contract and default on an existing loan prior to and in connection with the consummation of a loan that refinances all or part of the existing loan.". 12 C.F.R. Part 30 Appx. C III A (4). Another relevant section provides that, when implementing mortgage lending standards, a bank should provide "timely, sufficient, and accurate information to a consumer concerning the terms and costs, risks, and benefits of the loan". 12 C.F.R. Part 30 Appx. C III D.

Though the guidelines are focused on the loan origination stage, we believe that these guidelines should apply as a minimum standard to an assumption and/or modification made subsequent to origination. We would recommend that these guidelines be augmented with language to explicitly address post-origination servicing and the widows and orphans problem in general.

The problems that widows and orphans are having with servicers' effectively driving them into foreclosure are not only unfair to these individuals as heirs but also represent a safety and soundness issue in bank operations. Taking reasonable steps to insure the continuing performance of an asset is one of the most fundamental of activities that a bank should undertake as part of good management of the bank's assets. This notion should apply to the bank in its role as servicer of both its own, and investor-owned, residential mortgage loans.

Fannie Mae Servicing Guidelines

These guidelines instruct servicers how to handle borrowers who transfer ownership to a third party. The language focuses on due-on-sale clauses but expressly includes the terms "transfer". For example, a guideline FAQ states that "[w]e do not require the servicer to enforce the due-on-sale (or *transfer*) provision for certain types of transfers or related transactions. Generally, the servicer *must* process these exempt transactions without reviewing or approving the terms of the transfer." [8] (emphasis added). These include transfers by devise, operation of law (joint tenancies), or creation of revocable trusts that benefit a relative.

III. PROPOSED REGULATORY CHANGES

In light of the foregoing discussion, we propose a new rule and servicing guidelines to help resolve the current unfortunate practices of banks and servicers with regard to widows and orphans. Experience shows that servicers fall, more or less, into two groups: (1) those who refuse to talk to widows, and (2) those that talk to widows, but do not make any good faith movement towards a resolution of the widows concern. The proposed rule would compel servicers to have a good faith and complete conversation with widows, while the proposed guidelines would instruct servicers about the substance of those conversations.

Regulation

24 C.F.R. § 3500.21

Housing and Urban Development (HUD) promulgated this regulation under the Real Estate Settlement Procedures Act (RESPA) to govern mortgage servicing transfers. The most relevant section is section (e), which creates duties of loan servicers to respond to borrower inquiries.

When the names of widows and other heirs are not on the loan documents, they are not borrowers, and yet they frequently need fundamental information about the account in order to determine whether or not they should pursue loan assumption. Without basic information such

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[8] *See* Fannie Mae FAQ, found *at* https://www.efanniemae.com/sf/guides/ssg/relatedservicinginfo/pdf/transowner.pdf.

as the amount still owed on the mortgage loan, the total amount of the monthly payments, the current interest rate and change dates, the type of loan, and any arrears, the heir cannot make an informed decision about what he or she can afford the modification.

We propose amending the term “borrower” in 24 C.F.R. § 3500.21(e) to include heirs, widows, beneficiaries and other successors in interest to the property encumbered by the mortgage loan about which information is sought.   Executrixes and executors entrusted with distribution of property and otherwise carrying out the wishes of the deceased should also be included in this amended language.

Servicing Guidelines

We propose to augment the OCC’s Guidelines for Residential Mortgage Lending Practices, 12 C.F.R. Part 30 Appendix C, and have that form the basis of rules binding all servicers. It is important to note that these proposed changes are more clarification of existing obligations than a creation of new obligations. We propose the following changes:

