

The logo for HERA (Housing and Economic Rights Advocates) is displayed in large, bold, orange capital letters. It is positioned in the upper left corner of the page, overlaid on a photograph of a sunlit porch with a floral chair and a white bird.

housing and
economic
rights advocates

Whose Home Is It Anyway? How The Modern Mortgage Servicing Industry Strips Wealth From Low and Moderate Income Communities In the U.S. And California

Maeve Elise Brown, Esq., Executive Director

Housing and Economic Rights Advocates (HERA)

Oakland, California, melisebrown@heraca.org

Working Paper, June 2016

Asset Building, Preservation and Organizing Series

Introduction

Where other reports discuss such costs to seniors as home repairs, medical bills, property taxes, and a plethora of other expenses that can affect seniors' ability to keep their home, this issue brief seeks to fill in a gap in the discussion by

focusing on the hardship faced by survivors trying to keep the family home after a loved one has passed away. HERA is uniquely positioned to share the reality of residents experiencing the problem. HERA is a California statewide provider of legal services that works directly with several thousand California households individually each year, provides technical assistance and trainings to other advocates and agencies statewide and nationally, interacts with local, state and federal government, as well as advocates nationally, and engages in organizing and policy work. This working paper also

summarizes some of the mechanics of our campaign to address one of the most important threats to asset preservation for low and moderate income communities that our country has seen since the Great Recession.

You're A Homeowner Now- So What's The Problem?

Congratulations, Dear Readers, you've made it! Many of you have already bought your first home. Why did you do it? Well, if you are like most homebuyers in the United States, you plan to live in that home. Your spouse or significant other is going to live there with you. You probably bought the home together, with both on title as owners. There's a good chance that only one of you is on the mortgage debt for the house, since one of you has much better credit and a stronger work history. You have dreams of helping your kids, or maybe your sister's kids, go to college, or of making your small business your baby to which you devote your time and energy— or both. You picture your home as your base, your stability, your financial present and your financial future. You dream of traveling, but you also dream of retiring and living out your days till you die in your home.

The starting place for this paper is this shared dream of people across the United States. It is a dream with important and tangible implications for all those who share it. The dream depends on the public believing that homeownership is a relatively safe investment for their precious dollars, time and energy. It depends on the belief that homeownership is the way that a person can live a happier, safer life as an older person after retirement. It depends on the belief

that a homeowner can pass the family home to the loved ones of his or her choosing, with the family home as the financial legacy from which subsequent generations can benefit. This working paper discusses a phenomenon that casts a pall on that shared dream; the phenomenon of how mortgage servicers manage the collections process when the mortgage borrower dies.

Many mortgage servicing companies are refusing to talk to surviving homeowners or heirs to the family home about the basics of what it takes to keep that home. It is not unusual for just one person out of a couple to be on the mortgage debt. In many households, one person is the primary breadwinner or has better credit. That one person ends up on the mortgage loan. In the most typical scenario, the surviving widower or widow needs a loan forbearance (payment holiday with arrears added to the back of the loan) or loan modification because loss of much of the household's income with the death of the spouse or partner has made it difficult or impossible to keep up with current mortgage payments. Across America, right now, and every week, there are mortgage servicers (collection companies) that refuse to talk to the surviving widow or widower about assuming (getting their name added to) the mortgage loan. The servicers' staff-people say that it is because they are obligated to protect the privacy of the dead spouse.

This mind-boggling response, consistently given by servicers across the United States, would mean that the only way homeowners could ever make sure that a loved one or anyone of their choice got to hold onto the family home was if

that person was on the mortgage loan at the time the borrower died. Deciding to whom to leave the family home would no longer be a matter of choice. Homeowners would not be able to count on their legal rights as owners of the property to pass that property to someone. What servicers have, de facto, required is that only someone already on the debt—not just on title, but on the debt—be allowed to keep the family home.

In California, most spouses and partners own the home as joint owners with right of survivorship. Those who do not have, instead, family trusts that specify the beneficiary (ies) to whom the home passes when the creator of the trust dies. Mortgage servicing companies have, essentially, declared that our basic state laws regarding how property is passed are just not good enough. By virtue of refusing to discuss loan assumption or modification or other ways of hanging onto the family home with anyone not already listed on the mortgage debt, mortgage servicing companies have deprived many homeowners and heirs to the home of their property rights. Only someone already listed on the mortgage debt gets information and assistance.

The cruelty and apparent arbitrariness of this mortgage servicer behavior makes their actions almost impossible to believe. Why would a mortgage servicer refuse to talk to a homeowner about how to keep payments current on the family home or make payments more affordable so the homeowner could stay current? Doesn't it hurt the mortgage servicer to have another foreclosure? Clearly the surviving homeowner must be lying about what the servicers are saying because it makes no sense that a mortgage

servicer would not be working hard to stop foreclosure.

Does that sound familiar? It should. This is the exact same logic that mortgage servicers tried out on the public during our most recent foreclosure crisis.

