

Rohit Chopra, Director
Consumer Financial Protection Bureau
1700 G St., NW
Washington, DC 20552

September 27, 2022

Dear Director Chopra:

On behalf of the low-income clients and communities we represent, we urge the Bureau to take swift action against the loan holders, debt collectors, and mortgage servicers that are violating the Fair Debt Collection Practices Act (FDCPA), the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) in their handling of “zombie” second mortgages. Through their abuses, these companies are stripping equity and wealth from low-income communities, communities of color, and older homeowners that disproportionately have these loans. We would like to meet with you to further discuss the abuses homeowners are facing and the actions the Bureau can take.

Zombie Mortgage Problems Developed out of the Subprime Boom, Disproportionately Affecting Communities of Color, Low-Income Homeowners, and Older Borrowers.

“Zombie” second mortgages have their origin in the subprime mortgage crisis. In the years before the Great Recession, many subprime lenders did not require the typical 20% down-payment to purchase a home and put borrowers in “80/20” loans—a first lien loan for 80% of the purchase price, and a second for 20%. This was marketed as a “no money down” loan to borrowers who did not realize that they were financing the down-payment with a high-risk second loan, [originated with disregard for industry underwriting standards](#). It also eliminated the need for mortgage insurance that was typically required on subprime loans for borrowers making a down payment of less than 20% of the purchase price of the home. Subprime lenders also refinanced borrowers who had first lien loans with adjustable interest rates into 80/20 loans, providing a fixed interest rate on the first loan and a second loan that could provide cash out to the borrower and also eliminate the need for any required mortgage insurance. Home equity lines of credit, “HELOC” loans, were also marketed aggressively while property values were on the rise during the early 2000s as a way for homeowners to access cash to pay for home repairs or bills. These second lien loans often were toxic with high interest rates, prepayment penalties, and balloon payments. Careless underwriting and predatory loan terms led to early defaults. Those affected were [disproportionately communities of color](#) and lower-income borrowers. Millions of o as a result of subprime lending abuses.

When housing values plummeted, many owners of delinquent second mortgages ceased communicating with borrowers and wrote off and sold the loans. Foreclosing would not have generated enough money to cover the second mortgage, let alone the first. Many borrowers did not hear anything about their loans for ten years or more and believed their second mortgages had been discharged in a bankruptcy, modified with their first mortgages, or forgiven. Others attempted to make payments but could not ascertain where to send payments. Many did not

realize they had a second mortgage because of the confusing 80-20 loan structure. All the while, interest and late fees have silently continued to accrue.

After years of lying dormant, these “zombie” second mortgages are now awakening. The owners and servicers of these loans are taking advantage of rising housing prices by demanding the entire loan balances due plus interest and fees.

The harsh consequences of a second mortgage foreclosure can catch even sophisticated consumers by surprise. When a second mortgage is in default, the second mortgagee can foreclose and terminate all the homeowner’s rights in the property – even if the homeowner is current on the first mortgage. A foreclosing second mortgagee can either cause the property to be sold, paying off the first mortgage and applying the remaining equity to the second mortgage, or do nothing for now and leave the first mortgage in place. With the first mortgage still in place the second mortgagee can use the threat of foreclosure as powerful leverage to extract payments from the homeowner. The recent rise in housing values has increased equity in homes, making it an ideal time for second mortgagees to threaten foreclosures. **Despite surviving the last foreclosure crisis and then the financial challenges of the COVID-19 pandemic, borrowers are now at risk of losing their homes and the equity they have earned.**

Second mortgage holders are using the lien on the property as intense leverage to coerce homeowners into paying on the loan. Not only are they threatening to foreclose after years of silence, many are unwilling to offer affordable options to bring the loans current. Modification offers often include:

- A capitalized new principal balance for which the mortgagee cannot account or produce a payment history, with
 - a modified balance that is significantly higher than the original loan amount; and
 - a modified balance that is much higher than the amount alleged owed just a few weeks before;
- Interest rates as high as 10% or more;
- Balloon payments;
- Extension to a 40-year term; and
- Large initial payment requirements of \$20,000 or more.

This leaves most borrowers with the untenable choice of either entering into an unsustainable modification option or losing their home.