I. Introduction
i. […] The Guidelines are designed to protect against involvement by national banks and their operating subsidiaries, either directly or through loans that they purchase or make **or are otherwise managing** through intermediaries **or subsidiaries, such as mortgage servicers**, in predatory, **unfair**, or abusive residential mortgage lending practices that are injurious to ~~bank customers~~ **rights of consumers** and that expose the bank to credit, legal, compliance, reputation, and other risks.
[…]
D. Definitions.
2. For purposes of these Guidelines, the following definitions apply:
b. Bank means any national bank, federal branch or agency of a foreign bank and any operating subsidiary thereof that is subject to these Guidelines.
c. Servicer means the entity responsible for the servicing of a residential mortgage loan (including the entity that makes or holds a mortgage loan if such entity also services the mortgage loan).[9]
d. Mortgagor. Expanded definition of mortgagor. With regard to loan assumptions under Part G, the term “mortgagor” shall also mean the mortgagor’s successor in interest.
e. Successor in interest means any one of the following:

(i.) the estate of the mortgagor, or

(ii) the executor of the mortgagor’s estate (whether probated or not), or

(iii) the personal representative of the mortgagor, or

[9] Culled from 24 C.F.R. § 3500.2.

(iv) the heir to the property in question as to which the servicer has servicing responsibilities, or
(v) the surviving joint tenant, or
(vi) other personal representative as indicated by the mortgagor.

III. Implementation of Residential Mortgage Lending Standards
[…]
D. Avoidance of Consumer Misunderstanding. A bank's residential mortgage lending activities should include provision of timely, sufficient, and accurate information to a consumer concerning the terms and costs, risks, and benefits of the loan **or assumption thereof**. Consumers should be provided with information sufficient to draw their attention to these key terms. **Additionally, activities of mortgage servicers should include responding to a borrower and to a borrower's successor in interest with a valid legal interest in the property securing the mortgage being serviced.**

G. Loan Assumptions By Successors in Interest.
1. With respect to requests by the borrower, or by the borrower's successor in interest to assume the loan, the servicer must process these transactions without reviewing or approving the terms of the transfer, provided that the legal interest arose from:[10]
(i) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
(ii) The granting of a leasehold interest which has a term of three years or less and which does not contain an option to purchase (that is, either a lease of more than three years or a lease with an option to purchase will allow the exercise of a due-on-sale clause);
(iii) A transfer, in which the transferee is a person who occupies or will occupy the property, which is:
(A) A transfer to a relative resulting from the death of the borrower;
(B) A transfer where the spouse or child(ren) becomes an owner of the property; or
(C) A transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse becomes an owner of the property; or
(iv) A transfer into an inter vivos trust in which the borrower is and remains the beneficiary and occupant of the property, unless, as a condition precedent to such transfer, the borrower refuses to provide the lender with reasonable means acceptable to the lender by which the lender will be assured of timely notice of any subsequent transfer of the beneficial interest or change in occupancy.[11]

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[10] Culled from Fannie Mae FAQ, see, *supra*, note 2.
[11] Culled from Garn-St. Germain.

2. In processing assumptions by successors in interest, a servicer has the latitude to establish its own application process and to decide the type and amount of information it will require from successors in interest, provided that the servicer processes assumption requests in a timely, efficient, and accurate manner.[12] However, a servicer is encouraged to obtain any legal instrument that evidences a legal interest in the underlying property secured by the loan or mortgage being serviced including, but not limited to:

(i) death certificates;

(ii) deeds, trusts, or testamentary instruments which may show ownership interest *without the need for any probating or other court action by the successor in interest*[13]*;*

(iii) agreements; and

(iv) court orders or decrees.

3. A servicer, after receiving documentation evidencing a legal interest in the underlying property as stated in paragraph 2 from the successor in interest, shall within 30 business days, send a Written Notice to the successor in interest regarding the mortgagor's loss mitigation options including Making Home Affordable (MHA). Servicers shall postpone all foreclosure related activity for 60 days from the date of the letter in order to ensure adequate response time from successors in interest. The Written Notice must provide the following information and instructions: (i) the specific loss mitigation options including loan modifications such as MHA, proprietary loan modifications, short sales, and repayment plans (ii) advisement of the loss mitigation department contact number available to assist homeowners, and (iii) HUD counseling hotline contact number. The servicer shall document its files to show that due diligence is being performed in sending Written Notices and the time frames for obtaining any responses prior to proceeding with foreclosure.[14]