The National Mortgage Settlement of 2012 (NMS) came about as a combined state and federal effort to address well-documented mortgage servicing abuses that, at the end of the day, were all about mortgage servicers not following loan modification rules and not investing the necessary staff time to comply with rules. At the end of the day, this is the same reason for abuse of surviving homeowners. Abuses addressed by the NMS include “robo-signing”, which is the practice of signing foreclosure documents without verifying whether a foreclosure is even valid or appropriate, as well as “dual-tracking” homeowners by foreclosing while supposedly also considering for a foreclosure avoidance alternative, and the practice of having employee compensation policies that promote foreclosure over foreclosure avoidance alternatives like loan modification. The \$25 billion settlement was against Ally Financial, Bank of America, Citigroup, JPMorgan Chase and Wells Fargo, who serviced almost 60% of all mortgages in the United States.¹

¹ National Mortgage Settlement Summary, (2012), National Conference of State Legislatures, at <http://www.ncsl.org/research/financial-services-and-commerce/national-mortgage-settlement-summary.aspx>

A key element of the NMS was the creation and imposition of mortgage servicing standards to “make foreclosure a last resort by requiring servicers to evaluate homeowners for other loss mitigation options first...”² This striking element of the NMS highlights the fact that mortgage servicers were not willing to spend the time necessary to implement loan modification or other foreclosure avoidance options for homeowners. Regulators found it necessary to specifically adopt a very detailed set of do’s and don’ts for these largest mortgage servicers because, absent detailed rules, servicers were choosing to foreclose on homeowners rather than work with them. Much of the industry has proven that, without specific rules mandating that they work with homeowners to avoid foreclosure, foreclosure is their first choice.

Homeownership For Low and Moderate Income Residents- Health and Wealth Effects

Following the financial collapse and foreclosure crisis that sparked the Great Recession, rates of homeownership on average across the country fell significantly. But, even in 2009, out of the 23.1 million households nationally headed by individuals age 65 or older, a whopping 18.5 million were homeowners.³ In 2011 and 2012,

² See *\$25 BILLION MORTGAGE SERVICING AGREEMENT FILED IN FEDERAL COURT* (2012), Department of Justice, at <https://d9klfgibkcquc.cloudfront.net/Settlement-USDOJ-FILING-news-release.pdf>. Court documents at http://justice.gov/opa/opa_mortgage-service.htm.

³ 65+ in the United States: 2010, (June, 2014), p.84, U.S. Census Bureau, at

that figure was still over 80 % for White homeowners over age 65,⁴ while ownership rates for people of color also remained steady at or near pre-crash levels of 58-70 %.⁵ “Among adults aged 50 and over, 82 % of whites own homes, compared with just 58 % of blacks, 62 % of Hispanics, and 70 % of Asians.”⁶

Troubling race-based disparities aside, homeownership has been a powerful tool for wealth-building for households. In California, the total number of seniors in our population is predicted to rise faster than the total population over the next five year.⁷ Homeownership was one of the primary ways in which low and moderate income households, particularly women and people of color, built wealth in the United States.⁸

<https://www.census.gov/content/dam/Census/library/publications/2014/demo/p23-212.pdf>

⁴ *Id.* at 85-86.

⁵ *Id.* at 87.

⁶ *Housing America’s Older Adults: Meeting the Needs of An Aging Population*, (2014), p.4, Joint Center for Housing Studies, at

http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-housing_america_s_older_adults_2014.pdf

⁷ See *Data and Statistics-Facts About California’s Elderly*, California Department of Aging at

http://www.aging.ca.gov/data_and_statistics/facts_about_elderly/

⁸ *Is Homeownership Still an Effective Means of Building Wealth for Low-income and Minority Households? (Was it Ever?)*, (2013), Joint Center for Housing Studies, Harvard University, at

<http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/hbtl-06.pdf>

Home equity is among the most significant sources of wealth for seniors, especially for low-income and minority homeowners. Data from the 2010 Health and Retirement Study show that the mean home equity for all older homeowners nationally was \$125,000 and the typical older owner-occupied household had housing equity more than twice as high as its annual income.⁹

We know from the Great Recession's impact and prior financial crashes in the U.S. that homeownership may not be the safest form of wealth building. After rampant inflation of home values, the bubble burst, leaving homes massively devalued while homeowners continued to carry debt that greatly exceeded the new, lower value of the home. While almost all low and moderate income homeowners in the U.S. suffered as a result, households of color bore the brunt of the ensuing losses. "From 2005 to 2009, inflation-adjusted median wealth fell by 66% among Hispanic households and 53% among black households, compared with just 16% among white households."¹⁰ Although in the past 24 months, home values have risen again astronomically in some parts of California,

much of our state, especially in our Central Valley with significant numbers of people of color, down through Kern County, and in Imperial County and parts of Riverside and San Bernardino Counties in Southern California, home values remain under water.¹¹ The significant number of California's homeowners who owe more than their house is worth are trapped; they cannot sell the home for as much as they owe, in mortgage debt nor can they refinance. If the family member on the mortgage loan passes away, the surviving homeowner or other successor in interest will have no option for retaining the family home other than assumption and/or assumption and modification.

