

Examples of Cases Where Successors in Interest and Similar
Parties Faced Challenges Seeking Loan Modifications and
Communicating with Mortgage Servicers

Submitted by the National Consumer Law Center (on behalf of
its low-income clients)

July 1, 2014

STATE: Georgia

SERVICER: Seterus, Inc

SUMMARY: LO and her husband owned their home as joint tenants with right of survivorship. MD was the sole borrower on the mortgage. The mortgage is owned by Fannie Mae and serviced by Seterus.

Husband died. Under Georgia law, when her husband died, his title interest in the homeplace passed automatically to LO outside of his estate. LO was then the sole title owner of the property under Georgia law. LO did not file any probate action because there were no estate assets.

LO continued to pay the mortgage. One year later, she contacted Seterus to discuss loan modification. LO provided Seterus with a copy of her husband's death certificate and a copy of the affidavit of Joint Tenant, which was properly filed with the Superior Court.

Seterus refused to recognize and communicate with LO as the lawful successor in interest of the property and demanded that LO file a probate action. LO has struggled to pay her mortgage. She is on a fixed income and would benefit from a reduction in her monthly mortgage payment.

On June 26, 2014, we sent Seterus a Notice of Error and Qualified Written Request with cites to Georgia law on Joint Tenants with Right of Survivorship and to the CFPB Bulletin 2013-12 -- Policies and Procedures Regarding Successors in Interest to the Property of a Deceased Borrower. We enclosed copies of husband's death certificate, the Deed with the survivorship language, and the Affidavit of Joint Tenant.

STATE: Texas

SERVICER: Wells Fargo

SUMMARY: Original borrower was client's former spouse with client signing the deed of trust (security instrument) only. They divorced as a result of an incident of severe physical abuse. She was awarded the home in the divorce, assumed the note, and agreed to indemnify the ex-husband.¹ The ex-husband uses the mortgage account as a way to continue his abusive behavior. He has changed passwords and denied phone access to her; she has difficulty getting account information. She applied and was approved for an FHA modification, but Wells Fargo refused to honor the modification without the signature of the client's former spouse. Even after obtaining approval from Matt Martin that the FHA only required the client's signature, Wells Fargo would not honor the modification without the former spouse's signature.

¹ This case, and several others included here, fall outside the usual fact patterns associated with death-related successor in interest issues. Some include co-borrowers, while others, like this, involve a divorce resulting in a homeowner other than the original borrower now having title to the property.

STATE: New York

SERVICER: Chase

SUMMARY: The loan is owned by Fannie Mae and serviced by Chase. Chase is represented by Parker Ibrahim in the foreclosure action. The loan is in only my client's ex-husband's name. They recently divorced and he quitclaimed the property to her. She lives in the property with her two children. In January we sent a simultaneous modification/assumption packet to Parker Ibrahim. We still have not gotten an official response to our packet. At the settlement conference on Wednesday April 23, 2014, however, a bank representative appeared and he and counsel explained that she was going to be denied because Fannie Mae requires a three month TPP before the loan is permanently modified and assumed, but Chase's internal rules do not allow TPP's to issue to non-borrowers. This is in violation of Fannie Mae's regulations which require servicers to simultaneously assume and modify if the non-borrower qualifies for a modification.

STATE: New York

SERVICER: Chase

SUMMARY: Chase gave a military widow a TPP and then instead of converting it, said that she was unable to assume and modify a mortgage because she was not the borrower (even though it gave her the TPP knowing that she was not the borrower). They are claiming that she must be current to assume, even though it is a Freddie Mac loan and Freddie Mac's rules say otherwise. Chase is represented by Fein, Such & Crane.

