



## WHAT IS A ZOMBIE SECOND MORTGAGE?

During the Great Recession, borrowers who had entered into second mortgages with predatory terms, such as interest rates that adjusted upward after only a few months, often found themselves unable to make the payments. Because housing values had dropped so much, and foreclosure on a second mortgage results in payment to the lender only if money is left over



after the first mortgage is paid in full, these lenders typically did not foreclose. Many lenders eventually sold the loans to debt buyers who let the mortgages continue like sleeping zombies on the borrowers' homes, in the hopes that property values would increase.

And voilà, in the last two years, housing values have skyrocketed. **The zombies have awakened and are eager to get paid by foreclosing on borrowers' homes.**

## HOW CAN BORROWERS DEFEAT THESE ZOMBIES?

There are several strategies borrowers can use to fight zombie second mortgage foreclosures. These include the following:

- **Statute of Limitations:** Many states limit how long a lender has to foreclose on a mortgage. While some states have no limit, many states set between 6-20 years as the period for a lender to foreclose. This period can begin after each missed monthly payment or when the loan is accelerated or has reached its maturity date. **See NCLC's Home Foreclosures § 5.3.1 & § 11a.2.**
- **Authority to Foreclose:** Just as with first mortgages, a lender must have proper authority to enforce the mortgage. Debt buyers may not have policies in place to ensure they have proper assignments, endorsements, and accounting of the amounts owed. **NCLC's Home Foreclosures Chapter 2, Chapter 3, and Chapter 4; § 11a.3.**
- **The Truth in Lending Act and Real Estate Settlement Procedures Act** require lenders and servicers of the mortgage to provide certain disclosures to borrowers when the loan is sold and servicing of the loan is transferred. TILA also specifies when servicers have to send monthly account statements to borrowers and when they can charge past-due interest. Many borrowers have not received a monthly statement in years. **See NCLC's Home Foreclosures §§ 11a.4.2; 11a.4.3; § 11a.4.2.**

- **The Fair Debt Collection Practices Act** prohibits the servicer/debt collector from attempting to collect past-due interest that it is not entitled to or threatening to take an action it cannot legally carry out. See [NCLC's Fair Debt Collection §§ 7.4.11, 8.3, and 8.6](#).
- **State UDAP Statutes:** It can be unfair and deceptive for a debt buyer to lie in wait without any communication to a borrower for years until housing prices increase and then out of the blue, foreclose on the property. See [NCLC's Unfair and Deceptive Acts and Practices §§ 4.2.15, 4.3.3, 4.4](#).
- **Laches and Equitable Defenses to Second Mortgage Foreclosures:** Servicers' failure to provide any communication about amounts owed for years led many borrowers to believe the loan was written off or had been modified with their first mortgage. The servicers' conduct can be the basis for a claim of laches or unclean hands. [NCLC's Home Foreclosures § 11a.8](#).
- **State Law General Foreclosure Requirements:** Many states require lenders to fulfill specific preconditions, such as giving a specific type of notice, before foreclosing. Debt buyers may be unfamiliar with these requirements. [NCLC's Home Foreclosures § 11a.10](#).
- **State Laws that Specifically Regulate Second Mortgages:** These laws limit default-related charges and limit the amounts of interest that can be collected if a lender violates the law. [NCLC's Home Foreclosures § 11a.10.1](#).
- **Bankruptcy** can be used to temporarily stop a foreclosure, create a plan to pay back the arrears, challenge the amounts the lender alleges due, and possibly strip off the entire lien. [NCLC's Home Foreclosures § 11a.11](#).
- **Loss Mitigation Options:** Borrowers may be able to modify the mortgage to bring the loan current and get a more affordable payment. [NCLC's Home Foreclosures § 11a.5](#) outlines the major servicing options that cover junior mortgages.

