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# ALFN ANSWERS WEBINAR

## Deceased Borrowers

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Dealing with Deceased Borrowers and Their Heirs

*Monday, August 17, 2020  
1:00-2:15 PM Central Time*

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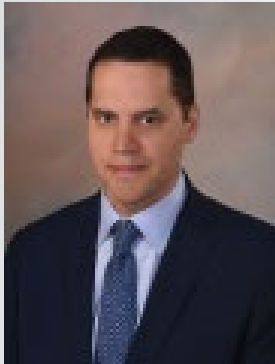
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Contact information for today's presenters

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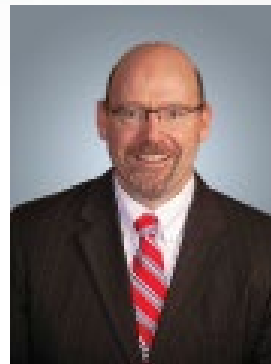
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## SPEAKER



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# OVERVIEW

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## Dealing With Deceased Borrowers and Their Heirs

- I. General Introduction: Heirship and Probate Proceedings
- II. Significant Federal Regulations
- III. Client Processes, Launches, and Holds
- IV. Communications With Heirs or Estate Representatives
- V. State-Specific Issues: Some Examples



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# I. General Introduction: Heirship and Probate Proceedings



# I. General Introduction

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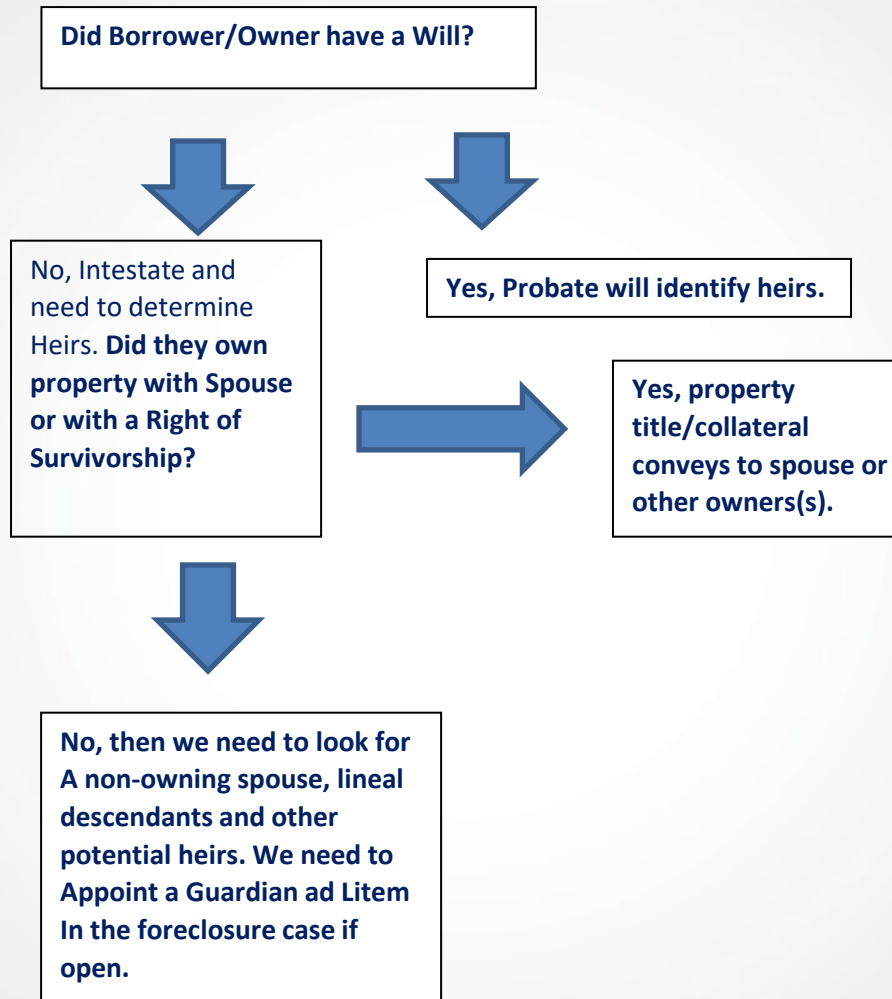
## a. Heirship:

- Who Are the Deceased Borrower's Successors in Interest?
  - Key to Post-Mortem Loss Mitigation
- Descent: Heirs at Law
  - Children
  - Surviving Spouse
  - The Common Law Surviving Spouse
  - Without Children or Surviving Spouse
- Wills: Devisees
  - Probated or Not Probated



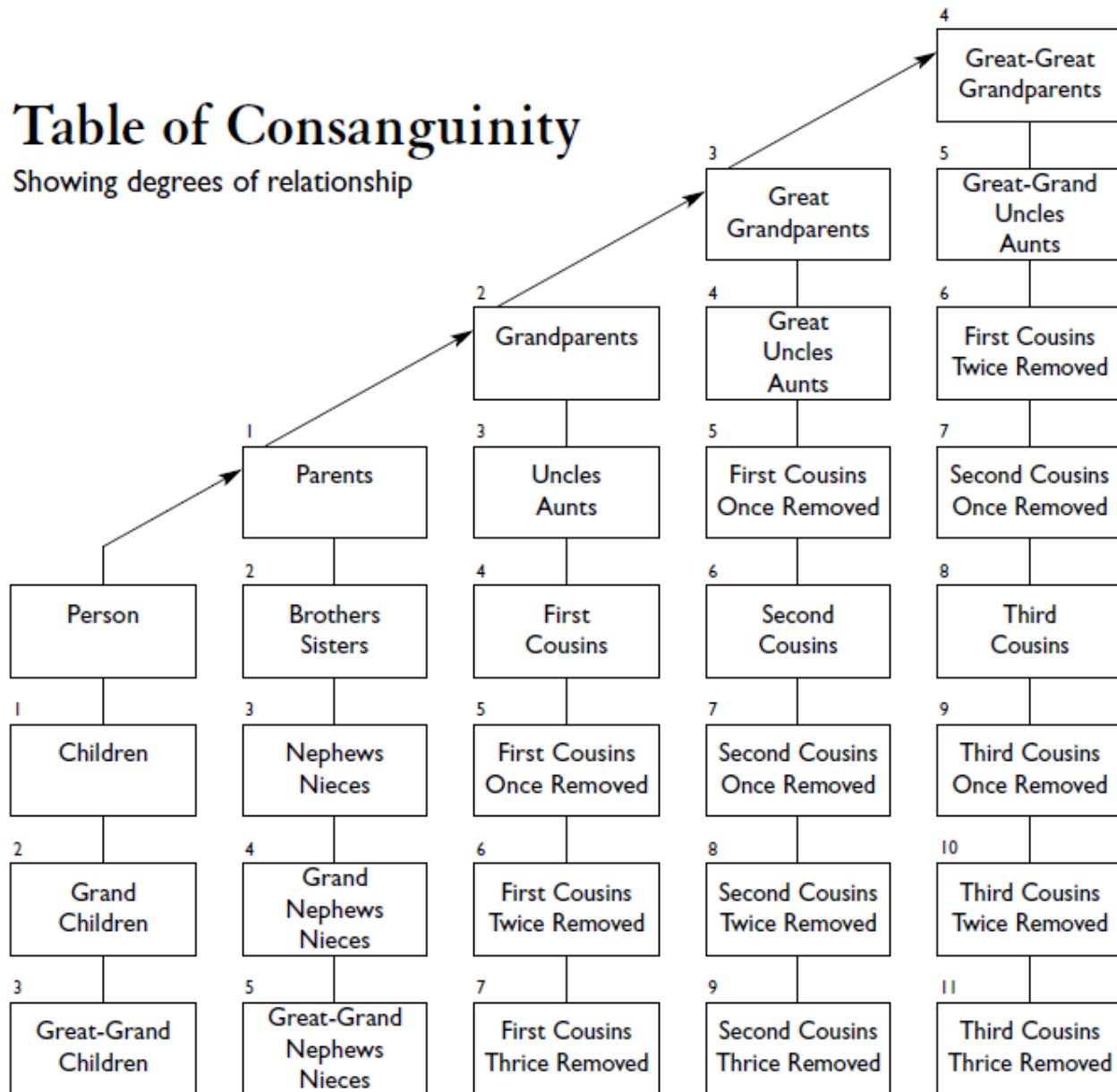