4. A servicer must consider the successor in interest for a modification in conjunction with and as part and parcel of considering an assumption application upon the request of the successor in interest. The servicer shall inform the successor in interest in writing of whether or not the successor in interest qualifies for a loan modification and shall make the offer of the loan modification in conjunction with the modification process. In other words, a successor in interest need not assume a loan without knowing that he/she has been approved for a loan modification. The goal is to make sure a successor in interest does not subject itself to credit risk by undertaking a financial obligation that is unaffordable by not having a modification offer confirmed in writing before the loan assumption.[15]

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[12] Culled from 12 C.F.R. § 202 Supplement I.

[13] New suggested language aimed at stopping the servicer practice of forcing a probate when none is necessary for purposes of showing who holds title to the property in question.

[14] Culled from 24 CFR 206.125 and 206.127; HECM Servicing FAQs

[15] New, suggested language.

5. A servicer shall communicate directly with the successor in interest and/or his/her representative for purposes of both the requested loan modification and loan assumption after the successor in interest has provided adequate proof of being successor in interest to the property that is security for the loan in question.[16]

6. Adequate proof of being successor in interest to the property that is security for the loan in question may consist of:

(i) a will, or
(ii) a completed probate, or
(iii)other proof of title to the property, or
(iv) inter vivos trust

7. A homeowner and the homeowner's successor in interest shall have the right to enforce these provisions against the servicer for failure to comply with the requirements listed in these sections. These private enforcement rights shall not be waived.[17]

We propose further that the above-proposed amendments to the OCC's Servicing Guidelines be embodied in inter-agency guidance as a minimum standard of residential mortgage servicing conduct, and incorporated as appropriate into new CFPB servicing standards.

In addition, as many instances of abuse arise in communities of color and often in cases with Limited English Proficient borrowers, we urge the regulators to mandate multi-language notice of rights where a non-title spouse has a security interest in the property securing the loan.

CONCLUSION

In conclusion, we urge the OCC, CFPB and HUD to address the widows issue directly and quickly. Above, we propose solutions we think are best tailored to meet the goal of preventing unnecessary foreclosure of widows. If there are better ways to achieve these goals, we are for it. The status quo can be acceptable to no one.

If you have any questions about this letter, please feel free to contact Maeve Elise Brown of Housing and Economic Rights Advocates at (510) 271-8443, or Kevin Stein of the California Reinvestment Coalition at (415) 864-3980.

[16] Id.
[17] Id.

Thank you for considering our views on this important and compelling issue that is unfairly impacting some of our most vulnerable residents.

Very Truly Yours,

Bet Tzedek Legal Services
California Reinvestment Coalition
Community Legal Services in East Palo Alto
Fair Housing Council of the San Fernando Valley
Fair Housing of Marin
Housing and Economic Rights Advocates
Law Foundation of Silicon Valley
Law Offices of Selwyn Whitehead
Public Counsel
Shirley Hochhausen, Adjunct Professor, USF School of Law
Toledo Fair Housing Center
Unity Council

Cc: Commissioner Carol Galante, Federal Housing Administration
Assistant Secretary John Trasvina, Department of Housing and Urban Development
Eric Halperin, U.S. Department of Justice
Gail Pinkepank, Principal Policy Analyst, Federal Housing Finance Administration
Jacqueline Cosgrove, Freddie Mac

APPENDIX A

Story 1:

In 2004, Leon and Ella Vinson bought property in Napa County, and incorporated it into a trust, which made Lisa Booker (her daughter) sole trustee and beneficiary post death. After Ella dies in 2006, the Bookers recorded the death certificate and grant deed, and received the interest in the property. Although the trust and property were still in Leon Vinson's name, the Bookers lived in the property and made mortgage payments, which included escrow, to ASC/Wells Fargo. In November, 2009 the Bookers fell behind on their payments due to hardship and in a December 20, 2009 letter addressed to Leon Vinson, ASC demanded $7,233.24 to cure the delinquency. On December 16, 2009, the Bookers spoke to an ASC agent regarding the amount needed to bring the account current, and Lisa said that Leon was deceased. The Bookers paid that amount, $7,248.24 on December 29, 2009, by electronic debit from their checking account. In January 2010, the Bookers called ASC and tried to make a payment. ASC rejected their payments on the ground that they were non-borrowers. ASC specifically told the Bookers that it would not accept mortgage payments from the Bookers because they were not the owners of the property. Thereafter, ASC sent correspondence addressed to both "Estate of Leon Vinson" and "Leon Vinson."

In December 2009, ASC/Wells Fargo stopped paying the Bookers' homeowners' insurance policy though Chubb because the Bookers were not on the note. In January 2010, Lisa Booker sent Wells Fargo a letter requesting that Wells Fargo immediately pay the Chubb policy to avoid cancellation and also included all the requisite legal documents regarding the trust (showing Lisa as the sole trustee) and death of Leon Vinson. On March 1, 2010, Wells Fargo force placed its own insurance policy, increasing Lisa's costs significantly. Beginning in February of 2010, ASC/Wells Fargo advised the Bookers to apply for a loan assumption and modification. Wells Fargo agents told the Bookers that they could do a "simple assumption" and be approved for a loan modification at the same time. Nevertheless, after the Bookers applied for a modification on July 2, 2010, Wells Fargo denied their HAMP application because the home was no longer "owner occupied." Wells Fargo repeatedly told the Bookers that they needed to assume the loan in order to be approved for a modification, but kept denying the modification because the home was not owner occupied. Thus, Wells Fargo denied the assumption because it refused to approve the modification.[18]

[18] Additionally, in a letter dated January 10, 2011, ASC denied the Bookers for a loan modification because there had been an additional second lien on the property. However, this lien had been cancelled after Leon Vinson passed away. ASC addressed the letter to Leon Vinson, Lisa's deceased father, and to Deborah Vinson, Lisa's sister who was not listed as a beneficiary of the Trust. ASC did so even though it has received legal documentation regarding the Trust, which showed that Lisa was the sole trustee.

The account fell further behind because Wells Fargo refused payments. In April 2010, ASC recorded a notice of default. In May 2010, Lisa's estates and trust attorney sent a letter to ASC asserting Lisa's status as the rightful Trustee to the property, and requesting that ASC recognize her as such. On September 23, 2010, ASC sent the Bookers a letter stating that the loan assumption had been approved subject to the terms and conditions listed in the commitment letter. However, ASC did not process the loan assumption documents correctly, and thus did not complete the assumption.

ASC continued with the foreclosure. In response, the Bookers filed Chapter 7 bankruptcy in order to stop the sale which they voluntarily dismissed in March of 2011. The Bookers reapplied for the simple assumption and HAMP modification. Once again, ASC denied the HAMP modification because the Bookers were deemed to not occupy the property as their primary residence. The Bookers re-applied on May 28, 2011 for HAMP/simple assumption and were denied because a sale was set for December 1, 2011. According to ASC, there was not enough time to review the application. On December 1, 2011 the Bookers filed Chapter 13 bankruptcy pro per to stop the foreclosure sale. Wells Fargo confirmed with HERA and HAMP Solutions Center that during the Bookers' active bankruptcy, it could not review the Bookers for any type of modification and an assumption. Wells Fargo explicitly stated that it could only review for the modification and assumption after the court/Bookers dismissed the bankruptcy. Based on the information provided by Wells Fargo, the Bookers let the court dismiss the bankruptcy voluntarily. Subsequently, on April 6, 2012, the Bookers applied for a modification and an assumption with Wells Fargo.

