The deed of trust and mortgage had an acceleration clause providing that upon the death of the borrower, the entire debt would become due unless the property was the principal residence of a surviving borrower. The debtor was not a co-debtor on the deed of trust but inherited the property with his sister upon his mother’s death. The property had significant equity over the outstanding debt and Fannie Mae sought to foreclose upon the triggering of the Acceleration clause. The debtor filed a chapter 13 bankruptcy and sought to modify the debt and pay it over the course of the plan under sections 1322(c)(2) and 1325(a)(5). Fannie Mae objected on the bases that section 1322(b) does not permit modification of a note secured by the debtor’s principal residence and because the debtor’s sister, who by inheritance became a co-debtor on the Note, was not a party to the bankruptcy.

The court began with what it described as the “inflexible treatment for claims secured by a debtor's principal residence” under section 1322(b)(2) as balanced by section 1322(c)(2) which “rights the balance somewhat by dampening what would otherwise be a significant, and frequently insurmountable consequence for debtors.” Section 1322(c)(2) permits modification of a loan secured by the debtor’s residence in the case where the loan would come due in its entirety before the conclusion of the chapter 13 plan. Thus, the plain language of the provision indicates that the accelerated loan was amenable to modification. The court noted that a number of other bankruptcy courts dealing with the issue had found that in such situations as the one before it, modification has been permitted. *See In re Brown*, 428 B.R. 672 (Bankr. D. S.C. 2010); *In re Carter*, No. 0935587, 2009 WL 5215399, at \*3 (Bankr. S.D. Tex. Dec. 28, 2009); *In re Wilcox,* 209 B.R. 181, 183 (Bankr. E.D. NY. 1996). In Brown, which was on all fours with *Griffin*, the fact that the acceleration clause kicked in prior to the bankruptcy, rather than cementing the creditor’s right to immediate payment, triggered the applicability of section 1322(c)(2) and provided the debtor with an alternative to loss of his residence.

The court found that the legislative history of section 1322(c)(2) supported the debtor’s position as that provision was enacted in part to overrule *First National Fidelity Corp. v. Perry (In re Perry),* 945 F.2d 61 (3d Cir. 1991) which held that section 1322(b)(2) barred a debtor from using section 1325(a)(5) to decelerate a loan already in foreclosure that was secured by the debtor's principal residence.

The court distinguished the cases cited by Fannie Mae and held that “Section 1322(c)(2) . . . was enacted to expand the rights of debtors with respect to secured claims against principal residences but only within the confines of the subsection's precise language; i.e., where the last payment according to the original payment schedule is due prior to the proposed final payment under the debtor's plan.”

The court dispensed with Fannie Mae’s alternative argument that the fact that the debtor’s sister was not a party to the bankruptcy prevented modification by noting that those cases cited by Fannie Mae dealt with tenants in the entirety which are significantly different than the situation presented by the case before it. A tenants by the entirety estate is a single entity, whereas involves separates interests. That a debtor’s bankruptcy may affect a non-debtor is not uncommon nor does it, standing alone, render the non-debtor a necessary party.