Nevertheless, home equity has been and, at this moment, is still the most significant source of wealth for low-income and minority homeowners. Nationally, housing accounts for more than three-quarters of the assets of senior homeowners in the lowest income quintile, and similarly two-thirds of the assets of the median black homeowner over age 50.¹² Furthermore, the housing wealth of low-income older adults is critical for the wealth accumulation of those seniors' broader families and communities.¹³

⁹A profile of *Housing and Health Among Older Americans, Research*, (2013), p.15, Institute for Housing America at http://www.housingamerica.org/RIHA/RIHA/Publications/86310_13205_RIHA_Senior_Housing_Paper.pdf

¹⁰ *Wealth Gaps Rise to Record Highs Between Whites, Blacks, Hispanics*, (2011), Pew Research Center at <http://www.pewsocialtrends.org/2011/07/26/wealth-gaps-rise-to-record-highs-between-whites-blacks-hispanics/>

¹¹ See *U.S. Housing Crisis*, Zillow at <http://www.zillow.com/visuals/negative-equity/#4/39.98/-106.88>

¹² *Housing America's Older Adults*, (2014), The Joint Center for Housing Studies at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-housing_americas_older_adults_2014.pdf

¹³ Mallach, Alan, *Building Sustainable Ownership: Rethinking Public Policy Toward Lower-Income Homeownership*, (2011), Federal Reserve Bank of Philadel-

Many seniors, both low and moderate income, build housing equity over time with the goal of transferring their housing wealth to the next generation. When successful, a transfer of housing wealth can be a tool that promotes economic and social mobility.¹⁴

Stable Senior Homeownership helps extended family live a more stable life. Seventy-four percent of California's senior households own their homes,¹⁵ and studies show that homeowners generally achieve better physical and mental health outcomes than renters.¹⁶ For many of HERA's senior clients, remaining in their communities is critical to maintaining their quality of life.

HERA client Aurora Macdula had been living in her home for 34 years before falling behind on her mortgage payments. Her husband handled all financial matters in the home, including mortgage payments. He was the only person on the mortgage loan, and he was the only person

phia at
<https://www.philadelphiafed.org/newsroom/press-releases/2011/020311a>

¹⁴ Cramer, Reid and Trina R. Williams Shanks, *The Assets Perspective: The Rise of Asset Building and Its Impact on Social Policy*, (2014).

¹⁵ U.S. Census at
http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml?_ts=481061250627

¹⁶ Connolly, Sheelah, Dermot O'Reilly, and Michael Rosato. *House Value as an Indicator of Cumulative Wealth Is Strongly Related to Morbidity and Mortality Risk in Older People: A Census-Based Cross-Sectional and Longitudinal Study*, (2010) at 383-391, *International Journal of Epidemiology* 39.

on the title to the home. Mrs. Macdula's husband became ill and applied for a modification. He was approved for a trial payment plan, which he and Mrs. Macdula made payments on. When her husband died before he could sign the final modification agreement, Mrs. Macdula contacted Wells Fargo to let them know of her husband's passing. She offered to make the full mortgage payment, but Wells staff refused, stating that they would not accept it because Mrs. Macdula was not on the mortgage loan.

At 80 years old, a move would have been traumatic not only for Ms. MacDula, but also for the severely disabled adult daughter in Ms. Macdula's care. In California, approximately 9% of children live with their grandparents and more than 66,700 seniors have primary responsibility for their grandchildren.¹⁷ Mrs. Macdula pursued the process of getting title of the property into her name and then contacted Wells Fargo again about assuming the loan. By the time she had gone through this process, she had accumulated \$21,000 in arrears and fees. Wells Fargo insisted that the widow bring the mortgage current before it would consider her for assumption of the mortgage loan or consider her for a much needed loan modification. Without HERA's help, Ms. Macdula would have lost the

¹⁷ *Grandfacts: State Fact Sheets for Grandparents and Other Relatives Raising Children (2011)*AARP at <http://www.aarp.org/content/dam/aarp/relationships/friends-family/grandfacts/grandfacts-california.pdf>

home. With HERA's help, she received a loan modification and assumed the loan.¹⁸

Our traditional notions of homeownership as wealth building tool for most low and moderate income residents of this country faces one of its greatest threats yet—the rise of a mortgage collections (servicing) industry that is subverting state and federal laws regarding the transfer of the family home to our loved ones.

Healthy Aging in Place = Wealth Building And Emotional Well-Being Combined: The Double-Bottom Line.

Most seniors want to live out their days under their own roof. A 2010 AARP survey found that 88% of US seniors want to remain in their own homes indefinitely.¹⁹ Forced moves to nursing facilities are associated with increased mortality rates and reduced health and well-being.²⁰

The health effects from the loss of one's home in old age depend on the level of choice involved

on the part of the homeowner, and on the alternative housing options available to the former homeowner. A voluntary move to a more accessible and lower-cost housing option in the same community could be beneficial, while an unwanted move to an institutional care facility is strongly associated with negative health outcomes. Research links home foreclosures with many negative psychological and physical health problems, including hypertension, heart disease, and anxiety or depression.²¹ Studies show that involuntary environmental changes may seriously compromise seniors' wellbeing, especially for elders with declining health or vulnerable financial status.²²

And, unfortunately, given the high cost of rental housing in many areas of California, and the long wait lists for subsidized housing options, there are few affordable alternatives that would allow low and moderate income senior homeowners to remain in their communities. For example, the majority of facilities listed in the Alameda County Senior Housing Guide have closed their waiting lists, and for those that are open the guide warns seniors to expect waits up to five years.²³ For the more than 65% of

¹⁸ Jessica Silver-Greenberg, *Mortgage Catch Pushes Widows Into Foreclosure*, December 1, 2012, New York Times at http://www.nytimes.com/2012/12/02/business/widow-s-pushed-into-foreclosure-by-mortgage-fine-print.html?_r=0

¹⁹ Keenan, Teresa, 2010, *Home and Community Preferences of the 45+ Population*, (2010), AARP at <http://assets.aarp.org/rgcenter/general/home-community-services-10.pdf>

²⁰ Oswald, Frank and Wahl, Hans-Werner, *Housing and Health in Later Life*, (2014), *Reviews on Environmental Health*, 19(3-4): 223-52.