Case reports of borrowers affected by these unfair practices can be found in Appendix A. For example, a low-income Latina single mother mistakenly believed the second mortgage of an 80/20 loan was discharged when she got a HAMP modification in 2010 and she stopped receiving any correspondence on the second. More than a decade later, she started getting multiple harassing calls from a debt collector threatening to foreclose if she didn't start making payments on the second mortgage. They claimed she owed the original principal balance plus over ten years of interest and fees. The stress of potentially losing her home along with other challenges exacerbated her underlying mental health issues and she had to be hospitalized for several months. The debt collector offered her a modification, which she could not afford but, desperate to save her home, signed anyway. She has since fallen into default on that modification and is facing foreclosure.

Zombie Mortgage Practices Violate Many Consumer Protection Laws

Owners and servicers of zombie seconds are violating many consumer protection statutes by failing to provide communication about the debt for years and then suddenly demanding an exorbitant amount due with a threat of foreclosure. Many servicers and certain debt buyers and attorneys are debt collectors under the FDCPA. When debt buyers purchase these loans, they obtain minimal documentation about the transaction history of the loan. They cannot verify the correct amounts paid, credited, and due over the life of the loan and misrepresent to borrowers amounts alleged due in violation of the FDCPA. Attempts to collect without providing any statements or disclosures for years are also unfair under the FDCPA. In some states, the debt is beyond the statute of limitations for collection, and the collector is pursuing the debtor without complying with Regulation F.

Owners and servicers also systematically violate TILA by failing to provide communications such as periodic statements and change of loan ownership notices, often over many years. They routinely violate RESPA by failing to provide notices of transfers of servicing rights, ignoring qualified written requests, ignoring early intervention and loss mitigation rules, and failing to maintain records of account transactions. The Bureau promulgated these important servicing rules in order to protect consumers from exactly this type of conduct – the failure to give borrowers the essential information they need to understand their rights and responsibilities under mortgages and to have the opportunity to act to avoid foreclosure.

The CFPB Should Address Zombie Mortgage Abuses

This is an urgent, significant issue affecting homeowners now, particularly lower-income borrowers, older borrowers, and homeowners in communities of color. These homeowners struggled to keep their homes during the last foreclosure crisis and most likely suffered harm due to the pandemic only to be dealt another blow with a foreclosure of a long-dormant mortgage. We urge the Bureau to use its authority to address these zombie second mortgage abuses.

We appreciate the Bureau's persistent efforts to help protect consumers from abusive debt collection and mortgage servicing practices. We look forward to meeting with you to discuss these issues further. For further discussion and for setting up a meeting, please contact NCLC attorney Andrea Bopp Stark at astark@NCLC.org.

Sincerely,

National Consumer Law Center (on behalf of its low-income clients)
Americans for Financial Reform Education Fund
Center for Community Progress
Center for Responsible Lending
Coalition for Social Justice (MA)
Community Legal Services of Philadelphia (PA)
Connecticut Fair Housing Center
Consumer Action

Empire Justice Center (NY)
Greater Boston Legal Services (MA)
Housing and Economic Rights Advocates (CA)
Jacksonville Area Legal Aid (FL)
Legal Action Chicago (IL)
Legal Aid Society of Southwest Ohio, LLC
Legal Aid Society of the District of Columbia
Legal Services for the Elderly (ME)
Long Island Housing Services, Inc. (NY)
Mid-Minnesota Legal Aid
Mountain State Justice, Inc. (WV)
National Community Reinvestment Coalition
National Community Stabilization Trust
National Disability Rights Network (NDRN)
National Fair Housing Alliance
National Housing Law Project
National Housing Resource Center
NHS Brooklyn CDC, Inc. (NY)
North Carolina Justice Center
Prosperity Now
Public Counsel (CA)
Revolving Door Project
Senior Citizens' Law Office, Inc. (NM)
United South Broadway Corporation (NM)
Urban Edge Housing Corporation (MA)

