

New Federal Policies to Prevent Reverse Mortgage Foreclosures

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Housekeeping

- All on mute. Use Questions function for substantive questions and for technical concerns.
- Problems with getting on to the webinar? Send an e-mail to NCLER@acl.hhs.gov.
- Written materials and a recording will be available at NCLER.acl.gov. See also the chat box for this web address.

About Legal Services of New Jersey

LSNJ coordinates the statewide Legal Services system, which provides free legal assistance to low-income New Jerseyans for their civil legal problems. Through its work, LSNJ strives to secure substantive and procedural justice for those living in poverty.

About NCLC

Since 1969, the nonprofit National Consumer Law Center® (NCLC®) has used 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, in the U.S.

NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitative practices, help financially stressed families build and retain wealth, and advance economic fairness.

About NCLER

The National Center on Law and Elder Rights (NCLER) provides the legal services and aging and disability communities with the tools and resources they need to serve older adults with the greatest economic and social needs. A centralized, one-stop shop for legal assistance, NCLER provides Legal Training, Case Consultations, and Technical Assistance on Legal Systems Development. Justice in Aging administers the NCLER through a contract with the Administration for Community Living's Administration on Aging.

Key Lessons

1. Reverse mortgage basics
2. Major causes of reverse mortgage foreclosure
3. Loss mitigation options for property charge defaults
4. Non-occupancy defaults
5. Spouses and other heirs
6. Reverse mortgages assigned to HUD

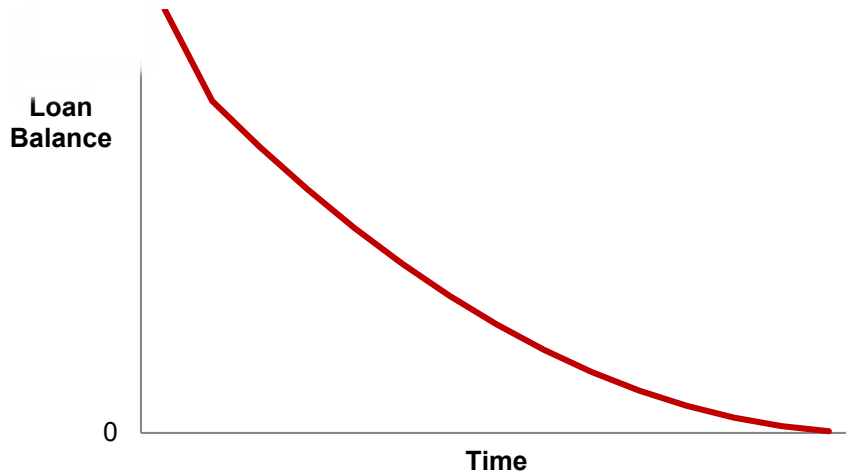
Reverse Mortgage Basics

Reverse Mortgage Basics (Slide 1 of 3)

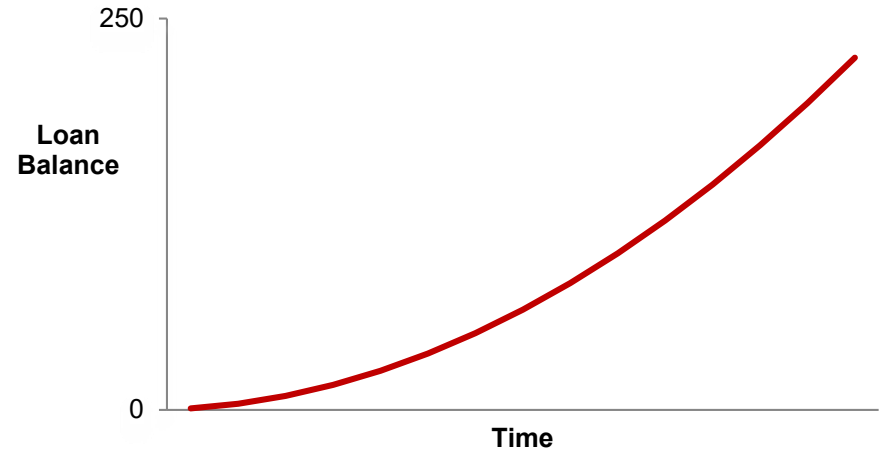
- FHA-Insured Reverse Mortgages: the Home Equity Conversion Mortgage (HECM)
 - Borrower must be at least 62 years old.
- Proceeds may be taken as a lump sum, line of credit, or an annuity.
- No monthly payments of principal or interest; interest and servicing fee is added to the loan balance each month.
- Loan comes due upon a triggering event – death or non-occupancy.