²¹ Cohen, Rebecca, *The Impacts of Affordable Housing on Health: A Research Summary*, (2011), Center for Housing Policy at http://lchc.org/wp-content/uploads/03_LCHC_Housing.pdf

²² Oswald, Frank and Wahl, Hans-Werner, *Housing and Health in Later Life*, (2014), *Reviews on Environmental Health*, 19(3-4): 223-52.

²³ *Senior Housing Guide, Year 2013 Edition*, (2013), Alameda County Area Agency on Aging, at <http://www.alamedasocialservices.org/public/services>

seniors with multiple chronic health conditions, moving may present health risks that outweigh the costs of saving and modifying a long-time home.²⁴

For seniors to maintain optimal stability and well-being, policymakers should value and work to ensure that senior homeowners are not forced from their homes before they are ready to leave.

Mortgage Servicers' Impeding the Ability of Low and Moderate Income Seniors to Retain Home Increases Risk of Senior Homelessness

Seniors in California and across the United States are treading water financially. They are more cost burdened than ever, and the cost of living continues to rise. Loss of the family home frequently means the loss of a lifetime of financial and emotional investment and the family's only generational wealth building tool. Moreover, it is increasingly likely that a senior's loss of the family home means permanent displacement and homelessness for the senior.

Limited Income. According to the Supplemental Poverty Measure developed by the Census Bureau, nearly 21% of California's seniors are in

poverty—the highest rate in the nation.²⁵ More than 1.2 million California seniors are lifted only just beyond the official poverty threshold through Social Security income.²⁶ The Elder Economic Security Index shows that older adults in rural counties are facing economic hardships as well as seniors in coastal and urban areas. For example, at 67.1%, Imperial County has the highest percentage of single older adults below the benchmark set for economic security. The data also demonstrates that minority group seniors face poverty at significantly higher rates than White households. Older Latinos, African-Americans, Asian/Pacific Islanders and Native Americans are significantly more likely to be in poverty than other Californian seniors.²⁷

²⁵ *Poverty Among Seniors: An Updated Analysis of National and State Level Poverty Rates Under the Official and Supplemental Poverty Measures*, (2015), Kaiser Family Foundation, at <http://kff.org/medicare/issue-brief/poverty-among-seniors-an-updated-analysis-of-national-and-state-level-poverty-rates-under-the-official-and-supplemental-poverty-measures/>

²⁶ *Social Security Keeps 22 Million Americans Out Of Poverty: A State-By-State Analysis*, (2013), Center on Budget and Policy Priorities, at <http://www.cbpp.org/research/social-security-keeps-22-million-americans-out-of-poverty-a-state-by-state-analysis>

²⁷ *Who Can Afford to Get Old? Senior Poverty in the Golden State* (2015), Assembly Committee on Aging and Long-Term Care 201, at <http://altc.assembly.ca.gov/sites/altc.assembly.ca.gov/files/Background%20Paper%20on%20Letterhead.pdf>

/elders_and_disabled_adults/docs/SENIOR_HOUSING_GUIDE_2013_English.pdf

²⁴ *Aging in Every Place: Supportive Service Programs for High and Low Density Communities*, (2014) Center for Housing Policy, at <http://community-wealth.org/content/aging-every-place-supportive-service-programs-high-and-low-density-communities>

Significant Debt Load. Seniors are burdened by debt even as their income declines. “More than 70 % of homeowners aged 50–64 were still paying off their mortgages in 2010.”²⁸ Student loan debt for seniors age 65 and older has also increased at an alarming rate—“from about \$2.8 billion in 2005 to about \$18.2 billion in 2013, more than a six-fold increase.”²⁹ To try to manage their debt, seniors now have to stay in the workforce longer.

In 2013, 31% of households aged 65-69 included an employed senior, as did 18% of households aged 70-74. These levels of senior employment are significantly higher than senior employment levels twenty years ago.³⁰

At the same time, staying in the workforce is not always possible, and declining health, disability, a reduced income, the loss of a spouse or partner, or the loss of other family members who are key supports is part of the landscape of aging in America. That landscape is particularly bleak for seniors carrying mortgage debt. Nearly 25% of senior homeowners with a mortgage in the US

are severely burdened by their housing costs, meaning that they are spending more than 50% of their income on housing.³¹ Forty-five percent of US homeowners with mortgages, aged 65-79, pay more than 30% of their income for housing and 61% of homeowners over age 80 do so.³² Most of us will find ourselves on a fixed income when we are 65 years of age or older, and that income is not likely to increase.