# I. General Introduction

## Florida Flow Chart for Passing Title to Property Upon Death



# Table of Consanguinity

Showing degrees of relationship





# I. General Introduction

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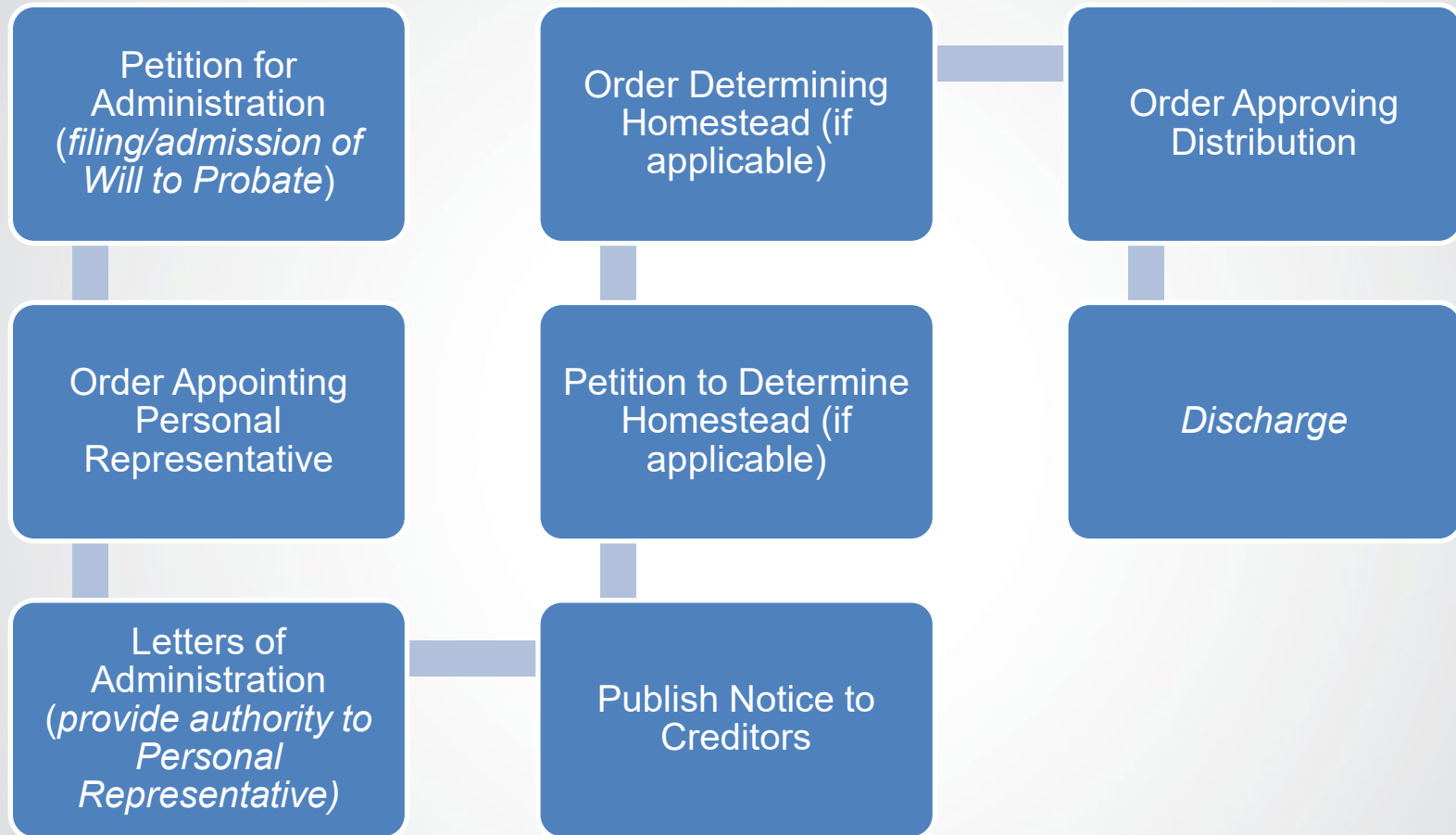
## b. Probate Proceedings