STATE: California

SERVICER: Chase

SUMMARY: Client currently lives in a home formerly owned by his father, who passed away in July 2013. Before passing away, the father placed the home in a trust, naming the client as the beneficiary. While still living, the father fell behind on the payments as he was battling cancer. Eventually, Chase pursued a foreclosure, setting a sale date of December 2013. The client applied for a loan modification review in November 2013, seeking a simultaneous loan modification and assumption of his father's loan, but after being slow to act, Chase responded that they did not have authorization to talk to the client or his representatives at HERA. HERA escalated the matter and Chase informed it that it would conduct a review to see if the client would be able to assume the loan. The client then received a Notice of Trustee sale scheduled for February 2013, but received no information regarding his eligibility for assistance. Fearing that Chase would foreclose on him before deciding on his loan mod application, the client began exploring a short sale. Chase immediately halted review of his loan modification/assumption application, then informed the client that it would not approve a short sale, and rescheduled the sale date for April 14, 2014. On March 5, Chase advised the client and HERA that he should resubmit his loan modification application and start all over. The client still does not know when or if Chase will make a decision on his loan modification application and allow him to stay in the home his father left to him.

STATE: California

SERVICER: EMC, Chase

SUMMARY: S.S owns a house with her sister and her mother in Los Angeles. The house was owned by her father until he passed away in June 2010. Although S.S provided EMC with a death certificate, a deed transferring title to her, her mother, and her sister, and trust documents which established her and her sister as trustees, EMC refused to provide information about the loan to her. Though EMC accepted mortgage payments made by S.S after her father's death, it refused to speak with her about the loan or tell her how much was due. EMC ignored the trust documents, and instead insisted it would speak with her only if she produced proof that she was the executor of her father's estate -- even though she had received title to the property through a trust, not probate, and there was no executor and no estate. As EMC refused to give her any information and proceeded towards foreclosure, S.S withheld payment and instead deposited the money in a bank account. A notice of default was filed, with EMC continuing to refuse to talk to S.S, despite repeated calls. In September 2010, EMC acknowledged S.S and her sister as Co Successor Trustees, but continued to deny them access to any information about the account.

After Chase took over servicing of the loan, it continued to direct correspondence to S.S's deceased father, at one point in 2011 writing her father and asking him to call Chase to finalize a request for a power of attorney. Ultimately, in 2011, Chase allowed S.S and her sister to apply for a loan modification, but then denied the modification, claiming they had to assume the loan and bring it current first. S.S and her sister have submitted numerous applications for modification and assumption at Chase's request since that time without success. On December 30, 2013, Chase sent S.S's deceased father another letter.

STATE: New York

SERVICER: Wells Fargo

SUMMARY: We have a client who paid for years on the loan taken out by her deceased husband, and who (after getting behind in payments) tried for a couple of years to modify; after accepting packages from our client for those years, Wells Fargo abruptly told her that she couldn't modify unless she first assumed, but that she couldn't assume without first getting current. We moved in the foreclosure case for a finding that Wells acted without good faith. We have been waiting for a decision for nearly 2 years, and as it is, Wells' about-face happened nearly 4 years ago.

STATE: New York

SERVICER: ASC

SUMMARY: The case involves a loan in foreclosure whose mortgagor is deceased, and whose family member/administrator applied for a loan modification. The bank's attorney solicited documents in support of a loan modification application over the course of more than a year (within NY's mandatory foreclosure settlement conference proceedings), only to abruptly inform the surviving family member that the loan can't be modified unless the family member brings the loan current and assumes it.