High Cost of Rentals. Rents across much of the United States have risen at an astronomical rate over the past two years compared to the income level of residents.³³ Some regions of California are now among the most expensive in the entire country. Rising rent levels are gobbling up a significant portion of the income of low and moderate income households. “[T]he share of renters at least moderately burdened (paying more than 30% of income on rent) is 40% or higher in all but three states as of 2013.”³⁴ The burden on people of color³⁵ and seniors is particularly severe. “Today, 40% of

²⁸ *Housing America’s Older Adults* (2014), The Joint Center for Housing Studies at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-housing_americas_older_adults_2014.pdf

²⁹ *Older Americans: Inability to Repay Student Loans May Affect Small %age of Retirees* (2014), pp.8-9, General Accounting Office at <http://www.gao.gov/assets/670/665709.pdf>

³⁰ *Housing America’s Older Adults*, (2014), The Joint Center for Housing Studies at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-housing_americas_older_adults_2014.pdf

³¹ *Housing America’s Older Adults* (2014), The Joint Center for Housing Studies at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-housing_americas_older_adults_2014.pdf

³² *Ibid.*

³⁴ *Projecting Trends in Severely Cost-Burdened Renters 2015-2025*, (2015), p.7, Enterprise Community Partners and Joint Center for Housing Studies at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/projecting_trends_in_severely_cost-burdened_renters_final.pdf

³⁵ *Id.*, citing to Ault, M., et al. *Housing Landscape 2015*. Center for Housing Policy. 2015. <http://www.nhc.org/#!/2015-housing-landscape/d9ata>

elderly renters are paying more than half their income on housing.”³⁶

In this environment, the consequence to a surviving homeowner having been unnecessarily foreclosed on is that the survivor, generally an older widow, faces a rental market well beyond her means. Older renters versus older homeowners are more likely to be severely burdened by the cost of housing.³⁷ That, in turn, puts her at risk of homelessness.

Surviving Owners of “Under Water” Homes At Higher Risk of Foreclosure Due To Mortgage Servicer Mistreatment. Surviving owners of homes worth less than what is owed on the house (under water) are more at risk for foreclosure when a mortgage servicer mistreats them. When a home is loaded with more mortgage debt than what the home can sell for in the open market, then the homeowner cannot sell the home to cash out the years worth of mortgage payments made. The homeowner does not even have enough equity to pay off the mortgage. Senior homeowners cannot get a reverse mortgage because there is no equity in the home. (Please note that reverse mortgage lenders require significant amounts of equity/value in a home before they will lend, and the borrower must be at least age 62. And the younger the

³⁶ *Projecting Trends in Severely Cost-Burdened Renters 2015-2025*, (2015), pp.8-9, Enterprise Community Partners and Joint Center for Housing Studies at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/projecting_trends_in_severely_cost-burdened_renters_final.pdf

³⁷ *Housing America's Older Adults* (2014), p.14, The Joint Center for Housing Studies at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-housing_americas_older_adults_2014.pdf

homeowner is, the less money the person qualifies to borrow.)³⁸ When mortgage servicers mistreat surviving homeowners who are under water, those homeowners have almost no options, therefore, for saving the home.

Nationally, by close of the fourth quarter of 2015, more than 6 million homeowners were in negative equity.³⁹ Those homeowners are not distributed equally across the country. In California, most of the Central Valley still has significant swathes of homeowners who are under water: Riverside at 13.5%, Sacramento at 10.4% as of close of 2015; San Bernardino 18%, Kern County 25%, Tulare 25%, Kings 31%, Fresno 23%, Merced 21%, Stanislaus and San Joaquin Counties at 19%, and similarly high percentages to the north and east of Sacramento,⁴⁰

Older Female Homeownership Particularly At Risk. About 26.5% of California's seniors have suffered the loss of their spouse.⁴¹ By age 80, three out of five US households consist of a single person. Women make up nearly three

³⁸ For an explanation of reverse mortgage basics, see the Federal Trade Commission publication at <https://www.consumer.ftc.gov/articles/pdf-0058-reverse-mortgages.pdf>

³⁹ See *Negative Equity Continues to Weigh Down Housing Markets, Limiting New Inventory*, (March, 2016), Zillow at <http://zillow.mediaroom.com/2016-03-09-Negative-Equity-Continues-to-Weigh-Down-Housing-Markets-Limiting-New-Inventory>

⁴⁰ See *Negative Equity Infographic*, Zillow at <http://www.zillow.com/visuals/negative-equity>. This infographic is based on 2014 data.

⁴¹ U.S. Census at http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml?_ts=481061250627

quarters of this group.⁴² Ordinary life throws seniors into having to seek a modification of their mortgage to try to create an affordable payment. That can happen to any of us. It is, in fact, likely to happen to most of us at some point. So, how will mortgage servicing companies respond to our needs as older homeowners? How are they responding now?

