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Wells Fargo, Fannie Mae are sued to to block foreclosures and evictions

SAN FRANCISCO
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- **Class action suit seeks to enforce HUD rule**
- **'Wells Fargo's actions are not just wrong, they are economically irrational'**

Wells Fargo Bank and the Federal National Mortgage Association (Fannie Mae) are being sued by the AARP on behalf of reverse mortgage borrowers and their survivors designed to head off illegal foreclosures and evictions.

The suit, filed in the U.S. District Court for the Northern District of California in San Francisco, seeks a declaration of the rights of class members, as well as an injunction prohibiting what the AARP calls illegal foreclosures and evictions, and damages for breach of contract.

The case seeks to accord the surviving spouses and heirs of reverse mortgage borrowers the right to purchase the property for its appraised value after the loan becomes due and payable, either because of the death of the borrower or for some other reason.

The representative plaintiff is Robert Chandler of Elk Grove, whose mother, Rosemary, died in 2010, five years after obtaining a reverse mortgage. Like many other heirs, Mr. Chandler was never given notice of his right to purchase the property for its current value.

When Mr. Chandler expressed an interest in purchasing the property at that price, Wells Fargo told him that he would have to pay off the full mortgage balance, the lawsuit says.

This is contrary to the explicit terms of the contract his mother signed with Wells Fargo and federal reverse mortgage law, says AARP.

Wells Fargo, acting on behalf of the owner of the mortgage, and Fannie Mae, then proceeded to foreclose on the Chandler home. Finding no one willing to buy it for the same market price that Mr. Chandler was willing to pay, Fannie Mae then began efforts to evict Mr. Chandler from the property, which his family has owned since the 1940s.

Congress designed the Home Equity Conversion Mortgage program with the explicit goals of helping seniors to access the equity in their homes, without facing a threat of losing their homes, AARP says.

A key part of the program is an insurance fund that every reverse mortgage borrower pays into, which ensures that their survivors can purchase the property at the current market value, should real estate prices fall. The class action seeks to ensure that any heir of a reverse mortgage borrower who wants to purchase their family home, as Mr. Chandler does, will be able to do so.

"Mr. Chandler's case is not an isolated one. In the wake of HUD's reversal of its rule on the rights of surviving spouses and heirs earlier this year, we have been contacted by many, many others facing the same problem," says Jean Constantine-Davis, a senior attorney with AARP Foundation Litigation.

"It is difficult to understand why reverse mortgage lenders continue to deny them their contractual and legal rights."

Michael Ng of the law firm Kerr & Wagstaffe LLP, which is suing on behalf of AARP, says, "Wells

Fargo’s actions are not just wrong, they are economically irrational. Even though elderly borrowers paid for insurance that protects the bank against the downturn in the housing market, Wells Fargo insists on evicting family members from homes that will go unsold and unoccupied.”

In March, AARP Foundation Litigation and the law firm Mehri & Skalet filed suit in federal court alleging that the Department of Housing and Urban Development had abandoned long-established federal rules that guaranteed that an heir or surviving spouse would never owe more than the home was worth at the time of repayment.

One month after the AARP suit was filed, HUD reversed itself, and reinstituted the HUD policy to the fairer practice of not requiring payment that exceeded the updated value of the home.

The new suit alleges that, despite HUD’s correction of its rules, the defendants are still failing to give notice to surviving spouses and heirs of their rights to purchase the property for the lower value, and are foreclosing and seeking to evict an heir who is attempting to pay off the current fair market price on an underwater home.

A reverse mortgage is a loan that allows older homeowners to convert the equity in their homes into cash. It is the “reverse” of a traditional mortgage, in which the borrower repays the borrowed sum on a monthly basis. Reverse mortgage borrowers receive money in the form of a loan that must be paid back out of their home equity.

Reverse mortgage borrowers are not required to make monthly or other periodic payments to repay the loan, other than payment of property taxes and home insurance premiums. Instead, the loan balance increases over time and the loan does not become due and payable until one of several specific events occur, for example, the last homeowner dies, moves permanently, or sells the home.

The loans are insured under the Home Equity Conversion Mortgage (HECM) program, and because of the complexity of the program and because it is specifically tailored to meet the needs of those 62 and older, Congress included special protections for HECM borrowers.