Over the course of the modification review, Wells Fargo repeatedly requested updated documentation every month. In addition, Wells Fargo lost the entire assumption package which had to be re-submitted in May 2012. Then, Wells Fargo requested a completely new RMA with all updated documentation on Jun 25, 2012. Wells Fargo also requested updated documentation during July clarifying the Bookers' expenses and income. During this time period, HERA had to escalate the case within Wells Fargo on multiple occasions in order to obtain accurate information and case updates. In HERA's experience as legal advocates, Wells Fargo has regularly thwarted the loan modification process with incredibly long delays every step of the way. Wells Fargo claims that since this is an "estate case" the review is extremely complicated and delicate. Wells Fargo finally approved the Bookers for a Trial Period Plan/Modification on July 26; however, Wells did not approve HAMP because of the "owner occupancy issue." Wells approved a 4% fixed rate due to the investor restricting the waterfall DTI at 37%. Furthermore, Wells completely disregarded the Bookers' proprietary home owners insurance and calculated the TPP payments using forced placed insurance. Then, when HERA submitted the Bookers' updated policy to Wells, it refused to re-calculate the TPP payments. Wells claimed that this would require an entirely new review of the Bookers' information. HERA continues to assist the family until an assumption and modification are provided due to additional errors by Wells.

Advocate's contact information: Cynthia Singerman, Housing and Economic Rights Advocates, (510) 271-8443, ext. 303, csingerman@heraca.org.

Story 2:

Aurora Macdula is an 84 year old widow. The loan on her home is serviced by Wells Fargo. Countrywide originated the loan. Mrs. Macdula's husband, who was the sole borrower, died in November 2011. He defaulted on the mortgage loan in July 2011 after he got sick (he later fell into a coma and never came out of it). Thereafter, Mrs. Macdula contacted Wells to inform them about her husband's death, and told Wells she wanted to start making payments. When she called, Wells transferred her from department to department—to the estates department, and then to bankruptcy, for no apparent reason. The Single Point of Contact at Wells sent an acknowledgment letter of some sort to the family, and Mrs. Macdula kept calling her but never received a return call. When she finally reached a live human, that person refused to talk to Mrs. Macdula because she did not have an authorization from her dead husband.

Her husband died intestate and Mrs. Macdula was not on the loan. At some point, a staff person at Wells instructed Mrs. Macdula to obtain a court order stating that the property was conveyed to her. Once Mrs. Macdula obtained a court order placing title in her name and delivered that to Wells (after recording in the county), Wells told her they still could not discuss the status of the case because she had to re-fax the documents to a different number and wait 7-10 days. Wells then sent the widow a denial letter (not clear whether the denial was of an assumption or a modification) because Wells said it had not been able to reach the widow. Eventually, Mrs. Macdula reached a Wells agent named Yolanda who confirmed receipt of proof of ownership of the home but would not discuss anything else. A few days later, the widow called again and spoke to a Pablo, who transferred her to the assumptions department. Someone in that department told the widow to pay $21,000 in arrears before a modification review could be started. The widow cycled through speaking to a variety of different Wells staff thereafter, all equally unhelpful. Wells required that Mrs. Macdula assume the loan before she could be reviewed for a loan modification. However, in order to assume this loan, Wells was requiring the widow to pay $21,000 in arrears in order to reinstate the loan. Since Mrs. Macdula could not afford the reinstatement amount, Wells refused to review her loan mod and closed her file. A Notice of Default was recorded on 7/2/12. Fortunately, Mrs. Macdula found her way to HERA, who advocated on her behalf for a simultaneous assumption and modification of the mortgage.

Advocate's contact information: Arabelle Malinis, Housing and Economic Rights Advocates (510) 271-8443 ext. 309, amalinis@heraca.org

Story 3:

Eron Munoz inherited the family home in Napa via the trust of her grandmother Luella Petree. The property was a home the family had owned and lived in since the 1940s. Ms. Petree obtained a HECM in 2004 on the property. After Ms. Munoz's grandmother passed away in 2011, Wells Fargo refused to recognize Ms. Munoz's ownership interest in the property and initiated foreclosure proceedings. Following the death of her grandmother, Ms. Munoz spoke with various Wells Fargo representatives about her right to purchase the property at 95% of the appraised value under FHA regulations. Wells Fargo continually represented to Ms. Munoz that she would have to pay off the full loan balance.