STATE: Ohio

SERVICER: Wells Fargo

SUMMARY: V.A and her husband purchased a house for \$175,000 and moved to Toledo from New York City in 2005 to retire. Only Mr. A signed the Note for \$160,000; both Mr. and Mrs. A signed the Mortgage. Wells Fargo became the servicer soon after the loan origination. Fannie Mae owned the loan. Mr. A passed away suddenly in early 2007. V.A notified Wells Fargo of Mr. A's death. V.A made arrangements with Wells Fargo for a payment plan that began in September 2008, and she made her September and October payments. However, Wells Fargo filed a foreclosure lawsuit against V.A on September 8, 2008. The court dismissed Wells Fargo's case. On July 31, 2009, Wells Fargo mailed a document to V.A's home entitled "Home Affordable Modification Program Loan Trial Period." The plan, which was addressed to Mr. A, called for payments of \$1,280.43 due on August 30, October 1, and November 1, 2009. V.A talked with a Wells Fargo employee on the phone, and said that she would fill out the necessary paperwork and make the three payments. The Wells Fargo employee did not object. At the conclusion of the trial period, Wells Fargo refused to provide a permanent loan modification to V.A because she had mistakenly omitted 43 cents from her final payment. However, Wells Fargo accepted a fourth payment soon after, and V.A mailed in a separate check for the 43 cents. In all, V.A made a total of 15 payments of \$1,280.43 under what was supposed to have been a three-month Trial Period Plan. After not receiving an offer of a permanent loan modification, V.A filed a lawsuit against Wells Fargo in state court. During the litigation, Wells Fargo asked V.A to submit an application to assume the loan. V.A did so. Wells Fargo denied her application to assume the loan. Faced with a servicer and a loan holder who refused to modify the loan, V.A agreed to a settlement that involved the property going through the foreclosure process. The sheriff's sale took place on November 28, 2012. The sheriff's office appraised the property at \$98,000, so the minimum bid was \$65,334. A family member of V.A attended the sale and attempted to purchase the property. Wells Fargo repeatedly outbid the family member, whose highest bid was above \$155,000. Wells Fargo ultimately paid \$160,000 for a property that was appraised at \$98,000. Wells Fargo subsequently assigned the bid to Fannie Mae. Fannie Mae has now listed the property for sale through its HomePath program for \$74,900. In other words, Wells Fargo outbid V.A's family member at more than double the price it is now asking for the property.

STATE: South Carolina

SERVICER: Chase (former servicer)

SUMMARY: I have a case formerly involving Chase where I represent the non-borrower widow. Chase absolutely refused to offer a Freddie Mac trial plan (or modification) despite Freddie Mac's February 2013 Bulletin specifically allowing an assumption/modification for non-borrower surviving spouses. Chase claimed that a non-borrower could not receive a trial plan. And an assumption is not allowed where the loan is not current. Servicing subsequently was transferred to Bayview Loan Servicing, which did end up processing a trial plan.

STATE: California

SERVICER: Chase

SUMMARY: B.M made payments for five years on the home left to her by her mother upon her death, until she lost her job. She requested a loan modification through her servicer, Chase, but Chase refused to approve a modification without her dead mother's signature, despite knowledge of her death. A class action lawsuit was filed against Chase on B.M's behalf.

STATE: Missouri

SERVICER: Citi Mortgage

SUMMARY: A young woman moved in with her ill father to take care of him as he died of cancer. He alone was on deed and loan. He died without a will and never put his daughter on the deed. She continued making the mortgage payment until, even though employed full time, she could no longer afford it and became delinquent. She is working full time with childcare expenses and would need the \$700+ mortgage PITI payment modified to keep the home.

The attorney she consulted told her that if she went to probate court she would also assume her father's debt. The servicer will not speak to her because she is not on the loan and therefore I can't have the conversation either. She and her brother are the only survivors.