Reverse Mortgage Basics (Slide 2 of 3)

Regular/Forward Mortgage



Reverse Mortgage



Reverse Mortgage Basics

(Slide 3 of 3)

- Loan balance may grow to exceed the value of the house
 - FHA insurance
 - Nonrecourse loan
- Initial principal amount loaned is based on:
 - Appraised value of the house
 - Prevailing interest rates
 - Age of the youngest borrower (older = higher loan proceeds)

Maximum Claim Amount

- The loan will be assigned to HUD when it reaches 98% of the “Maximum Claim Amount”
 - Maximum Claim Amount = the lesser of:
 - The appraised value of the house
- OR
- \$726,525

Property Charges

- Although the reverse mortgage borrower doesn't owe a monthly payment to the lender, the borrower must continue to pay their "property charges," including:
 - Property taxes
 - Homeowner's insurance
 - HOA fees

Reverse Mortgage as a Tool

(Slide 1 of 2)

- Reverse mortgages can **help** some clients as a home-saving solution.
 - ✓ Wants to live in property for remainder of lifetime.
 - ✓ Can afford regular ongoing property costs (taxes, insurance, association dues) or has enough equity to set-aside those funds.
 - ✓ Leaving the asset or full amount of home equity to heirs is not a high priority.

Reverse Mortgage as a Tool

(Slide 2 of 2)

- When can it be a solution?
 - Property tax arrears.
 - Home equity loan or other mortgage balance.
 - Other liens that client wants to pay off (IRS, judgment liens, etc.).
 - Client wants to draw some money from available home equity, but doesn't want a monthly repayment on the balance.

“Due and Payable” Events

- The last surviving borrower dies* (D&P “deferred” if there is a non-borrowing spouse in the home)
- The last surviving borrower sells the home or conveys title (however, borrowers can convey title after closing as long as they retain at least a life estate interest in the property).
- The borrower changes their principal residence (or fails to submit the annual occupancy certification):
 - A borrower may be away from the home for up to 12 months if the absence is due to medical reasons.
- Borrower fails to pay property charges or maintain the property in “saleable” condition.

Major Causes of Reverse Mortgage Foreclosure

- Property Charge defaults
- Non-occupancy (or alleged non-occupancy)
- Death of the borrower
- Some of these foreclosures are avoidable!
 - NCLC, [Unmet Promise](#) (Feb. 2023)
 - HUD has made certain policy changes, but more are needed.

Data from GAO Report

- GAO, Reverse Mortgages: [FHA Needs to Improve Monitoring and Oversight of Loan Outcomes and Servicing](#) (9/25/19): Peak of HECM terminations was 82,000 in FY2016.
- Over 2014-2018:
 - 34% of terminations were due to borrower's death
 - 15% due to default
 - 30% unable to determine the reason
- In 2018, 18% of terminations were due to default.

Data from 2019 GAO Report

- From April 2015 to end of 2018, 22% of HECM borrowers with property charge defaults got repayment plans.
- 2% got the At-Risk Extension.
- Servicers claim repayment plans are “rarely successful”.
- 8,800 HECMs that terminated in 2014-2018 had arrearage balances less than \$2,000.