At first, Wells Fargo refused to even speak to Ms. Munoz claiming that she did not have authorization to communicate with Wells in connection with the property. Then, Wells Fargo requested a copy of the borrower's death certificate, trust documentation and additional information regarding the testamentary documents in connection with the property. In April 2011, Ms. Munoz and her mother sent all of this information to Wells Fargo's loss mitigation department. Wells Fargo denied Ms. Munoz's request to purchase the property at 95% of the appraised value. Wells Fargo claimed that because the trust approval requires a Revocable Living Trust to contain specific language, and since the trust agreement did not include the specific language, the request was denied.

Wells Fargo proceeded to deny Ms. Munoz's request to exercise her right under HUD/FHA regulations to pay off the HECM loan via a short sale at 95% of the appraised value. On December 15, 2011, Wells Fargo moved forward with the foreclosure by recording a Notice of Default. Wells Fargo continued to ignore Ms. Munoz's requests to purchase at 95% and insisted she pay off the entire loan. On March 12, 2012 Wells Fargo recorded a Notice of Sale.

HERA began advocating on Ms. Munoz's behalf of March 30, 2012. HERA repeatedly communicated Ms. Munoz's desire to purchase the property for 95% of the appraised value. Wells Fargo had misplaced all of the trust documents, among other information Ms. Munoz had previously submitted. Wells continued to ignore the FHA/HUD regulations permitting Ms. Munoz to purchase the property. While denying Ms. Munoz the opportunity to sell and purchase her family's home for its appraised value, Wells Fargo tried to foreclose on the home which is uniquely meaningful to the Munoz/Petree family, only so Wells Fargo can try and sell the property to a stranger for around the same price that the family would pay if they could.

After months of advocating, Wells Fargo agreed to postpone the foreclosure sale and review the short sale process pursuant to FHA/HUD guidelines. Wells Fargo is currently processing the short sale, but because Wells consistently rejects/requests new documents, HERA has to vigorously advocate for a new foreclosure postponement.

Advocate's contact information: Cynthia Singerman, Housing and Economic Rights Advocates, (510) 271-8443 ext. 303, csingerman@heraca.org.

Story 4:

Husband and wife are on the title. Husband forges a fake deed to himself and gets a new loan on the underlying property. Wife is not on the forged deed, nor the new loan and is unaware of this for a few years. Husband dies. Wife wants to keep the house, but Chase refuses to talk to her. Wife paid money on the loan, which Chase accepted. However, Chase did not credit her payments. Wife needs a modification to stay in the house, which is her primary residence, and that of her three children. Wife is in litigation to try and keep home.

Advocate's contact information: Pat Pinto, Legal Aid Society of Orange County, (714) 571-5216, ppinto@legal-aid.com.

Story 5:

A husband and wife in Southern California purchased a home and took title as joint tenants. They financed the purchase with a loan from GMAC that listed both the wife and husband as borrowers. Several years later, the wife and husband decided to refinance. To obtain a better interest rate, the couple put the home into husband's name and took out a new loan with the husband as the sole borrower. Several days later, the husband quitclaimed his interest back to himself and his wife as joint tenants. The refinanced loan, however, remained in the husband's name only.

When the husband passed away five years later, his widow began to have trouble making payments on the mortgage. She retained an attorney to help her obtain a loan modification, and he advised her to allow the loan to go into default. Unfortunately, the attorney performed no work for the widow and did not tell her that there might be a problem trying to modify a loan that was not in her name.

