Reverse Mortgage Update: Options for Borrowers & Surviving Non-Borrowing Spouses Facing Foreclosure & Other Challenges

NATIONAL CENTER ON LAW & ELDER RIGHTS

CHAPTER SUMMARY • February 2020

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National Consumer Law Center

The National Consumer Law Center (NCLC) uses its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults and people of color. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness.

Key Lessons

1. The U.S. Department of Housing and Urban Development (HUD) provides several foreclosure avoidance options for borrowers with reverse mortgages and spouses at risk of foreclosure and eviction. These options include loss mitigation for property charge default and deferral of foreclosure for non-borrowing spouses.
2. HUD issued revised guidelines that include greater protections for non-borrowing spouses. Now, non-borrowing spouses seeking to remain at home after the borrower dies no longer have to provide proof of marketable title or a legal right to remain in the home, or meet strict program deadlines.
3. HUD program guidance, with respect to the Home Equity Conversion Mortgages (HECM) program, changes routinely. Attorneys working with older adults should consult Mortgagee Letters, FAQs, and regulations for changes.

Introduction

Reverse mortgages allow older homeowners to convert home equity into cash and receive the loan proceeds as a lump sum, stream of payment, or through a line of credit. No payment is due on the loan until the borrower dies, sells, or permanently moves out of the home, or is unable to meet other loan obligations. Most reverse mortgages are federally-insured Home Equity Conversion Mortgages (HECMs). The U.S. Department of Housing and Urban Development (HUD) manages the HECM program and provides guidance through Mortgagee Letters, FAQs, handbooks, and regulations.

In recent years, a growing number of borrowers have defaulted on their HECM loans. Most defaults were due to borrowers falling behind on property taxes or failing to pay insurance. Surviving spouses not listed as a borrower on the loan also faced foreclosure and eviction after the borrower spouse dies. Despite the increase in defaults and foreclosures, the Government Accountability Office reports[1] that lenders are not using the foreclosure avoidance options HUD created for non-borrowing surviving spouses and borrowers. Servicer mistakes also result in loans being prematurely called due on the incorrect assumption that the borrower does not occupy the home. HUD made several changes to the HECM program. The most significant changes allow more leeway for surviving non-borrowing spouses to remain at home after the borrower on a reverse mortgage dies.

1 Government Accountability Office, "Reverse Mortgages: FHA Needs to Improve Monitoring and Oversight of Loan Outcomes and Servicing," (September 2019), available at: gao.gov/products/gao-19-702.

MOE Option Provides More Flexibility for Non-Borrowing Spouses

The Mortgagee Optional Election (MOE) allows surviving non-borrowing spouses to remain at home after the borrower dies if they meet the eligibility criteria and continue to fulfill the terms and conditions of the loan. Under the revised guidelines, non-borrowing spouses, (those not listed on HECMs made before August 4, 2014), no longer have to provide proof of marketable title or a legal right to remain in the home. The prior requirement and the strict program deadlines proved to be a barrier for many spouses wishing to access the program. The new policy relaxes program deadlines and requires servicers to notify borrowers about the existence of the option, and request the names of spouses who may potentially qualify for the option. Borrowers will receive the notice and form with the annual occupancy certificate.

Timing and Process

This option is discretionary and a lender must elect the MOE option within a reasonable period, typically within 180 days of the death of the borrower to avoid being financially penalized. Lenders may choose this option even after starting the foreclosure process. The surviving non-borrowing spouse must establish their eligibility under the program's guidelines. Eligible non-borrowing spouses include those who were married to the borrower at the time of loan closing (or engaged in a committed relationship akin to marriage); live in the home as a principal residence; and have a loan that is not due and payable for other reasons. If the borrower was enrolled in a plan to repay property charge arrears, the non-borrowing spouse must bring the delinquency up to date before the lender assigns the loan to HUD.

If the non-borrowing spouse qualifies for the MOE, the due and payable status on the loan will be deferred and the loan will not be subject to foreclosure until the spouse moves out of the home, dies, or fails to meet the terms and conditions of the loan, including paying the property charges. Though the spouse is required to meet the financial obligations of the loan (i.e., payment of property charges, maintenance), they will not receive any proceeds from the HECM. The non-borrowing spouse must certify annually that the conditions are met.

Mortgagee Letter 2019-15, issued September 23, 2019, details the new policy. Servicers should be communicating with borrowers regarding the MOE. Borrowers or spouses with questions, or those wishing to benefit from the MOE, should contact the loan servicer.

