

What We Know

ARTICLES & INSIGHTS

ABOUT THE AUTHORS



[Caren Enloe](#) leads Smith Debnam's consumer financial services litigation and compliance group. In her practice, she defends consumer financial service providers and members of the collection industry in state and federal court, as well as in regulatory matters involving a variety of consumer protection laws. Caren also advises fintech companies, law firms, and collection agencies regarding an array of consumer finance issues. An active writer and speaker, Caren currently serves as chair of the Debt Collection Practices and Bankruptcy subcommittee for the American Bar Association's Consumer Financial Services Committee. She is also a member of the Defense Bar for the National Creditors Bar Association, the North Carolina State Chair for ACA International's Member Attorney Program and a member of the Bank Counsel Committee of the North Carolina Bankers Association. Most recently, she was elected to the Governing Committee for the Conference on Consumer Finance Law. In 2018, Caren was named one of the "20 Most Powerful Women in Collections" by *Collection Advisor*, a national trade publication. Caren oversees a blog titled: [Consumer Financial Services Litigation and Compliance](#) dedicated to consumer

CLIENT ALERT: CFPB's Successor in Interest Rules Take Effect April 19, 2018: What You Need to Know

April 13, 2018 | by

On April 19, 2018, the CFPB's Successor in Interest Rules take effect. Here's what you need to know:

What do the Successor in Interest Rules require?

The Rules are really modifications to the Mortgage Servicing Rules which are already in place and enable mortgage servicers to communicate with potential and confirmed successors in interest without violating the Fair Debt Collections Practices Act.

Why did the CFPB Add the Servicers in Interest Rules?

The Rules were added to provide additional consumer protections to surviving family members and others who have an interest in a dwelling subject to a mortgage

Are Small Servicers exempt?

There is no general exemption for small servicers but small servicers do have the same exemptions with respect to confirmed successors in interest that they have regarding other borrowers and consumers.

Who is a Successor in Interest?

Most commonly, a successor in interest is a person who has an ownership interest in property securing a mortgage loan, when that ownership interest was transferred:

- by devise, descent, or operation of law on the death of a joint tenant;
- to a relative after the death of the borrower;
- to the spouse or children of the borrower; and
- as a result of a dissolution of marriage decree

Do I need to address Successors in Interest in my policies and procedures?

financial services and has been published in a number of publications including the Journal of Taxation and Regulation of Financial Institutions, California State Bar Business Law News, Banking and Financial Services Policy Report and Carolina Banker.



[Jeff Rogers](#) is a partner in the firm and heads the firm's Foreclosure and Collateral Recovery Section. He concentrates his practice in the area of creditor representation, including collections, commercial litigation, real property litigation, foreclosure, collateral recovery, bankruptcy, and creditor defense. His clients include banks, credit unions, commercial lenders, finance companies, and businesses of all sizes.

Unless an exemption applies, you are required to maintain policies and procedures reasonably designed to:

- Promptly facilitate communication with any potential or confirmed successor in interest regarding the property securing the loan upon receipt of notice of the borrower's death or of transfer of the property;
- Promptly determine what documents are reasonably required to confirm the person's identity and ownership interest and promptly provide the person with those documents and a direction as to how to submit a written request for information;
- Promptly notify the person upon receipt of the documents what additional documents are necessary confirmation of the person's status as a successor in interest and whether or not the person is a successor in interest.

How do I confirm a person is a successor in interest?

- When a servicer receives notice, either in writing or otherwise, of a potential successor in interest, the servicer must "promptly" facilitate communication with the potential successor in interest and provide the potential successor in interest with a "written description of the documents the servicer reasonably requires to confirm the person's identity and ownership in the property[.]"

Are there deadlines for communications?

In some instances, yes. For example, if you receive a written request for information pursuant to 12 CFR 1024.36, there are time limits which must be complied with.

How are confirmed successors in interest treated?

Generally, confirmed successors in interest are treated the same as the original borrower for the purposes of the Mortgage Servicing Rules and as a "consumer" for the purposes of the Truth in Lending Act. This means any confirmed successor in interest is entitled to submit notices of error, requests for information, and requests for a payoff statement with respect to the mortgage loan account.

Am I required to make any additional disclosures to a confirmed Successor in Interest?

After confirming that a person is a successor in interest, a servicer *may*, but is not required, to provide a written notice to that person. If provided, the written notice must include certain details, including an acknowledgement that the servicer has confirmed the person's identity as a successor in interest, and a notice that the successor in interest is not liable for the mortgage debt and cannot be required to pay off the mortgage, except that the lender has a security interest in the property and the right to foreclose on the property, when permitted by law and authorized under the mortgage loan contract.

Does a confirmed successor in interest have the right to loss mitigation?

Regardless of whether a successor in interest assumed the mortgage loan obligation, a servicer must review and evaluate a loss mitigation application if it is complete and is received from a confirmed successor in interest.

What information do I have to share with successors in interest.

You must send successors in interest disclosures and other information concerning:

- Escrow accounts, payments and account balances;
- Mortgage servicing transfers and mortgage transfers;
- Error resolution;
- Information requests;
- Force-placed insurance;
- Early intervention;
- Loss mitigation;
- Post-consummation events;
- Payoff statements; and
- Periodic Statements.

What information should I omit?

Contact information and personal financial information should never be shared with other parties.

For more information about the Mortgage Servicing Rules, please contact [Jeff Rogers](#) and [Caren Enloe](#).

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