JUSTICE IN AGING
FIGHTING SENIOR POVERTY THROUGH LAW

ISSUE BRIEF

Reverse Mortgage Servicing & Foreclosure: Emerging Issues

ISSUE BRIEF • APRIL 2017

Odette Williamson, Attorney, National Consumer Law Center

The National Consumer Law Center

The National Consumer Law Center 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.

Introduction

Reverse mortgages allow older homeowners to convert equity in their homes into cash without having to move out and without having to make monthly mortgage payments. The mortgages allow older homeowners to age in place by supplementing income, providing funding for repairs or modifications to the home, or funds to meet other necessary expenses. Cashing out the equity in the home does come with some risks and costs. Recently there has been an uptick in reverse mortgage foreclosures due to default on property-related charges (e.g., taxes and insurance) and other issues despite options to cure these types of default and reinstate the mortgage. The challenges homeowners face in fulfilling the requirements of the mortgage have been exacerbated by poor or inadequate loan servicing. Poor servicing leads to quick foreclosure and ejectment of the elder from the home.

Ms. Brown filed for bankruptcy after her loan servicer repeatedly refused to allow her to enter into a repayment plan to cure her property charge default and scheduled her home for sale. Initially the servicer stated that it could not offer repayment plans for loans in foreclosure. Ms. Brown requested that the servicer seek a waiver from HUD of this policy, but the servicer chose not to submit this request. In order to save her home of over 40 years, Ms. Brown filed for Chapter 13 and is repaying the arrears through a bankruptcy plan.

How Does a Reverse Mortgage Differ from a Traditional Mortgage?

Under a traditional "forward" mortgage, the lender advances the principal at the origination of the loan, and the borrower typically pays off the balance of the loan over time with monthly payments. Under a reverse mortgage, the lender advances funds to the borrower as a lump sum, as monthly payments, through a line of credit, or a combination of these options. The borrower does not make monthly payments on this loan. Instead, over time, the amount owed on the reverse mortgage increases as the lender advances more funds and interest and fees are added to the balance of the loan. For most reverse mortgages, maturity occurs when the borrower dies, sells, or permanently relocates from the home.

There are two types of reverse mortgages: Home Equity Conversion Mortgages (HECMs) and proprietary reverse mortgages. HECM loans are federally insured loans and make up the vast majority of the reverse mortgage market. The Department of Housing and Urban Development (HUD) promulgates regulations with respect to HECM loans.[1] Proprietary reverse mortgages are equity conversion products that are developed and backed solely by private financial institutions. Since the beginning of the foreclosure crisis in 2007, very few proprietary reverse mortgages have been originated.

The Home Equity Conversion Mortgage (HECM) Program

The HECM program was designed to meet the needs of older homeowners by reducing the economic hardship that results from increasing costs of health, housing, and subsistence needs at a time of reduced income.[2] The FHA insures HECM loans and guarantees that the lender (or its assignee) will be repaid, up to specified limits, for extending credit to the homeowner. The insurance also protects the homeowner in the event that the lender is unable to fulfill its payment obligation. HUD manages the HECM program and provides guidance through Mortgagee Letters, FAQs, handbooks and regulations.[3]

HECM eligibility

All HECM reverse mortgage borrowers must be at least sixty-two years of age. The property serving as collateral for the loan must be titled in the borrower's name and must be the borrower's principal residence. Borrowers must generally own their homes free and clear or with a minimal amount of outstanding liens.

Loans originated after April 27, 2015 are subject to a financial assessment which includes a review of the borrower's credit history and cash flow.[4] The borrower must have a satisfactory credit history that demonstrates his or her ability and willingness to pay ongoing expenses including property taxes and insurance and to meet other financial obligations. Borrowers who do not meet the financial assessment criteria must, as a condition of the loan's approval, use a portion of the HECM proceeds to pay future property taxes and insurance.

HECM borrowers must obtain counseling by an independent third party, usually one from a list of HUD-approved counseling agencies, that is neither directly or indirectly associated with the mortgage transaction. The counseling fee can be paid to the counselor directly by the borrower or subtracted from HECM proceeds at the closing.

Generally, the amount of money that the borrower can receive under the reverse mortgage is based on age, interest rate, and housing value (or HUD established limits, whichever is less). Amounts may be deducted from the loan proceeds to satisfy existing liens and closing costs, and pay for required repairs or delinquent federal debt, taxes, insurance and other property charges.

HECM foreclosure

HECM loans are due and payable when the last borrower dies, sells, or permanently relocates from the home.

---

1 HUD recently finalized rules that revise the HECM program guidelines. See 82 Fed. Reg. 7094 (Jan. 19, 2017). The regulations are effective September 19, 2017. The reverse mortgage regulations codified many of the policies previously announced by HUD through its Mortgagee Letters and other guidance.

2 12 U.S.C. § 1715z-20(a).

3 Mortgagee Letters provide guidance to approved lenders regarding HUD's mortgage-related policies. Under the Reverse Mortgage Stabilization Act of 2013, 12 U.S.C. § 1715z-20(h), HUD was given substantial authority to amend the rules of the HECM program through the issuance of Mortgagee Letters. The HECM regulations are in 24 C.F.R. Part 206, and were recently revised. See 82 Fed. Reg. 7094 (Jan. 19, 2017) (effective Sept. 19, 2017). The HECM Handbook 4235.1 provides details on the program but is not as up to date as the Mortgagee Letters or regulations.