Policy Changes in Late 2023

- The Revised HECM Handbook, eff. April 2024, eliminates the need to annually renew the At-Risk Extension (over age 80, critical health circumstances)
- Permanently eliminated the ban on successive repayment plans for arrears over \$5,000
- Optional delay of due and payable for arrears of up to \$5,000 (previously \$2,000)
- Incentives for short sale or deed in lieu, up to \$7,500 plus probate costs of up to \$5,000

Property Charge Defaults

Loss Mitigation Options for Unpaid Property Charges

- Reinstatement
- HECM Refinance
- Repayment Plan
- At-Risk Extension
- Optional Delay of Due & Payable Status

Reinstatement

- HUD allows borrower to reinstate at any time, subject to 3 exceptions:
 - If mortgagee accepted reinstatement within past two years;
 - Reinstatement will preclude later foreclosure;
 - Reinstatement will adversely affect lien priority.
 - See Mortgage, Par. 10 and 24 CFR § 206.125(a)(3)
- Family members, religious institutions, grant, etc.

HECM Refinance

- Difficult without significant equity—but home values have increased since COVID.
- Refinance must meet all applicable HECM origination requirements
 - Life Expectancy Set Aside likely required if borrower has defaulted on property charges
 - Borrowing limits have decreased
- Origination costs

Repayment Plan (RPP)

- Step 1: Determine total amount due plus property charges due for the next 90 days. (HOA dues can be included, effective 4/29/24!)
- Step 2: Ability to Repay
 - Length of plan may be up to 5 years (60 months)
 - Length of the plan based on whether the total arrearage divided by the borrower's monthly surplus income would result in 60 months or less than 60 months of payments
 - RPP may be offered if the monthly payment consumes more than 25% of surplus income, so long as there is a "reasonable expectation" of performance on the RPP. Handbook at 1496.

Repayment Plan Issues

- Unsuccessful RPP = “a full monthly payment is not made within 60 days of the monthly payment due date.”
- Borrower is required to pay the future property taxes on time
- Hardship or later unpaid property charges = servicer should evaluate for a revised repayment plan
- Re-default and arrears greater than \$5,000 is no longer a barrier!

At-Risk Extension, ML 2015-11

Servicer may request foreclosure extension from HUD if:

- Youngest borrower at least 80; and
- Borrower has critical circumstances such as a supported terminal illness, substantiated long-term physical disability, or a “unique” occupancy need (e.g., terminal illness of family member receiving care at residence)
- Servicer must include supporting documentation validating conditions (e.g., doctor’s letter); borrower must furnish.
- If approved, servicer to provide supporting docs to HUD on no less than an annual basis.

At-Risk Extension Renewals

- Servicers are not consistently notifying borrowers of the renewal process, or telling them too late.
 - May need to remind borrowers to get and submit a new doctor's letter.
 - Many servicers claim borrowers can only request a renewal 30 days before extension lapses.
 - Even a timely request may not be approved by HUD in time, so the borrower may end up back in foreclosure.
- Late requests are generally still processed but sometimes treated as new applications
 - If borrower's disability prevented them from timely renewing, make a reasonable accommodation request to HUD or servicer.
- Strategies: Send NOE, escalate to HUD's NSC, contact NCLC
 - (Renewal process might become easier in the future)

Additional Options

- Optional Delay of Due and Payable Status
 - If arrears less than \$5,000 (formerly \$2,000), see [Mortgagee Letter 2023-23](#) (Nov. 30, 2023); and
 - Borrower expressed willingness to pay and is currently making payments or partial payments, OR lender has not yet been able to reach the borrower but has received occupancy verification and no reason to believe the property is vacant
 - Flexible repayment arrangement, not required to follow RPP guidelines

Non-Occupancy Issues

Servicer Alleges Non-Occupancy

- Security instrument (mortgage) requires occupancy as principal residence.
- Regulations for reverse mortgages say that the mortgagee shall require the borrower to certify to this annually.
 - (24 CFR 206.211)
- “Principal Residence” – majority of calendar year in residence.
 - Still considered principal residence if borrower is temporarily in a health care institution, so long as less than 12 months
- Borrower can “cure” the default
 - Providing verification that they are living there
 - Or verification that have moved back in (if they were actually out of the home).