APPENDIX A: Zombie Second Mortgages Examples from Legal Services Advocates

California

Greater Los Angeles

1. An African-American male homeowner, Mr. E. stopped receiving notices on his second mortgage after filing for bankruptcy in 2010. He mistakenly believed the loan had been discharged. Mr. E. had not heard anything about the loan until 2020 when a debt collector demanded the full balance due. He was offered a loan modification, but he lost his job soon after and was unable to accept the loan modification. In May 2022, a Notice of Default was recorded, demanding payment of about \$99,000 to bring the loan current. Mr. E. requested a loan modification, but the only offer requires an up-front payment of about \$30,000 and a \$54,000 balloon payment due in 2046. He is current on the first mortgage and has substantial equity in his property that he risks losing. The loan servicer is Specialized Loan Servicing.
2. A monolingual Spanish-speaking Latina woman, Ms. C., age 62, filed for bankruptcy in 2013 because she mistakenly thought her second mortgage would be discharged. Following the bankruptcy, she did not receive any notices regarding the second mortgage. In February 2022, she received a letter from the new loan servicer, Specialized Loan Servicing, that she was required to pay about \$223,000 to prevent foreclosure of her home. She is current on her first mortgage and cannot afford to pay any additional amount on the second mortgage. She stands to lose substantial equity that has accumulated over the years.
3. As part of a refinance, an African-American borrower took out a second mortgage in 2007. In 2014, she fell behind on mortgage payments, but was approved for Keep Your Home California assistance for her first mortgage. She has remained current on her first mortgage. She does not remember receiving any monthly statements about the second mortgage until March 2020 when she received a letter from the new servicer, Planet Home Lending (PHL), that she was behind on her second mortgage. She ignored the letter because she had never heard of PHL. She then received subsequent letters saying her home would be sold if she did not pay the arrears. PHL then recorded a Notice of Default and a Notice of Trustee's sale. With the help of legal services, the borrower tried to negotiate a settlement but PHL only offered an unaffordable loan modification that capitalized the prior interest. PHL also refused to extend

the time for the client to sign the modification to allow her time to explore her options. Faced with an imminent sale, the client signed the unaffordable loan mod. The creditor was BCMB1 Trust.

Greater Oakland

4. A Spanish-speaking borrower, H.R., has a second mortgage, recently serviced by Specialized Loan Servicing that originated as part of an 80/20 loan in 2006. The first mortgage had an adjustable rate that increased from 3.6% to 8.5% and the second had an interest rate of 10.75%. Both loans were originated by Countrywide. The borrower got a loan modification with Bank of America in 2012 on his first mortgage and thought the loan modification was for both the first and the second. H.R. has remained current on the first. He never got any periodic statements after the 2012 modification until a few months before the total debt was due on the second in 2021. By then the amount due had ballooned to a debt that was twice the original loan. Desperate to save his home, H.R. refinanced to pay off the entire amount alleged due by SLS, thereby substantially reducing his equity.
5. Ms. P. purchased her home in 1993 and obtained a home equity line of credit in 2006. The loan had a variable interest rate starting at 9.875%. Ms. P. made payments on the loan until 2010. She stopped receiving mortgage statements and when she tried to make a payment, it was rejected. She could not figure out where to send payments. She learned in 2018 that Specialized Loan Servicing LLC ("SLS") was the servicer of the loan. Ms. P. wanted to refinance the loan and asked for a payoff amount. SLS alleged she owed almost \$200,000 even though she had only taken out \$45,000 on the line of credit. She was denied the financing because of the inflated amount. SLS continues to send statements to Ms. P. alleging \$100,000 principal due and almost \$100,000 in past due interest. Ms. P cannot afford to pay this amount and is worried they will take her home.

Georgia

6. Ms. K., a 64-year-old African-American woman, received a first and second mortgage in 2005 to purchase her home. The second mortgage had a balance of \$43,000, prepayment penalty, interest rate of 10.875%, 15-year term, and balloon payment of \$37,000. By 2010, she fell behind on the mortgages. She received a modification on the first mortgage in 2013 and has remained current on that loan. At the time of the modification, she did not receive any statements

on the second mortgage. She thought the second mortgage was included in the modification or was otherwise written off. She did not hear anything about the second mortgage until 2021 when FCI Lender Services demanded an amount of \$87,000. Ms. K thought this was a scam- she had never heard of FCI. She also received a modification offer from United Asset Management with a new principal balance of over \$90,000. She was confused by this and did not accept the offer. She then received a foreclosure notice and her home was scheduled for foreclosure on December 7, 2021. Luckily, she was able to connect with legal services and negotiate a resolution.

Illinois: Greater Chicago

7. Mr. V. is a Black senior male who had filed bankruptcy in 1999. He mistakenly thought the second mortgage was discharged and he has not made a payment since then. He continued to pay on his first mortgage. He received one letter in 2016 from a debt collector about the loan suggesting he sell the home or apply for federal assistance to bring the loan current. After that, he did not hear anything about the loan until recently. One of the original holders of the loan went out of business and this loan sat with the FDIC for several years and then was sold to a debt buyer. Mr. V. was sued for foreclosure in 2019 – 10 years beyond the statute of limitations. The debt buyer fabricated a 2009 default date in their foreclosure complaint to avoid the statute of limitations. By 2019, the client was a senior and had paid off his first mortgage and thought he owned his home outright. His home is worth over \$200,000. The threat of losing his home when he is on an income of social security benefits is very distressing.