STATE: Hawaii

SERVICER: Bank of America

SUMMARY: Since 2008, Hawaiian Community Assets has been working on 1 specific case related to foreclosure/lease cancellation on Hawaiian Homelands. The homeowner, Ms. V.WK, has been unable to have her payments accepted for her mortgage despite sending the necessary checks directly to Bank of America. This stems from Ms. V.WK being identified as a “successor” to her deceased mother’s lease on Hawaiian Homelands, a standard process for Hawaiian Trust lands, but the lease transfer paperwork approved by the Hawaiian Homes Commission is not being recognized by Bank of America. As a result, Bank of America will not speak with Ms. V.WK, nor Hawaiian Community Assets about the case. Meanwhile, the family has been incurring fees and penalties upwards of \$45,000 since 2008. Hawaiian Community Assets has requested a loan assumption package multiple times with no action by Bank of America. We have reached out to the US Department of Interior, Consumer Financial Protection Bureau, and the Hawaii State Attorney General office to provide guidance on this case. The Hawaii Attorney General office is contemplating writing a letter to inform lenders to recognize standard lease transfer paperwork approved by the Hawaiian Homes Commission. This long, drawn out process has been emotionally, mentally, and physically draining on Ms. V.WK. She wants nothing more than closure on this case and her opportunity to rightfully assume her deceased mother’s loan, but despite her efforts, this has not been possible.

STATE: Texas

SERVICER: Aurora Loan Servicing, then Nationstar Mortgage

SUMMARY: RC was married to her husband when they bought the house. She was not on the Loan but was on the Deed as required in Texas for community property. SC was murdered in December of 2009 in Honduras. She was not aware of his death until a few weeks after it happened. They owned a business and when he died she lost everything.

In 2011, she came to me looking for help dealing with the servicer, Aurora Loan Servicing. Aurora would not talk to her because she was not on the loan. She submitted a Death Certificate from Honduras and the servicer wanted it in English. We had to explain that Honduras was not going to give us the document in English. Finally she filed for Intestate Probate and it took over a month to complete. The file was closed and transferred to another servicer.

The loan was transferred to Nationstar Mortgage in June of 2012. We had to start the process again with Nationstar Mortgage. This time we had the probate documents and submitted a complete file. On November of 2012 Nationstar offered her a 1 year "Interest Only" modification because she did not qualify for a HAMP. When the 1 year modification ended, her payment increased from \$1100 to \$2200 a month because the interest rate is back to 9.5%.

In April of 2014 she was in the process of starting a Short Sale and Nationstar contacted her and told her that she could apply for another modification to keep her home.

She came back to me and asked for help to reapply. We submitted a complete application to Nationstar. Nationstar is now asking for her to get proof that her husband's social security number is not being used by another person. We have sent them the Death Certificate and all Probate documents and still they insist that she get "Government" proof that the social security number belongs to a deceased person.

She has been trying to get information from the Social Security administration and they have told her that they can't do that but Nationstar says there is no way that they can move forward without the proof.

STATE: Florida

SERVICER: Nationstar Mortgage

SUMMARY: DS purchased a property with her grandfather. They held title to the property as Joint Tenants with the Right of Survivorship. Her grandfather died on November 2, 2012. By virtue of her survivorship, DS became the sole owner of the property at the time of her grandfather's death. She provided a copy of her grandfather's Death Certificate to Nationstar's purported predecessor in interest, Bank of America, within a month of his death. She also tried to talk to Bank of America about making payments pursuant to the terms of the mortgage and they would not talk with her because, although she signed the mortgage, she did not sign the note. She kept trying to call them but they would not speak to her. Nationstar took over servicing of the loan in or around March or April of 2013. DS called continuously and would stay on the telephone for an hour. She finally got them to agree to look at her grandfather's death certificate which was already in their possession and her deed. She sent her deed to Nationstar in November, 2013 but they still would not talk to her about the mortgage in general or her loss mitigation options. Nationstar continued to send correspondence regarding mortgage loss mitigation opportunities but each time DS attempted to contact them, they would refuse to talk with her because she did not sign the note. The case is in litigation and Nationstar is seeking to proceed with a foreclosure despite the fact that DS, the heir, has claims.

STATE: Illinois

SERVICER: Chase

SUMMARY: Client is JW, an elderly widow who has lived in her home for almost 40 years. Her husband died in 2010. Chase took her money for a while, then she fell behind. Now she wants to do a HAMP loan mod on the HELOC, which is not huge – so she should be able to afford it. But Chase is saying she has to go to probate before they are willing to talk assumption and modification. But she is not just an heir, she is also a surviving joint tenant. In Illinois, title automatically passes to a surviving joint tenant. We submitted an affidavit of surviving joint tenancy and said we wanted to assume and modify, and submitted a loan modification package. They have not responded to the package, but they are now saying (again) that she has to go to probate. And now they are saying they will soon foreclose (in 35 days) if she does not go to probate, which is completely unnecessary (and expensive).