- Independent Administrations
- Dependent Administrations
- Open Probate Proceedings Without Personal Representatives
  - A menace to client timelines
- Other types of probate proceedings
  - Determinations of Heirship
  - Muniment of Title



# I. General Introduction

## Probate Administration Milestones (Florida)



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## II. Significant Federal Regulations



## **II. Significant Federal Regulations**

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### **Gramm-Leach-Bliley Act (GLBA, 1999)**

- Servicers must implement policies to safeguard sensitive data
- Major reason for hesitation or reluctance of servicers in dealing with successors in interest



## **II. Significant Government Regulations**

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### **Consumer Financial Protection Bureau (CFPB)**

#### **Bulletin 2013-12 of October 15, 2013**

- Addressed deceased borrowers following the 2013 Real Estate Settlement Procedures Act (RESPA) and Truth in Lending Act (TILA)
- Provided guidance to servicers regarding the identification of and communication with successors in interest of a deceased borrower as to property.
- Policies and procedures upon notification of death: servicer “promptly identifies and facilitates” communication with successors.
- Action developed from complaints received that servicers were “refusing” to speak with successors or requiring probate court documents.
- The goal is to promote loss mitigation and avoid loss of home.



## II. Significant Government Regulations

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### Consumer Financial Protection Bureau (CFPB)

- On August 4, 2016, the CFPB amended its mortgage servicing rules in Regulations X and Z, which further impacted the Successor in Interest rules.
  - Expands the scope of who is considered to be a successor.
  - Servicer now must promptly confirm or deny successor and/or alternatively, advise what documentation is needed.
  - Provides confirmed successors with the same servicing protection as the original borrower.
  - Upon confirmation, successors in interest will be entitled to the full protections of subpar C and section 1024-17 of Regulation X, and Regulation Z, with exception.
  - Servicers required to offer loss mitigation and be bound by requirements once successors confirmed.





## II. Significant Government Regulations

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### CFPB Definition of Successors in Interest

- Successor in interest means a person to whom an ownership interest in a property securing a mortgage loan subject to this subpart is transferred from a borrower, provided that the transfer is:
  1. A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
  2. A transfer to a relative resulting from the death of a borrower;
  3. A transfer where the spouse or children of the borrower become an owner of the property;
  4. A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property; or
  5. A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.



## **II. Significant Government Regulations**

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### **Confirmed Successor in Interest - 12 CFR 1024.31**

- Confirmed successor in interest means a successor in interest once a servicer has confirmed the successor in interest's identity and ownership interest in a property that secures a mortgage loan subject to this subpart.
- Note: Not required to have assumed the loan





## II. Significant Government Regulations

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### Consumer Financial Protection Bureau (CFPB)

- Upon Notification of the death of a borrower the following should be reviewed:
  1. Receipt of acceptable proof of the successor in interest's identity and legal interest.
  2. Standing of the mortgage loan.
  3. Eligibility of the successor in interest to continue making payments.
  4. Was loss mitigation in place at time of death?
  5. Is foreclosure imminent or planned?
  6. Eligibility of the successor in loss mitigation.
  7. Eligibility of the successor to assume mortgage loan with or without loss mitigation.