Let's look at the case of 92 year-old Clara (not her real name). When her husband passed away, Clara's household income was effectively reduced by two-thirds. Clara was in seriously poor health, unable to advocate for herself with her mortgage servicer to get her monthly payment reduced to an affordable amount. Her son paid a company that claimed to help with loan modifications, but it turned out to be a scam that left them worse off than before. Clara and her family then came to HERA, where staff attorneys filed complaints about the scam with the US Department of Housing and Urban Development (HUD) and the Office of the Attorney General and began negotiating with mortgage servicer, IndyMac, for a loan modification and a hold on the foreclosure process. HERA requested that IndyMac accommodate Clara's health concerns, and the office eventually obtained a permanent loan modification that allowed Clara to spend the last few years of life in the home she and her husband had purchased and lived in for over 30 years. Without substan-

tial help from her son and HERA, the servicer would have finished foreclosing on her home.

Sometimes mortgage servicers do not honor modification applications that are in process when a death of a spouse occurs. For example, after two previous denials, in 2011, Bank of America finally approved a loan modification for a HERA client shortly after the death of her husband. However, because her husband was still listed as a co-borrower, Bank of America demanded that he sign the modification agreement. When our client informed the bank that he had passed away the bank rescinded their modification offer and refused to communicate with the widow in any way on the loan until she could prove with court documents that she was the rightful owner of the property.

Similarly, mortgage servicer Chase had been accepting payments from HERA client Barbara McGarvey for months before they informed her that they could not approve her modification application because she was not the original borrower (she was the heir) on the loan she was paying off. When Ms. McGarvey's mother passed away in 2004, Ms. McGarvey inherited the Roseville, California home where they lived. Title was held in a living trust and Ms. McGarvey was the trustee after her mother passed.

Ms. McGarvey faithfully paid the property taxes, insurance, and made payments on the loan, which Chase accepted, for over five years. After she experienced financial hardship and fell behind on the mortgage in 2009, Ms. McGarvey, applied for a loan modification. Although Chase knew that the original borrower, Ms. McGarvey's mother, was no longer alive, Chase did not advise Ms. McGarvey that its policy was to not

⁴² *Housing America's Older Adults* (2014), The Joint Center for Housing Studies at http://www.jchs.harvard.edu/sites/jchs.harvard.edu/files/jchs-housing_americas_older_adults_2014.pdf

deal with heirs, even where the heir was the trustee in a living trust. Rather, Chase considered Ms. McGarvey's multiple mortgage modification applications and accepted partial payments from her without telling her explicitly that Chase would never actually modify the loan because it was still in her mother's name. Chase even placed Ms. McGarvey on a trial loan modification, accepting three monthly payments from her before finally stating it would never modify the loan, and foreclosing on her home.

Current California State and Federal Policy on Survivors' Rights. California's Homeowner Bill of Rights (HBOR) created a legal framework to help protect homeowners from being foreclosed on while waiting for a decision on their modification application or other mortgage relief effort. Our state's law created a model followed in other regulation in this arena. But it did not go far enough. The HBOR does not protect widows or widowers or their children or other heirs unless their name is already on the mortgage loan. And, unfortunately, many couples refinanced their mortgage under the name of just one spouse or partner, sometimes completely unwittingly, or because they wanted to benefit from one spouse's better credit. And, certainly, even when a family member is caring for the senior homeowner till the end of that senior's days, that family member is frequently not already on the mortgage debt when the senior dies. Survivors do not know that mortgage servicers will then refuse to talk to the surviving spouse or partner about the mortgage loan, even when that person is already on title to the home.

Federal policies and rules governing federally insured mortgages require mortgage servicers to

communicate with survivors and process mortgage loan assumptions for most survivors. Over 60 percent of outstanding mortgages in the United States are insured by Fannie Mae or Freddie Mac. Other federally insured residential mortgages –Federal Housing Administration, Veterans Administration and Rural Housing Services loans—make up much of the remaining mortgage market.⁴³ Federal rules for these programs require servicers to process loan assumptions for survivors, sometimes without a financial assessment of the survivor sometimes required, and sometimes not required.

If the loan in question falls under one of these programs, SB1150 would require mortgage servicers to follow these rules. If the loan is a private loan and not federally insured, then SB1150 would require mortgage servicers to follow whichever private lender, insurer or contract rules cover the loan. SB1150 would give survivors a private right of action to stop a foreclosure until the servicer follows the terms of the mortgage loan and any related federal or state laws and rules or other language governing the contract regarding assumption, modification and other loss mitigation options.

Hubert Weeks spent his savings bringing the mortgage current after his wife's death in spite of medical bills also competing for his attention. He sent his wife's death certificate and appropri-

⁴³See federal rules, *infra* at footnotes 44 and 45, and See VA Loan Electronic Reporting Interface VA Servicer Guide, (July 2009), Section 1.2.1, pp.4-5 Veterans Administration, at http://www.benefits.va.gov/HOMELOANS/documents/va_servicer_guide.pdf

ate forms to servicer HSBC, and it accepted payments from him for two years. When Mr. Weeks got the loan balance down to around \$10,000, he wanted to pay off the loan in full, but starting at that point HSBC refused to talk to him or provide the payoff statement because he was not the original borrower. HSBC refused to work with HERA to resolve the matter.