Maryland: Greater Baltimore

8. Ms. A, who does not speak English, purchased her home over 15 years ago with an 80/20 mortgage. The interest rate on the second is almost 10%. About 1 year later, she filed for Chapter 7 bankruptcy and mistakenly believed that the bankruptcy would get rid of the second mortgage. About a year after that, she received a loan modification of the first mortgage and believed the modification included the second mortgage but it did not. For nearly 10 years after this, she did not receive mortgage statements on the second mortgage. When the servicing switched to Planet Home Lending, the current servicer, she began receiving statements demanding the full balance due. When she could not pay, the servicer filed a foreclosure case against her. The interest that has accrued on this second mortgage is now more than the original principal amount. She is current on her first mortgage and has about \$250,000 in equity which the second

mortgage would substantially decrease. She is working with legal services to resolve the debt.

9. Ms. B, whose native language is not English, purchased her home over 15 years ago with an 80/20 mortgage. The interest rate on the second was almost 11%. About 5 years later, she filed for Chapter 7 bankruptcy. About 2 years after that, she received a loan modification of the first mortgage. She believed the second mortgage had either been discharged or modified with the first. She does not remember receiving any statements after the modification. Her current servicer is Real Time Resolutions. She is current on her first and has around \$200,000 in equity in the property without the second mortgage.

Massachusetts: Greater Boston

10. Mr. E, a Black middle-aged man, owns a triple decker property, which has been in his family for over 5 decades. He is not only a community organizer that fights for housing justice every day, but is also a low-income housing provider as he rents out the other two units to Section 8 voucher holders. He entered into an 80/20 loan on the property and thought his second mortgage was discharged 10 years ago. He had not heard anything about the loan until the start of the pandemic when he started receiving statements and calls to pay on the second mortgage. Originally, he believed this was a scam. It was only after he received the pre-foreclosure notices that he reached out to legal services. Since then, he has been trying to negotiate with the zombie second mortgage servicer, Planet Home Lending, including offering \$25k from the City of Boston and an additional \$10k from the homeowner, to discharge the loan, which has been rejected. He is current on his first mortgage. There is at least \$300,000 in equity in his home.
11. A low-income Latina single mother mistakenly believed the second mortgage of an 80/20 loan was discharged when she got a HAMP modification in 2010 and she stopped receiving any correspondence on the second. More than a decade later, she started getting multiple harassing calls from an unlicensed debt collector, First American National LLC, threatening to foreclose if she didn't start making payments on the second mortgage. This, along with other stressors, exacerbated her underlying mental health issues and she had to be hospitalized for several months. The debt collector offered her a modification, which she could not afford but, desperate to save her home, signed anyway. She has since fallen into default on that modification and is facing foreclosure.

New York

Queens

12. Mr. and Mrs. B-E live with their three children in a home in Cambria Heights which they bought in 2005. The purchase consisted of two mortgages: an 80/20 loan through WMC Mortgage Corporation. Soon after the purchase, they were contacted by Countrywide and warned that the interest rates on their loans would soon adjust and the monthly payment would increase substantially. They were convinced they had to refinance right away. They refinanced into two separate mortgages in 2006. The second mortgage had an interest rate of 8.25%. They fell behind on the loans in 2008. They received a loan modification on the first mortgage and stopped receiving monthly statements on the second mortgage, leading them to believe it had been modified into the first mortgage. They started receiving notices in 2019 from a company they had never heard of and thought it was a scam. In 2020, they were sued for foreclosure by BCMB1 Trust, the new owner of the loan, and the complaint sought many payments that are barred by New York's 6-year statute of limitations. The original loan was \$37,450 and now BCMB1 is alleging over \$79,000 due. Mr. and Mrs. B-E are shocked, confused and terrified that they could lose their home.

13. Mr. R lives with his three children in Ozone Park. In 2006 he bought a home with "no money down." Countrywide gave them an 80/20 loan. The second loan had an interest rate of 8.5%, a prepayment penalty, and a balloon payment due at maturity. He fell behind on the loans and modified the first. He stopped receiving statements on the second shortly thereafter and believed it had been consolidated into the modification. It was not until 2019 that he started receiving collection notices from SN Servicing that he had to pay over \$69,000 to cure the default. He then received a summons and complaint for foreclosure in 2020 from the new owner of the loan, BCMB1 Trust. SN Servicing alleged he owed over \$150,000 on a loan with an original balance of \$79,000. He is anxious, depressed, and terrified of losing his home.