## II. Significant Government Regulations

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### Loss Mitigation Rights of Successors in Interest

- "A servicer shall exercise reasonable diligence in obtaining documents and information to complete a loss mitigation application." 12 C.F.R. § 1024.41(b)(1).
- To comply with this diligence requirement, a servicer must promptly review a loss mitigation application for completeness and "[n]otify the borrower in writing within 5 days . . . after receiving the loss mitigation application that the servicer . . . has determined that the loss mitigation application is either complete or incomplete." 12 C.F.R. § 1024.41(b)(2)(i)(A)-(B)



## II. Significant Government Regulations

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### Rights of Successors in Interest and Standing to Bring Litigation

- May not be standing to bring a claim under the FDCPA.
- *Johnson v. Ocwen Loan Servicing*, 374 Fed. Appx. 868 (2010)
  - No standing for daughter of borrower to bring an FDCPA claim because she did not assume the mortgage.



## II. Significant Government Regulations

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### Rights of Successors in Interest and Standing to Bring Litigation

- 12 CFR 1024.31 – Successor in interest is a borrower under RESPA and a consumer under TILA
- Successor in interest has standing to bring consumer claims, including RESPA.
  - *Washington v. Green Tree Servicing* (S.D. Ohio May 5, 2017).
- Courts will use CFPB rules in assessing whether standing exists to bring a claim.
  - In *Washington v. Green Tree*, the rules were not in effect at the time of the alleged conduct, and the court found standing.
  - "While RESPA does not define the term 'borrower,' some courts have held that the term applies only to a borrower on the loan—that is a person who signed the promissory note or assumed the loan."



## II. Significant Government Regulations

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### **CARES Act: Coronavirus Aid, Relief, and Economic Security**

- Moratorium on Foreclosures applies to servicers of federally backed mortgage loans
  - Exception: where property is vacant
- Enacted March 27, 2020
  - First set to expire on May 17, 2020
  - HUD Mortgagee Letter 2020-13 - June 30, 2020
  - HUD Mortgagee Letter 2020-19 – now August 31, 2020
- Mortgage Servicers Cannot:
  - (1) initiate a foreclosure process;
  - (2) move for a foreclosure judgment or order of sale;
  - (3) execute a foreclosure-related eviction; or
  - (4) execute a foreclosure sale.



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## Polling Question 1:

What do you feel are the biggest concerns or challenges involving *successor-in-interest* matters?

- Disclosing information to an unauthorized party
- Delaying the foreclosure process
- Extra expenses involved managing servicing process
- CFPB complaints





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# III. Client Processes, Launches, and Holds



# III. Client Processes, Launches, and Holds

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## Processes Triggered by Deceased Borrowers

- Launches
  - Do servicer and foreclosure attorneys facilitate separate successor-in-interest management processes?
  - What information is needed from attorney?
- Holds
  - Hard or Soft?
  - Importance of internal communication






# III. Client Processes, Launches, and Holds

Holds - Microsoft Edge

https://bkfslloansphere.com/PM/ProcMan/ProcMan\_Holds.aspx?QryAdapterKeys=jAIB3vy2tcnxdDXNZhqHTMHYXG

 Holds

To place file [REDACTED] on hold, enter the Reason and Start Date in the space provided, and click Save:

Hold Information for [REDACTED] Tool Menu

**Additional Process(es)**

☐ Foreclosure Certification  
☐ OCC Presale Review

**Reason** Successor in Interest Review

**Hold Description** Successor in Interest Review

**Start Date** 8/5/2020

**Projected End**  **Maximum Allowed Date** N/A

**Comments**  
Max 1000 Chars

☐ Send Intercom: ☒

Save

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# IV. Communications with Heirs or Estate Representatives



# IV. Communications With Heirs or Estate Representatives

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## Types of Relief a Successor in Interest May Want

- Loan modification
- Acceptance of payments
- Information about the account
- Correspondence/1099
- Assumption of mortgage



# IV. Communications With Heirs or Estate Representatives

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## Successors in Interest / Requests for Information

- 12 CFR 1024.36(i) Potential successors in interest.
  - (1) With respect to any written request from a person that indicates that the person may be a successor in interest and that includes the name of the transferor borrower from whom the person received an ownership interest and information that enables the servicer to identify the mortgage loan account, a servicer shall respond by providing the **potential successor** in interest with a written description of the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property and contact information, including a telephone number, for further assistance. With respect to the written request, a servicer **shall treat the potential successor in interest as a borrower for purposes of the requirements of paragraphs (c) through (g) of this section.**