A Lesson in State-Wide and National Organizing and Policy Advocacy

Housing and Economic Rights Advocates (HERA) has been the leading legal services program in California in the fight against mortgage servicer abuses across the board, and specifically abuses directed towards surviving homeowners. We reached out to mortgage servicers early on, starting in 2010, when we first started to notice that there was troubling mortgage servicer behavior that made it impossible for surviving homeowners and heirs to the home to attempt to hang onto the family home. We began tracking the cases and pattern of abuse based on cases coming to our office, and based on cases brought to us for our help by HUD certified housing counseling agencies⁴⁴ and legal services programs throughout California. We reached out to California Reinvestment Coalition (CRC) to partner on seeking solutions and gathering more information. We gathered that additional information across California, and by

⁴⁴ HUD certified housing counseling agencies are non-profits funded by the U.S. Department of Housing and Urban Development to provide free counseling to both homeowners and homebuyers across the country.

reaching out to allies in other parts of the country.

Together, HERA and CRC reached out to the Federal Housing Finance Administration (FHFA), the regulator over the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), who are the largest federal insurers of single family home loans in California and the United States as a whole; as such, positive rule-making by FHFA, Fannie and Freddie can positively affect many households. Our goal was to report our findings and ask FHFA to require the servicing industry to follow existing mortgage assumption rules, and for FHFA to clarify and strengthen rules that the industry must follow regarding mortgage assumption by surviving homeowners and heirs who are not already on the mortgage loan. HERA and CRC also alerted the Consumer Financial Protection Bureau (CFPB) about the problem, and its significance.

HERA and CRC's hard work paid off. Fannie Mae and Freddie Mac both issued servicing strong servicing rules to further protect surviving homeowners and heirs and their ability to pursue assumption, as well as loan modification and simultaneous modification and assumption.⁴⁵

⁴⁵ *Freddie Mac Bulletin 2013-3*, February 15, 2013, FreddieMac at <http://www.freddiemac.com/singlefamily/guide/bulletins/pdf/bl11303.pdf> and *Fannie Mae Lender Letter, LL2013-04*, February 27, 2013, Fannie Mae at <https://www.fanniemae.com/content/announcement/111304.pdf>; see also, *Fannie Mae, Servicing Guide Announcement SVC-2013-17* (Aug. 28,

And the CFPB issued a rule requiring mortgage servicers to adopt policies to spell out how they would work with surviving homeowners and other successors in interest to the family home.⁴⁶

Our efforts helped to elevate the issue nationally and were complemented by strong reports, analysis and advocacy from groups like National Council of La Raza, National Association of Consumer Advocates, National Consumer Law Center, and the National Housing Resource Center on this critically important issue. We had also reached out to fellow advocates on the ground who were also beginning to note the problem and were reporting their concerns to regulators. HERA drafted a lengthy analysis and advocacy piece submitted jointly by CRC and HERA to federal regulators in 2012, delineating the problem, explaining the existing rules and laws related to the issue, and addressing the fallacy of excuses raised by servicers for how they were treating surviving homeowners and heirs.⁴⁷

2013), at
<https://www.fanniemae.com/content/announcement/svc1317.pdf>

⁴⁶ See 12 FR 1024.38 and *CFPB Bulletin 2013-12*, October 15, 2013, at Consumer Financial Protection Bureau at
http://files.consumerfinance.gov/f/201310_cfpb_mortgage-servicing_bulletin.pdf

⁴⁷ See *Joint HERA/CRC Letter to the Office of the Controller of the Currency, the Federal Reserve Board of Governors, and the Director of the Consumer Financial Protection Bureau Regarding Widows, Orphans, Joint Tenants and Loan Modification Challenges*, (Dec. 2012), at

HERA and CRC also pursued press, both national (See NYTimes story listed above) and local as part of our advocacy strategy to increase awareness and encourage more members of the public to come forward with their stories.

CRC solicited sign-ons from supporters across the country. HERA and CRC's groundwork and the growing number of complaints from legal services, housing counselors, community organizers and other advocates across the country inspired a series of papers by national non-profit entities, some on the issue of loan assumption, and these national entities included the issue in their list of policy concerns discussed with regulators. Other advocates were also talking to reporters, and talking to regulators about the shocking reality of how mortgage servicers were treating survivors.

But our work was not over. The reports of abuses that both HERA and CRC were monitoring continued to arrive, and calls for help from individual survivors to HERA's office continued. In its on-going, unique series of annual reports on the state of the mortgage servicing industry's abuses, CRC reached out to its members across California and documented ongoing mortgage servicing problems as it had done since 2007. CRC now included questions regarding abuses directed towards successors in interest.⁴⁸ HERA continued to receive com-

http://heraca.org/documents/policy/Widows_and_Orphans_letter_121012.pdf

⁴⁸ See *Chasm Between Words and Deeds VIII: Lack of Bank Accountability Plagues Californians*, (April, 2012), pp 5 and 9, California Reinvestment Coalition at

plaints directly from victims across the State of California, and we continued to advocate directly with mortgage servicers to try to stop unnecessary foreclosures and convince servicers to follow assumption and modification rules. It became apparent that the rules we had obtained, and strong voices of allies on the ground across the state and country had not changed mortgage service behavior.