Alleged Non-Occupancy Defaults

- Usually, non-occupancy is alleged because borrower did not return the Annual Occupancy Certification form to their servicer.
- If borrower still occupies the property as their “principal residence” (within the 12 month window), they can submit the form & resolve default.
 - Verbal certification? May not be considered sufficient for the mortgagee.

Avoiding Non-Occupancy Defaults

- Remind borrowers to submit the annual certification & open all of their mail. Most reverse mortgage servicers mail the form out before it's due.
- Some servicers won't accept an "early" recertification. Form must be submitted approximately no more than 30 days before or after the annual anniversary of the loan closing date.
- If borrower or family members are computer savvy, they might be able to submit the recertification form through online portal.

Other Non-Occupancy Considerations

- If borrower is out for almost 12 months, is there a health issue which makes living in the property no longer realistic? Do they need to think about other long term solutions?
- If borrower returns to property for some time period within the 12 month window & then leaves again, that could arguably count as occupancy for purposes of a truthful certification - case-by-case analysis.
- If borrower can no longer occupy the property, then they might need other assistance like estate planning.

Non-Borrowing Spouses

The Problem

- Until Aug. 2014, reverse mortgages only protected the borrower from foreclosure, even if there was a non-borrowing spouse (NBS).
- Lenders regularly removed a (younger) spouse from a deed when closing a HECM because:
 - The younger spouse is not yet 62;
 - Higher loan proceeds (and origination fees) if remove younger spouse.
- Although HECM brokers often told non-borrowing spouse they could be added back onto the deed later, loan docs called the loan due and payable upon the death of the **borrower**.

Addressing the Problem

- Litigation - *Bennett v. Donovan*, 703 F.3d 582 (D.C. Cir. 2013) and other cases.
- On June 12, 2015, HUD issued ML 2015-15, giving servicers the option to assign the loan to HUD.
- Problematic deadlines and proof of ownership requirements blocked access for many non-borrowing spouses initially.

Key Question for Non-Borrowing Spouse Cases:

When was the HECM originated?

Aug. 4, 2014



Pre: MOE
(must communicate with servicer; servicer assigns loan to HUD)

Post: Deferral
(spouse was identified at loan origination; should enter deferral automatically)

RM Originated Before or After August 4, 2014?

- **Prior and up to 8/4/2014: MOE**
 - ML 2015-15 provides for Mortgagee Optional Election (“MOE”) Assignment process.
 - Gives servicers the option to assign the loan to HUD
 - ML 2019-15 makes the process more humane
- **After 8/4/2014: NBS-Originated**
 - NBS identified at the time of origination, loan is underwritten to them, signs loan/mortgage paperwork, *eligible for deferral period*
 - MOE process not applicable
- **Spouse can qualify to remain either way.**

Mortgagee Letter 2021-11

- Allows NBS (pre and post 2014) to remain in home when borrower moves into a long-term care or other healthcare facility
- NBS no longer has to provide proof of “good and marketable title or a legal right to remain in the home” after the death of the borrower”
 - Removes last major remaining barrier for NBS
- Mandatory compliance date of September 3, 2021
- Builds onto prior MLs 2019-15 and 2015-15

MOE Criteria for Eligibility

- Spouse must have been legally married to the borrower at time of the loan (with an exception for same sex couples who could not legally marry) and must have been legally married at the time of borrower's death;
- Home must be spouse's principal residence from the time of origination to the present; and
- Loan not due and payable for any other reason— if there has been a default on property taxes or homeowner's insurance, spouse must cure any such default before the loan can be eligible for assignment.