# IV. Communications With Heirs or Estate Representatives

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## Successors in Interest / Requests for Information

- 2 CFR 1024.36(i) -(2)
  - If a written request under paragraph (i)(1) of this section does not provide sufficient information to enable the servicer to identify the documents the servicer reasonably requires to confirm the person's identity and ownership interest in the property, the servicer may provide a response that includes examples of documents typically accepted to establish identity and ownership interest in a property; indicates that the person may obtain a more individualized description of required documents by providing additional information; specifies what additional information is required to enable the servicer to identify the required documents; and provides contact information, including a telephone number, for further assistance



# IV. Communications With Heirs or Estate Representatives

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## Authority

- What servicers need to communicate with people after the borrower's death
- Examples:
  - Death Certificate
  - Affidavit of Heirship recorded in real property records
  - Order appointing personal representative of deceased borrower's estate
  - Obituary?
- What if such documents are missing?

## Restrictions and Agreements

- Investor restrictions and servicer agreements





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## Polling Question 2:

What do you think is the best form of proof for successor-in-interest entitlement?

- Affidavit of Ownership (*no deed or Order*)
- Proof of Marriage
- Copy of Will indicating requester is an heir named for succession
- Probate Order appointing requester as personal representative



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# V. State-Specific Issues





## V. State-Specific Issues: Connecticut

### Connecticut Definition of Successor in Interest

- More narrow than the CFPB definition. Under Connecticut law, a successor in interest is limited to a spouse or former spouse. CGS 49-31k(9).
  - “Permitted successor-in-interest” means a person who is a defendant in a foreclosure action with a return date on or after October 1, 2015, and either (A) the former spouse of a decedent-mortgagor, who acquired sole title to the residential real property by virtue of a transfer from the decedent-mortgagor’s estate or by virtue of the death of the decedent-mortgagor where title was held as joint tenants or tenants in the entirety, or (B) the spouse or former spouse of a mortgagor or former mortgagor who (i) acquired title to the residential real property by virtue of a transfer from such mortgagor or former mortgagor where such transfer resulted from a court decree dissolving the marriage, a legal separation agreement or a property settlement agreement incidental to such a decree or separation agreement, and (ii) ensures that all necessary consents to the disclosure of nonpublic personal financial information have been provided to the mortgagee in accordance with subdivision (3) of subsection (c) of section 49-31l.

## V. State-Specific Issues: Florida

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Generally, under Florida Statute 732.102 the surviving spouse gets half of the intestate estate unless no other heirs; then they get the entire estate.

- 732.102 Spouse's share of intestate estate.—The intestate share of the surviving spouse is:
- (1) If there is no surviving descendant of the decedent, the entire intestate estate.
- (2) If the decedent is survived by one or more descendants, all of whom are also descendants of the surviving spouse, and the surviving spouse has no other descendant, the entire intestate estate.
- (3) If there are one or more surviving descendants of the decedent who are not lineal descendants of the surviving spouse, one-half of the intestate estate.
- (4) If there are one or more surviving descendants of the decedent, all of whom are also descendants of the surviving spouse, and the surviving spouse has one or more descendants who are not descendants of the decedent, one-half of the intestate estate.



## V. State-Specific Issues: Florida

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- From a foreclosure perspective, title insurability is key.
- Service on heirs who are foreign nationals.
- Appointment of Guardian Ad Litem.
- Prior condo foreclosures.
- Deceased Heirs prior to sale.



## V. State-Specific Issues: Texas

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- Looming Possibility of Foreclosure Rescission
- Opening Probate to Avoid Foreclosure
  - The new bankruptcy petition
- Home Equity Mortgage Under the Texas Constitution
  - Problem of the surviving spouse
- Peculiarities of the Texas Estates Code
  - Watch for limitations!
- Jurisdiction
  - Statutory Probate Courts
  - County Courts at Law
  - Constitutional County Courts



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*Thank you for attending this ALFN webinar presentation.*

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