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FREE GUIDE

CALIFORNIA HOMEOWNERS

Inherited a house that still has a mortgage? What happens to the loan in California

Inherited homes and probate. Plain English, every fact sourced and dated.

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Questions? Talk with Fadi.
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Inherited a house that still has a mortgage? What happens to the loan in California

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QUICK ANSWER

The mortgage doesn't go away when the owner dies, and the house can still be foreclosed on if payments stop. But for a home with one to four units, federal law limits a lender from calling the whole loan due just because the house passed to a relative at death (the federal rule adds that the new owner lives or will live there, and it doesn't cover reverse mortgages). Heirs can keep paying the existing loan, refinance it, or sell and pay it off. Talk with a probate attorney about your situation.

At a glance

Question	What the rules say
Can the lender demand the full balance because of the death?	Not for listed transfers on 1 to 4 unit homes; the federal rule adds that the new owner lives or will live there
Must I refinance?	No, not just to keep paying or to be reviewed for help, per CFPB
Reverse mortgage?	Different rules: it comes due after the last borrower (and any eligible non-borrowing spouse) dies

The loan after a death: first steps

Some smaller servicers are exempt from parts of these rules, and reverse mortgages have their own. Ask a probate attorney whether estate money should pay.

STEP 1
Keep paying
CFPB: act quickly on payments to avoid foreclosure

STEP 2
Write to the servicer
Name the borrower who died and give the loan number

STEP 3
Get the document list
In writing, with a phone number for help

STEP 4
Send the papers
Such as a death certificate, a will or a court order

STEP 5
Get confirmed
Then you're treated as a borrower under the servicing rules

Can the lender call the loan due because the owner died?

A "due-on-sale" clause lets a lender demand the whole balance when the home changes hands. The federal Garn-St Germain Act limits it. For a loan on residential property "containing less than five dwelling units," it says "a lender may not exercise its option pursuant to a due-on-sale clause upon" a list of transfers, including:

- "a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;"
- "a transfer to a relative resulting from the death of a borrower;"
- "a transfer where the spouse or children of the borrower become an owner of the property;"

The federal regulation under this law (12 CFR 191.5) lists the relative and spouse-or-children transfers only where the new owner "occupies or will occupy the property," and it leaves out reverse mortgages. It also lets a lender use the clause if a later event takes the transfer outside the exception. If no heir plans to live in the house, ask an attorney how this applies to your loan.

The law limits the clause. It doesn't erase the debt.

What are my rights with the mortgage servicer?

Federal servicing rules call an heir who receives the house a "successor in interest."

- **Ask in writing.** Name the borrower who died and give the loan number. The servicer must answer with a written list of the documents it reasonably needs to confirm who you are and your ownership, plus a phone number for help.
- **Confirmation.** Servicers covered by the rule must have procedures to promptly decide whether you're confirmed and tell you.
- **After you're confirmed,** you're treated as a borrower under the servicing rules, without having to take on the loan first. That can include periodic statements, payment crediting and payoff statements, where those rules apply to your loan.
- **If you fall behind,** the servicer must review your complete application for help (loss mitigation) under the federal rules, if the home is your principal residence and the rules apply to that loan. A vacant home may still count as a principal residence, depending on the facts.

Being confirmed isn't the same as owing the debt (see the questions below). Some smaller servicers are exempt from parts of these rules, and reverse mortgages have their own rules, so ask yours which apply.

Who keeps paying while it's sorted out?

CFPB says heirs "must act quickly to make mortgage payments in order to avoid foreclosure." Who's in charge depends on how the house is held:

- **In probate,** the personal representative (executor or administrator) takes control of the estate's property and "shall pay taxes on, and take all steps reasonably necessary for the management, protection, and preservation of, the estate."
- **In a living trust,** the trustee must "take reasonable steps under the circumstances to take and keep control of and to preserve the trust property."
- **Joint tenancy or a surviving spouse:** see your first 30 days.

Whether estate money or your own pays the mortgage, and whether you get paid back, is a question for the probate attorney. Ask before you pay, and keep every receipt. (That's a practical tip, not a legal rule.)

What are the options for the loan?

Three ways to handle the loan

Behind on payments? Ask the servicer about help and call a HUD-approved counselor at (800) 569-4287. If a notice of default is recorded, the 21-day payoff rule applies only if the demand arrives before the notice of sale is first published.