In early 2011, the widow received a letter from GMAC, stating that a foreclosure sale would take place on March 28 unless the loan was reinstated. The letter promised that the loan would be reinstated if GMAC received a payment of $25,000. When the widow called GMAC to confirm the address to which she should send the cashier's check, she was told to convey the funds by bank transfer instead, and was provided with the necessary account details. The widow wired the entire sum to GMAC and was in constant contact with GMAC for several weeks thereafter, often with the same supervisor. Initially, the widow was told that the payment had been received and that she should not worry. When the widow pressed for confirmation that her payment had been received and applied, GMAC informed her that they could not disclose that information to her because her name was not on the loan. GMAC further refused to name what documents the widow should provide in order to gain access to the account information.

Wife was left utterly without remedy to stop GMAC from foreclosing on a loan she had paid $25,000 to have reinstated. Her home was sold at a foreclosure auction. The widow contacted Public Counsel seeking legal advice. Public Counsel wrote a Qualified Written Request under Section 6 of the Real Estate Settlement Procedures Act (RESPA) to GMAC on the widow's behalf, seeking more information on why the loan was not reinstated despite timely payment. GMAC refused to disclose any information concerning the payment, stating that the payment was on a loan in the deceased husband's name, and consequently his widow who had made the payment had no right to information concerning the payment.

The widow now lives with her sister and will have to open probate three years after her husband's death for the sole purpose of speaking to GMAC about the loan. She has limited resources and this is a significant burden for her.

Advocate's contact information: Adelaide Anderson, Equal Justice Works AmeriCorps Legal Fellow, Consumer Law Project, Public Counsel, (213) 385-2977 ext. 231, aanderson@publiccounsel.org.

Story 6:

Mrs. Virginia Chestnut, an 80 year-old, disabled, African-American woman lost her husband a few years ago. She was on title to the family home and became the sole owner of the property as joint owner with her husband with a right of survivorship after he passed away. However, only her deceased husband was on the loan. Countrywide originated this loan. When Mrs. Chestnut approached the servicer thereafter because she was unable to keep up with mortgage payments and needed a modification of the loan, the servicer refused to talk to her because she was not on the loan. Saxon, the servicer sent collections letters in the name of the husband, though they had been informed of his death. Mrs. Chestnut's adult children (who have power of attorney for her) attempted to assist in communicating with the servicer. The children reached out to HERA for help. When HERA asked Saxon about its loan assumption procedure, the first representative told HERA that Mrs. Chestnut would have to get a power of attorney form the borrower (her dead husband). The second person at Saxon said they do not do a lot of assumptions, and that the only way Mrs. Chestnut could assume the loan is by refinancing. He suggested sending a written request for subordination documents (loan assumption application) to customer relations office at 877-665-7970 and attaching a copy of the death certificate and a copy of the will.

Servicing was then transferred to Ocwen. Ocwen told HERA that to request an assumption, HERA needed to provide a letter that includes the loan number, borrower's name, phone number, contact information of title company, and copy of borrower's driver's license. HERA was given a fax number and a mail address to deliver the letter to. HERA was told it would then take the assumptions department about 8 weeks to process the letter. HERA asked for a number at the assumptions department to talk to someone, but no number was provided. Instead, HERA was informed that no assumption information would be given except in writing. Ultimately, with further advocacy, HERA obtained a loan assumption and modification for the widow.

Advocate's contact information: Cynthia Singerman, Housing and Economic Rights Advocates, (510) 271-8443 ext. 303, csingerman@heraca.org.

Story 7

A widow, age 43, could not get a mortgage servicer, Wells Fargo, to discuss the mortgage loan on her home after she was no longer able to keep up with payments. The widow was on title to the home, as joint owner with her deceased husband with right of survivorship, but she was not on the mortgage note. Wells Fargo originated the loan. The widow's four children and her brother live with her in the home. The servicer did not inform the widow that she could or should assume the loan nor did it refer her to the appropriate bank department to do so. California Rural Legal Assistance is advocating for her and is in litigation on her behalf. The borrower needs to be considered for a modification in order to be able to afford the home.

Advocates' contact information: Jeannie A. Barrett, Sylvia Torres, California Rural Legal Assistance, Inc. (805) 922-4563.