4 The Revised HECM Financial Assessment and Property Charge Guide is available as an attachment to Mortgagee Letter 2016-10 (July 13, 2016).

The due and payable status of the loan may be deferred if there is a non-borrower surviving spouse in the home.[5] In addition, the loan may be called due and payable if the borrower fails to meet certain conditions of the loan, including staying current on property taxes, insurance and other property-related charges and maintaining the home.

When repayment is due, the home can be tendered to the lender and nothing further is owed. Alternatively, the house may be sold and the proceeds used to pay off the loan. If the loan is paid off in full, any excess proceeds would belong to the borrower or the borrower's estate. The borrower is allowed to sell the property for the appraised value even if that value is less than the amount owed on the loan. If the mortgage is due and payable at the time a contract for sale is executed, the borrower may sell the property for ninety-five percent of the appraised value.

HECMs are "non-recourse" loans, which means that the borrower (or his or her estate) will not owe more than the loan balance or the value of the property, whichever is less. In other words, the lender can only enforce the debt through the sale of the property.

Emerging Issues and Options for Borrowers Facing Default and Foreclosure

Several issues related to servicing may put borrowers and their spouses at heightened risk of foreclosure, including:

- **Property tax and insurance 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 outstanding property charge defaults, including repayment plans; delay of the foreclosure process for certain "at risk" borrowers 80 years or older suffering from a serious illness or disability; delay of foreclosure if the amount owed is less than $2,000; and cancellation of the foreclosure if the lender uses its own funds to cure the default and does not seek reimbursement from HUD. Despite the menu of options, servicers can exercise their discretion and refuse to put a good solution in place. HECM refinances may be a solution where the loans are older and property values are higher. Direct aid from nonprofit organizations and state government may help delinquent borrowers, where available. Michigan and Florida, for example, help reverse mortgage borrowers through their Hardest Hit Funds programs.
- **Non-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, in part, 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.
- **Non-borrowing spouses.** The mortgage is due and payable upon the death of all surviving borrowers. Many couples were encouraged to take one spouse off the loan to qualify for a reverse mortgage or to obtain a higher amount. Over the years HUD has changed its policy regarding such non-borrowing spouses. Now, the due and payable status of the loan will be deferred until the death of the non-borrowing spouse, under certain conditions. Many barriers remain, however, to the surviving spouse establishing this status, including proving in a timely basis that the spouse has a legal right to remain in the home. Servicers do not apply HUD's guidelines uniformly. Spouses of borrowers have a much easier pathway to establishing their right to stay in the home for reverse mortgage loans made on or after August 4, 2014.

5 A qualified non-borrowing spouse is defined in the Mortgagee Letters. See Dep't of Hous. & Urban Dev., Mortgagee Letters 2014-07 (April 25, 2014); 2015-12 (April 30, 2015); 2015-15 (June 12, 2015); 2016-05 (Feb. 12, 2016).

Conclusion

Reverse mortgage foreclosure deprives older homeowners of their largest financial asset, and the stability and comfort of a home in which to age in place. Servicing abuses and errors lead to the premature foreclosure and eviction of older homeowners. Borrowers must defend against premature foreclosure and push for better compliance by servicers with the rules of the program.

Additional Resources

- U.S. Department of Housing and Urban Development (HUD): hud.gov
  - Find a HUD-approved housing counseling agency: hud.gov/offices/hsg/sfh/hcc/hcs.cfm
  - HECM page for Lenders (includes link to Mortgagee Letters and Handbook): portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/hecm
- Other Government Sites
  - Consumer Financial Protection Bureau: consumerfinance.gov
  - Federal Trade Commission (FTC): consumer.ftc.gov/articles/0192-reverse-mortgages
- 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: nclc.org
  - National Council on Aging: ncoa.org
- Legal Assistance
  - National Association of Consumer Advocates: consumeradvocates.org
  - Legal services/legal aid: lsc.gov/what-legal-aid/find-legal-aid
  - Volunteer lawyers: americanbar.org/groups/legal_services/flh-home/flh-free-legal-help.html
- Reverse Mortgage Industry
  - National Reverse Mortgage Lenders Association: nrmlaonline.org
- Publications
  - National Consumer Law Center, Foreclosure and Mortgage Servicing (5th ed. 2014)
  - National Consumer Law Center, Mortgage Lending (2012)
  - National Consumer Law Center, Surviving Debt (2016 ed.)

Case consultation assistance is available for attorneys and professionals seeking more information to help older adults. Contact NCLER at NCLER@justiceinaging.org.

This Issue Brief 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.

WASHINGTON
1444 Eye Street, NW, Suite 1100
Washington, DC 20005
202-289-6976

LOS ANGELES
3660 Wilshire Boulevard, Suite 718
Los Angeles, CA 90010
213-639-0930

OAKLAND
1330 Broadway, Suite 525
Oakland, CA 94612
510-663-1055