Keep it

- Keep making the payments
- No need to assume or refinance first
- Lender can still foreclose if payments stop

Refinance

- A new loan pays off the old one
- Usually closing costs and fees
- Not required just to keep paying

Sell

- Written demand for a payoff statement
- Lender delivers it within 21 days
- Up to $30 (not for FHA or VA loans)

Keep it and keep paying. CFPB says successors can keep making the payments, get loan information and be evaluated for a modification "without either assuming liability for the loan or refinancing." To change the loan's terms or the names on it, CFPB says you generally don't need to refinance if you assume the loan and meet the investor's underwriting rules.

Refinance. That's "a new loan to pay off and replace your old loan," CFPB says, usually with closing costs and fees. CFPB has heard from heirs "incorrectly told that they must refinance the loan at today's higher interest rates."

Sell and pay it off. Under California Civil Code 2943, the borrower's successor in interest or a licensed escrow holder can make a written demand for a payoff statement. The lender must deliver it within 21 days (if a notice of default is recorded, only if the demand arrives before the notice of sale is first published), for up to $30 (the cap doesn't apply to FHA and VA loans). In probate, the sale rules depend on the representative's authority; see selling a house in probate.

If you're behind. Ask the servicer about a repayment plan, forbearance, a loan modification, a short sale or a deed in lieu of foreclosure. The rules don't promise any one option. A HUD-approved housing counselor may be able to help for free (California Courts). CFPB says to call HUD at (800) 569-4287 and enter your ZIP code.

What if it's a reverse mortgage?

For a reverse mortgage, CFPB says the loan "becomes due and payable after your death and after the death of any coborrowers or of an eligible nonborrowing spouse."

- **The clock (HECM).** Once heirs receive a due and payable notice, CFPB says "they have 30 days to buy, sell, or turn the home over to the lender." The time "might" be extended up to six months to sell or get a loan.
- **Keep it** by repaying the loan (ask the servicer for the amount), possibly with a loan of your own.

- **Sell it.** If the home is worth less than the balance, you can sell for at least 95% of the appraised value, and mortgage insurance covers the rest.

What to do this week

1. **Write to the servicer** (its address and the loan number are on the latest statement). Say the borrower died, and ask what documents it needs to confirm you as a successor in interest. Keep copies.
2. **Gather the papers.** CFPB's examples: a death certificate, a will or a court order. In probate, the court's Letters (form DE-150) show the representative's authority.
3. **Keep the payments current** if you can, and ask the attorney whether estate money should pay.
4. **If the loan is behind,** call a HUD-approved counselor at (800) 569-4287, and read options before foreclosure.

Watch out for

- **Being told you must refinance.** If you get "the runaround," CFPB says to file a complaint with the CFPB.
- **Up-front fees.** CFPB: "If anyone tries to charge you in advance for help or guarantees that they can stop your foreclosure, they're not legitimate."
- **Anyone who asks for the deed.** The FTC warns scammers may try to get you to transfer the deed to them. DFPI says a deed transfer doesn't end the mortgage payments.
- **Unsolicited offers.** The Department of Real Estate warns they're often "far below market value" and advises: "take the time to have a professional help you determine the value of the property." That goes for our offer too.
- **Signing fast after a notice of default.** If you live in the home as your main home (1 to 4 units) and a notice of default is recorded, California's home equity sales law covers buyers of such a home, with some exceptions (for example, someone buying it to live in). In those sales you can cancel until midnight of the fifth business day after signing, or until 8 a.m. on the day of the foreclosure sale, whichever comes first. Ask an attorney whether it applies.

Questions people ask

Do I have to pay my parent's mortgage?

Federal rules give servicers a notice they may send to confirmed successors. It says that unless you assume the loan under state law, you aren't liable for the mortgage debt, but the lender keeps "a right to foreclose on the property, when permitted by law and authorized under the mortgage loan contract." Whether you owe the debt is decided by state law; ask a probate attorney.

Does the servicer need probate papers?

Not always. Documents it asks for must be reasonable for your situation, and if your state's law doesn't require probate, CFPB says it generally wouldn't be reasonable to demand probate papers.

How long do heirs have with a reverse mortgage?

For a HECM, CFPB says 30 days after the due and payable notice, which might be extended up to six months.



Questions about your situation?

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This guide explains general California rules. It isn't legal or tax advice. Talk with a probate attorney, a tax professional or a HUD-approved housing counselor about your situation.