Story 8:

During the course of a long marriage the Husband and his cousin, an officer of the Bank of America, conspired to deprive the Wife of her marital property and community interest in the marital home by deliberately misrepresenting that the husband was single and/or widowed and facilitating the repeated refinance of the home without the knowledge or consent of the Wife. When the home had been stripped of its equity, the Husband defaulted in the payments and allowed the property to go into default and to be sold in a foreclosure sale despite repeated orders from the family Court that he bring the loan current. Bank of America repeatedly refused to talk with the wife, declined her offer to bring the loan current and was unresponsive to her objections at the foreclosure sale itself. An order of the Family Court, directing the lender to deal with her, yielded no results.

Advocate's contact information: Shirley Hochhausen, s_hochhausen@hotmail.com.

Story 9:

Flora McKinney, a 69-year old homeowner in Toledo, Ohio, is on title to her home with her deceased spouse but she is not on the mortgage note. After her spouse died, the widow sought and received a HAMP modification, but it was in the name of her deceased spouse, so she was unable to get it notarized. When her housing counselor contacted the servicer to get that problem corrected, the servicer refused to do so, claiming it did not know of any co-owner. The counselor faxed over a copy of the original mortgage to the servicer, U.S. Bank-Flagstar, and was told that it would be handled. A week later, the homeowner called the servicer and was told that they were not going to send a corrected modification to her, that they had already sent her a modification (albeit incorrect), and that they had cancelled the modification since she did not return it (again, albeit incorrect as the modification was). The homeowner kept making her original payments until August 29, 2012, when the homeowner called to make her payment and the servicer told her that they were no longer accepting her payments. The servicer told the homeowner that she needed to move out of her home because she couldn't afford it. The homeowner called the housing counselor in tears informing the agency of what servicer said. The counselor again contacted the servicer to get information. Tim (the representative the counselor spoke to originally) acted like he did not remember the homeowner and her situation, so the counselor read notes to him and asked why the homeowner's payments were refused, as well as why she never received modification papers. Tim stated he never received the fax so the agency asked again for his direct fax number and re-faxed the original mortgage to him. He asked the housing counselor to contact him on Friday, August 31, 2012 to give him time to review the case. When the housing counselor called back, Tim placed the call on hold, then transferred it to another representative who said there was nothing she could do to help homeowner.

Advocate's contact information: Renea Wilson – Mortgage Specialist/Counselor, Toledo Fair Housing Center, (419) 243-6163, ext. 43, reneawilson@toledofhc.org.

Story 10:

A husband and wife were on the title of their home in Santa Clara County, which they had owed since 1976. However, when they last refinanced, only the wife was on the mortgage. Sadly, the wife passed away. Initially, U.S. Bank refused to talk to the husband/widower because his name was not on the mortgage. At some point, U.S. Bank told the widower that he would need to assume the loan, pay processing fees and late charges. The widower ultimately got a modification on the loan. He is 64 years old and current on the payments now.

Advocate's contact information: James Zahradka, Law Foundation of Silicon Valley, (408) 280-2423, jamesz@lawfoundation.org.

Story 11:

A widow, age 62, was told by the mortgage servicer, Bank of America, that it would not discuss or speak to her because she was not on the loan. Bank of America is also the originator, and Freddie Mac owns the loan. The widow was on title to the home, however, as joint owner with her deceased husband with right of survivorship. The widow's two daughters live with her in the home. She fell behind on the mortgage payments and was getting collections calls from the servicer. At some point, the servicer told the widow to send them the death certificate, which she did, but then they still would not speak to her. The servicer did not inform the widow that she could or should formally assume the loan nor did it refer her to the appropriate bank department to do so. The homeowner made contact with California Rural Legal Assistance, ultimately, and after two years of advocacy, the servicer told the advocates to talk to the assumptions department. The assumptions department then said that she could not assume the loan because she was not current. The borrower needs to be considered for a modification in order to be able to afford the home.

Advocate's contact information: Jeannie A. Barrett, Sylvia Torres, California Rural Legal Assistance, Inc. (805) 922-4563