Planning Ahead for Non-Borrowing Spouse While Borrower Still Living

- Same-sex couples may consider marrying if they haven't already
- Advise/assist in correctly completing NBS form with the annual occupancy certification
- Keep taxes and insurance current
 - If lender advances funds for these expenses, ideally couple should repay immediately as opposed to repayment plan or at-risk extension (because spouse will have to bring current quickly after borrower's death)
- Advise spouse to contact mortgage company ASAP if/when borrower dies to start the MOE process
- Although not required anymore, still a good idea to help get spouse back on title with survivorship rights (e.g. transfer on death deed, joint tenancy deed, trust)

Post-8/4/2014 NBS-Originated Loans

- Designed to implement solutions at origination. NBS purportedly entitled to “deferral period” if meets Qualifying Attributes/other requirements.
- Underwritten to the youngest spouse – like it or not
- NBS (or lack thereof) explicitly identified in the origination documents
- NBS signs various origination documents
- When borrower dies, loan should enter a deferral period.
- NBS will have to sign and return a verification form.

Options for Heirs After Borrower's Death

Other Heirs: After Death of Borrower

- Loan balance comes due and payable (exception: optional deferral for surviving spouse)
- Estate or personal representative can:
 - Allow lender to foreclose
 - Sell the home (short or market) or Deed in Lieu of Foreclosure
 - Review whether short sale is best option under state law. Estate has no liability on the note.
 - Purchase for lesser of loan balance or 95% of appraised value. (FMV determined by servicer's FHA appraisal)
 - Can heir(s) qualify for a loan (credit, income)?
 - Funds for down-payment (first time homebuyer)?
 - HECM refinance?

Guidelines: After Death of Borrowers

- Timeline
 - Estate has an initial 6-month period to try to purchase, sell, or refinance
 - Can request up to two 90-day extensions if additional time needed (but need to show progress, such as probate, sale listing, etc).
- Other loss mitigation incentives:
 - Mortgagee can offer “Cash for Keys” if heirs vacate the property through a Deed in Lieu, Short Sale, or before a completed eviction.
 - Up to \$7,500 cash + up to \$5,000 for probate costs. (ML 2023-23)

Escalate Problems with the National Servicing Center

- **HECM Borrowers:**
U.S. Dept. of Housing and Urban Development
National Servicing Center
110 West 7th Street, Suite 1110
Tulsa, OK 74119
Phone: (877) 622-8525
Fax: (918) 292-8984
Email: hecm.servicing@novadconsulting.com
- Contact NCLER or NCLC if still having problems

File CFPB Complaints

- Complaints about ANY mortgage (not just government backed mortgages) can be filed with the CFPB – online or by phone.
 - <https://www.consumerfinance.gov>
- Mortgage Servicer must then respond to the borrower and advise the CFPB of their response
- Past complaints are searchable by mortgage servicer and by issue – useful for establishing **pattern and practice.**

Send an NOE

- Notice of Error and Request for Information provisions of RESPA servicing regulations do apply to reverse mortgages

HUD Assigned Loans

Loans Assigned to HUD

- Loans are assigned when they reach 98% of the Maximum Claim Amount
- Right now, roughly 1/2 of the active HECM portfolio is owned by HUD (180,000 loans)
- HUD calls this the “Secretary held” portfolio
- The Single Family Foreclosure Act allows HUD to **preempt state foreclosure laws** and use a **nonjudicial foreclosure** commissioner process.
 - See [Unmet Promise](#) at page 15.
- Servicing issues - NOVAD, now Compulink
- Contact NCLER or NCLC if you are seeing issues!

HECM Policies

- Statute: 12 U.S.C. § 1715z-20
- HUD Regulations: 24 C.F.R. Part 206
- NCLC Manuals: [Home Foreclosures](#), [Mortgage Lending](#)
- [Mortgagee Letters](#)
- [HECM Handbook](#)

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