Brooklyn

14. Mr. C. and Mrs. P, husband and wife, live with their two children. They are Spanish-speaking. They bought their home in 2006 and were persuaded shortly thereafter to refinance their loan with Countrywide. They did not realize they were entering into two separate loans. The second loan has an interest rate of 9.5%. Mr. C and Mrs. P. did not receive any statements for the second mortgage until 2021, when they received a summons and complaint for a foreclosure action on the second mortgage. They had never heard of the Plaintiff, BCMB1 Trust, the new owner of the loan. The complaint sought payments from 2009 to the present, many of which were beyond New York's 6-year statute of limitations. The fear of losing their family home of over 15 years has caused them extreme distress.

15. Mrs. J., a retired senior, lives in her home with her husband. She purchased her first home in 2006 and only later learned she had been given two loans—an 80/20 transaction. The second loan had an interest rate of 11.5%. She soon fell behind on the mortgage payments but was able to modify the first. She stopped receiving statements on the second and believed it had been consolidated into the first modification. She did not receive communication regarding the second loan until 2021 when SN Servicing sent her an attempt to collect on the loan, including payments barred by New York’s 6-year statute of limitations. When she could not pay, she was served with a foreclosure complaint from NS194, LLC, the new owner of the loan. Mr. J. is distressed, panicked, and extremely worried she will lose her home.
16. Mr. and Mrs. P live with their three children. They purchased their home in 2005 and soon thereafter Mrs. P. refinanced into a first and second mortgage to lower her payments. The second loan had a 9% interest rate. She made payments until 2008 until she received a letter from Bank of America in 2010 saying she did not need to make payments on the second anymore. She stopped receiving monthly statements on the second after that. She modified her first mortgage in 2011 and remained current. In 2021, she was shocked to receive a foreclosure action from NS194, LLC, the new owner of the loan. The loan servicer is seeking over \$130,000 on a loan with an original balance of \$63,000. Mrs. P. is devastated, concerned, and shocked that she could lose her home.

The Bronx

17. Mr. and Mrs. O live with their three children. Mr. O. is a retired senior. The couple purchased their home in 2006 and at the time did not realize they were getting two loans. They also provided a down-payment of \$20,000 when they bought the home. The second loan had a 10.5% interest rate. When they found out, the mortgage broker told them that if they could pay for three months, the loans could be combined with one single payment. This did not happen and they fell behind on the loans. They received a modification for the first mortgage in 2011 and did not receive any statements on the second mortgage after that. They did not hear anything from the second loan until SN Servicing sent a notice in 2021 alleging they owed over \$100,000 on the second loan. Soon thereafter, the new owner of the loan, NS 194, LLC filed a foreclosure action against them seeking payments dating back to 2009. They are frightened of losing the home they have worked so hard to maintain for their family.

18. Mr. S. bought his home in 2004 and replied to a solicitation in 2006 for a second mortgage to help make repairs on his home. The second loan was for \$70,000 and had an 8.6% interest rate. He fell behind in 2008 on both loans but was able to get caught up on the first. He stopped receiving statements on the second loan until 2021. He received a mortgage statement and then a foreclosure complaint from STAR201 LLC, the new owner of the second mortgage. The current mortgage servicer is claiming he owes over \$160,000 now. Mr. S. is stressed, depressed, and fearful of his uncertain future.

Buffalo

19. Mrs. L. lives with her husband Mr. L. She purchased her home in 2005 with an adjustable rate mortgage. In 2007, she refinanced her loan to try to get a more affordable payment. Countrywide convinced Mrs. L. to enter into an 80/20 loan, the second having an interest rate of 9.25%. She fell behind on her loans in 2008 and received a modification on her first loan. After that, she stopped receiving mortgage statements on the second loan. She started to receive collection demands in 2020 but had not heard from the company and thought they were incorrect. She was served with a foreclosure in 2021 from BCMB1 Trust, the new owner of the loan, seeking amounts due from 2010 that included installments barred by New York's 6-year statute of limitations. She is confused, embarrassed and distressed about losing her home.

Virginia

20. Ms. D lives with her daughter and granddaughter in Henrico County. She bought her home using two mortgages. The second mortgage was for \$34,000. She made payments on the second mortgage through 2011 when she stopped receiving monthly statements for the loan. Her loan was transferred to a new lender but she did not receive any notice for the loan until 2021. FCI Lender Services LLC (FCI) sent her a past due notice alleging over \$66,000 due. FCI continued to send statements with increasing balances totaling over twice the original amount of the loan. The owner, United Asset, has now initiated a non-judicial foreclosure sale of her home.