

# Client Alert

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September 26, 2018



## New Loan Servicing Rules Apply to Persons Who Acquire Interest in Mortgaged Property

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Lenders and loan servicers need to be aware of some recent amendments to the mortgage servicing rules issued by the Consumer Financial Protection Bureau (CFPB). These amendments have revised certain requirements under RESPA and TILA and now require a mortgage loan servicer to “promptly” communicate with anyone who “may” have acquired an interest in mortgaged property.

The CFPB announced that the rules were amended in response to consumer complaints “of [loan] servicers either refusing to speak to a successor in interest or demanding documents to prove the successor in interest’s claim to the property that either did not exist or were not reasonably available.” As such, successors in interest reported experiencing substantial difficulty obtaining information about the status of a loan, payoff information, and loss mitigation options. The CFPB observed that “successors in interest are a particularly vulnerable group at risk of substantial harms[,]” because many times the transfer of the property resulted from an event, such as a death or divorce which could cause income disruption and therefore, jeopardize the successor’s ability to pay the mortgage.

Thus, the rule changes revised the definition of a successor in interest to align with the categories of transfers to a successor in interest which are protected under the Garn-St. Germain Act. Generally, this act prevents a lender from enforcing a due on sale clause in a mortgage due to certain protected types of transfers of the property, including a transfer due to the death of a borrower, a transfer due to divorce, or a transfer where the borrower’s spouse or children acquire an interest in the property, provided that the mortgage is not otherwise in default. Second, the changes implemented standards governing how a lender or loan servicer confirms a successor in interest’s identity and claim of ownership to the property.

Finally, the rule changes apply the mortgage servicing rules found in Regulations X and Z (of RESPA and TILA, respectively) to successors in interest once their status is confirmed.

In order to comply with these amendments, lenders and their servicers must have procedures in place to identify and communicate with any person who claims to be a successor in interest to a borrower of a loan secured by a mortgage on real property. It remains to be seen what types of communications will demonstrate that a party “may” be a successor in interest. However, in light of the broad language adopted in the rule revisions, if a person self-identifies as a successor in interest, the lender should “promptly” request confirmation of the person’s status with information which is reasonably available under the circumstances surrounding the transfer. If, for example, the transfer results from the death of the borrower, probate documents may not be available or necessary. The lender’s communications with the successor should be documented to confirm compliance with these rules. Because a successor in interest is not obligated to assume the mortgage loan, lenders must confirm that these communications do not suggest that the successor in interest is liable for the loan balance.

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