HERA continued to advocate for a stronger federal law to protect survivors. But, just as we realized in conceiving of the need for a Homeowner Bill of Rights in California, which was a ground-breaking state law to protect homeowners against dual-tracking (foreclosure while a modification is being considered) amongst other abuses, we came to understand that surviving homeowners also needed the opportunity to be able to go to court and stop foreclosure until servicers followed assumption and modification rules. Servicers had already ignored existing loan assumption rules, and then ignored the further rules issued by Fannie and Freddie in 2013. It is not even clear whether servicers

followed the CFPB's mandate in 2013 to create policies to facilitate communication with successors on modification and assumption, but it was clear that any such policies were simply unused guidance, if they existed at all.

HERA and CRC pursued the creation of protections for surviving homeowners and successors in interest in California even while we continued to advocate at the national level for better protections. For two years running, we have pursued legislation at the California state level. In this second, current effort, Senators Leno and Galgiani are the authors. Our bill, SB1150, was voted out of Senate Banking and then voted out of Senate Judiciary thereafter. California Alliance for Retired Americans is another key bill sponsor. The bill was voted out of the full Senate and has proceeded to the Assembly.

The Mortgage Bankers' Association, California Chamber of Commerce, and credit union and real estate associations have opposed protecting surviving homeowners. Remarkably, the Chamber of Commerce says that SB1150 would kill jobs in California.⁴⁹ All opposed say that

<http://www.calreinvest.org/publications/california-reinvestment-coalition-research>; See *Chasm Between Words and Deeds IX: Bank Violations Hurt Hardest Hit Communities*, (April 2013), California Reinvestment Coalition at

<http://www.calreinvest.org/publications/california-reinvestment-coalition-research>; and See *Chasm Between Words and Deeds X: How Ongoing Mortgage Servicing Problems Hurt California Homeowners*, (May 2014), California Reinvestment Coalition at <http://www.calreinvest.org/publications/california-reinvestment-coalition-research>

⁴⁹ The full list of those opposed to SB1150's protection of surviving homeowners and heirs includes California based groups: the California Bankers' Association, California Business Roundtable, California Chamber of Commerce, California Citizens Against Lawsuit Abuse, California Credit Union League, California Community Banking Network, California Land Title Association, California Mortgage Association, California Mortgage Bankers' Association, Civil Justice Association of California, and National Groups: The American Securitization Forum, the Consumer Mortgage Coalition, The Securities Industry and Financial

California should wait until the CFPB implements a final rule that has yet to be released, and with no indication of when it will take effect once it is released.⁵⁰

This combined effort of our two organizations is an example of coordinated advocacy on a federal and national level on an issue of state-wide and national importance, working on many fronts with many different kinds of allies locally, statewide and nationally. We appreciate their support and partnership in our efforts.

Conclusion

The impact of unnecessary and improper foreclosures on surviving homeowners has significant and negative implications for the future of all low and moderate income households in the United States, but, particularly for households of color which rely even more on the family home for building and passing household wealth. This is not billionaire wealth. This is enough wealth to help put a couple of kids through college—to give the next generation a shot at building or maintaining a stable middle class life. Our American dream is pretty modest. And it is being stolen from underneath the feet of parents and grandparents and their kids even as you read this paper. The measure of harm already perpe-

Markets Association, and the United Trustees Association.

⁵⁰ See *Proposed Amendments to the 2013 Mortgage Rules under the Real Estate Settlement Procedures Act (Regulation X) and the Truth in Lending Act (Regulation Z)*, December 2014, Consumer Financial Protection Bureau at <https://federalregister.gov/a/2014-28167>

trated has yet to be fully quantified. We urge further study to better quantify the harm to survivors that has occurred as a result of the rise and growth of the modern mortgage servicing market.

We also urge federal regulators to gather and track data on mortgage servicer treatment of surviving homeowners from now on. The population of the United States is aging. We are at a juncture when billions of dollars worth of household wealth could be unnecessarily stripped from average Americans across the country. Assessment of servicer behavior towards and treatment of survivors should include soliciting and reviewing feedback from the general public as well as non-profit agencies that serve households in need.

Similarly, we ask mortgage insurers and investors who are employing mortgage servicing companies to properly track and manage the behavior of Doc. 34-3 & 34-4: Electronic Sound Files to Shannon Picchone Declaration ISO Motion to Compel Arbitration these entities with whom they have contracted for collections and management of mortgage loans. Proper oversight could not only save the homes of surviving homeowners and heirs but could also save the investors themselves from losses from unnecessary foreclosures.

We are grateful to the Federal Housing Finance Agency (FHFA) and to the Consumer Financial Protection Bureau (CFPB) for the steps that they took years ago in their rule-making to try to protect survivors. And we applaud the CFPB for its proposed servicing rules that, if adopted, would bolster protections. Enforcement is now

the final piece of the puzzle. We encourage California state legislators vote for SB1150 to protect their constituents and be the strong-forward-thinking leaders that they were when they voted for the Homeowner Bill of Rights. We also encourage the CFPB to include in its rule-making a clear mechanism for surviving homeowners to pursue litigation to protect themselves from unnecessary foreclosures when servicers continue to violate servicing rules.

Acknowledgements

The author would like to thank Kevin Stein at California Reinvestment Coalition for his keen eye and feedback, Jennifer Song, Office of the Attorney General of California for her comments, and Dena Greenblum for initial research support. All content and opinions in this working paper are those of the author.