EXAMPLE

Mrs. Jones's husband died five months ago. The couple had been married for over 30 years. During their marriage, Mr. Jones handled all the financial affairs of the household, including arranging for a reverse mortgage on their home. Though Mrs. Jones knew her husband had taken out a reverse mortgage on the home, she did not know much about the loan or recall what papers she had signed. She did recall the loan officer recommending that the loan be made in her husband's name only because he was older. After her husband's death, Mrs. Jones has struggled to handle finances on her own. She still lives in the home and pays the property taxes and insurance. Her friends told her she should be sure to keep up with those bills. However, she stopped opening all her mail after the funeral. She did not realize that the reverse mortgage servicer was attempting to contact her regarding her plans for paying back the loan or moving from the house. Now she is catching up with the mail. She sees letters from the servicer mentioning something called a "non-borrowing spouse" and the possibility of staying in her home. She wonders what this means and how she can keep her home. She is getting ready to call the servicer but is not sure what to ask. Mrs. Jones contacted a reverse mortgage counselor, who advised her to contact the mortgage servicer right away. Most likely, the counselor said, the mortgage servicer is trying to contact her to determine whether she would qualify for the MOE program. Mrs. Jones should be prepared to provide information regarding her husband's date of death, date of marriage, and Social Security number. The mortgage servicer will collect other information and have her sign an agreement regarding the program.

Foreclosure-Avoidance Options for Borrowers Facing Foreclosure

Loss mitigation options for property charge default

Reverse mortgage borrowers must pay property-related charges, including real estate taxes, hazard and flood insurance premiums, and, if applicable, condominium association fees, ground rents, or other special assessments. HUD has directed lenders to use various loss mitigation strategies to address property charge defaults. Despite the menu of options, servicers can exercise their discretion and refuse to offer any loss mitigation options. The options include:

- **Repayment Plans:** Repayment plans of sixty months or less are offered based on the borrower's surplus income. The calculation involves consideration of all available sources of income and the borrower's necessary living expenses and property charges due over the next year. Though permitted under HUD guidelines, servicers generally will not offer a repayment plan if the monthly payment exceeds 25% of the borrower's surplus income. The length of the plan is up to sixty months or a shorter time period as necessary to ensure repayment before the mortgage reaches 98% of the Maximum Claim Amount. A borrower who misses a payment and defaults on a repayment plan and owes more than $5,000 is not eligible for another plan.
- **At-Risk Extensions:** Borrowers 80 years or older may qualify for an at-risk extension of the foreclosure timeframe. The borrower must suffer from certain critical circumstances such as a terminal illness, long-term physical disability, or a unique occupancy need (i.e. terminal illness of family member receiving care at the home). HUD approves the at-risk extension. This certification must be renewed annually.
- **Payment for Outstanding Charges:** If the property tax and hazard insurance arrears are less than $2,000, lenders may use their own funds to pay a borrower's outstanding charges. Lenders who use their own funds to cure the default cannot add that amount to the loan balance and are subject to other limitations or to seek reimbursement from HUD.

Aside from loss mitigation options, a HECM may be refinanced when the loans are older and property values are high or have increased. Direct aid from nonprofit organizations and state government may also help delinquent borrowers, where available.

Proving occupancy of the home

A reverse mortgage may be called due and payable if the home is not the principal residence of at least one borrower for longer than 12 consecutive months. Servicers seek to establish occupancy primarily by sending a certificate annually (or more frequently if they suspect the property is vacant) to be signed and returned. Unfortunately, many servicers fail to take additional steps or have inadequate measures to verify occupancy of the home and call the loan due and payable improperly. Borrowers must provide proof of occupancy and defend against a loan called due prematurely. Proof of occupancy can include utility bills or other records which demonstrate the home was not vacant and inhabited by a borrower.

Conclusion

Older homeowners with reverse mortgages and their surviving spouses are increasingly facing foreclosure and displacement from their homes. Full use of foreclosure avoidance options and other alternatives can ensure that older adults stay housed and enjoy the stability of aging in their community.

Additional Resources

- U.S. Department of Housing and Urban Development (HUD)
  - HECM page for Lenders (includes link to Mortgagee Letters and Handbook)

   - » Find a HUD-approved housing counseling agency

- Other Government Sites
   - » Consumer Financial Protection Bureau
   - » Federal Trade Commission (FTC)

- Housing Counseling & National Advocacy Organizations
   - » Senior Homeownership Preservation Project (SHOPP): (773) 262-7801. This project works with HECM borrowers who are facing default on their mortgages due to non-payment of property taxes or homeowners insurance.
   - » National Consumer Law Center

- Legal Assistance
   - » Legal services/ Legal aid
   - » Volunteer lawyer
   - » National Association of Consumer Advocates

- Publications
   - » National Consumer Law Center, Home Foreclosures (1st ed. 2019)
   - » National Consumer Law Center, Mortgage Lending (2019 3rd ed.)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at ConsultNCLER@acl.hhs.gov.

This Chapter Summary was supported by a contract with the National Center on Law and Elder Rights, contract number HHSP233201650076A, from the U.S. Administration on Community Living, Department of Health and Human Services, Washington, D.C. 20201.