

What to Do for Widows, Orphans, and Divorcees

1) Remind the servicer that the signatures of dead or divorced borrowers are not required on any of the modification documents.

- HB Ch. II, Section 5.7 (p. 35)

2) Provide the servicer with information documenting your client's right to assume the mortgage.

- Give the servicer a copy of Garn-St Garmain Act, 12 U.S.C. §1701j-3(d), which requires lenders to allow surviving spouses, children, and divorcees to assume outstanding mortgages.
- The only limitation on assumability established by the regulations is the maintenance of mortgage insurance, if otherwise required, so underwriting should not be required. 12 C.F.R. § 591.5.
- Give the servicer a copy of the divorce decree or death certificate.
- Give the servicer a copy of any further documentation showing transfer into your client's name (see #3 & 4, below).

3) Clear title into the remaining homeowner's name in the divorce proceedings, if your client is getting divorced.

- Ask for a judicial quit claim deed, if the departing borrower has not executed a quit claim deed to the remaining spouse.
- Consider asking for an order that the remaining spouse assumes the mortgage or that the mortgage is "assigned" to the remaining spouse.

4) Clear title into the surviving homeowner's name after a death.

- For heirs, if appropriate, prepare and file an affidavit of heirship, demonstrating that title passed to the surviving homeowner.
- Consider opening probate and having the surviving homeowner named as the administrator of the estate.
- Consider obtaining a court order naming the surviving heir as the personal representative of the estate for purposes of the mortgage.

5) If the servicer won't review, escalate!

- Ask for the servicer's in-house escalation team.
- E-mail escalations@hmpadmin.com.
- Ask for Ken Hannold if escalation isn't satisfactory.