STATE: Virginia

SERVICER: Bank of America

SUMMARY: Father was the borrower of a mortgage loan serviced by Bank of America when he died in January 2012. His daughter, BJ, was appointed as the administrator of his estate on February 2012. When father died, he was no more than one month behind on his mortgage payments. In the month following her father's death, BJ notified BoA, and several times sent proof of her qualification as Administratrix of his estate. BJ also called the Bank repeatedly seeking information and trying to work out options to deal with the mortgage and her father's house. BoA continued to treat her as an "unauthorized third party" and would not communicate with her about her options to preserve the property and avoid the foreclosure, even after she had notified them numerous times that she was the administratrix of her father's estate and, as such was entitled to be dealt with as the homeowner of the property subject to the mortgage. Despite BJ's multiple efforts to communicate with BoA, the Bank foreclosed on the mortgage without notifying BJ. It failed to provide her with the legally required notices of the right to cure and the notice of the foreclosure sale. After the foreclosure, the Bank finally acknowledged BJ's official position as administratrix of her father's estate. It repeatedly broke promises to her when she was trying to retrieve her father's possessions from the foreclosed-upon house. The result was that these possessions were lost to her.

STATE: New York

SERVICER: OneWest FSB

SUMMARY: My clients submitted a loan modification application to OneWest during the settlement conference process. OneWest refused to review the application unless my clients first reinstated the loan. Once the loan was reinstated, OneWest would then review their application for an assumption. OneWest made clear that my clients would have to be reviewed for an assumption and that such assumptions are not permitted as of right. If and when OneWest permitted my clients to assume the loan, it would then review their loan modification application. OneWest's insistence that my clients reinstate the loan before it will review them for an assumption would require my clients to pay to bring the loan current without any guaranty that they could then assume or modify the loan. We are now litigating this case.

STATE: Maine

SERVICER: Wells Fargo

SUMMARY: The homeowner in this case was my client's mother. She passed away in 2008. My client had been making payments for months after her passing, waiting for the estate to settle. He was on the title/deed and had signed the mortgage, but not the note. Through some conversation with the servicer it came to their attention that the mother had passed away, so they stopped dealing with my client altogether and stopped taking his payments. This put the loan into default, back in late 2008. We worked through the process of trying to get an assumption and loan modification in early 2011. At this point, there was already a significant arrearage which caused the property to be well under water. My client did finally get served as the executor of the estate. He's trying to do a simultaneous assumption/modification. Where we are with it right now is that he was declined based on affordability, but we feel that they looked at his income incorrectly. He is now married and has a business, and his spouse has an income. The mediator said that because it is such an unusual situation, she was adamant that they be allowed to submit a proposal to purchase the property at some type of discount. At this point, the unpaid principal balance is at around \$220k and the REO value is \$123k. My client was thinking of putting together a \$170k offer to buy the property. In short, my client is currently unable to modify the loan because of the amount of arrearage, caused by the servicer's refusal to deal with him for the better part of at least 4 years.

STATE: New York

SERVICER: Ocwen Loan Servicing

SUMMARY: Co-borrower W is separated from her male co-borrower. Both W's and the male co-borrower's names are on the mortgage and note. They were never married, but do have a child in common. W is a single head of household, working and raising their child alone. Only W contributes to the mortgage. The male co-borrower does not live in the house.

W fell behind on the mortgage and was offered a modification. The male co-borrower, however, would not sign the modification agreement without payment. W and the co-borrower are now in foreclosure. The male co-borrower will only agree to help stop the foreclosure if W pays him \$50,000 cash.