

Reverse Mortgage Servicing & Foreclosure: Emerging Issues

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Reverse Mortgage Basics

- **FHA-Insured Reverse Mortgages: the Home Equity Conversion Mortgage (HECM); borrower must be 62 or older**
- **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

- **Loan balance may grow to exceed the value of the house**
 - Nonrecourse loan
 - FHA insurance (assign to HUD when the loan balance reaches 98% of the Maximum Claim Amount)
- **Initial principal amount loaned is based on:**
 - Appraised value of the house
 - Prevailing interest rates
 - Age of the youngest borrower (older = higher loan proceeds)

“Due and Payable” Events

- The last surviving borrower dies
- 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
 - 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

HECM Resources

- Statute -12 U.S.C. § 1715z-20
- Regulations - 24 C.F.R. part 206
 - Revised 82 Fed. Reg. 7094 (Jan. 19, 2017)
 - Effective Sept. 19, 2017
- Mortgagee Letters – www.hud.gov
- FAQ, HECM Handbook 4235.1
- HUD approved Counselors
- State laws

Emerging Issues & Concerns

- Property charge default – loss mitigation
- Occupancy issues
- Non-borrowing spouses

Property Charge Defaults & Loss Mitigation

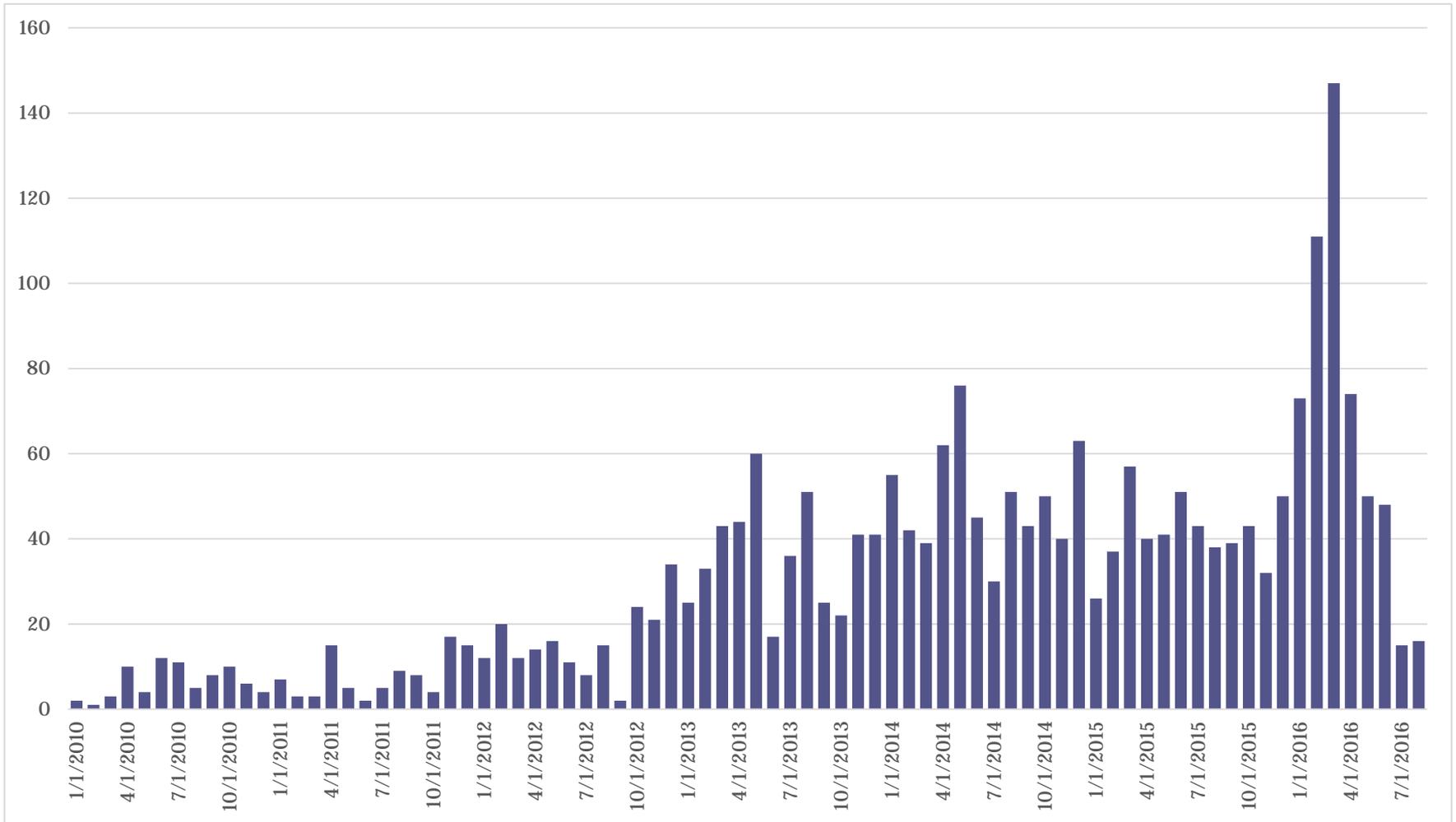
Property Charge Default

- Borrower is required to pay property charges.
- If unpaid, servicer will advance funds to pay the charges and declare default if borrower fails to repay the advances.
- “Property charges” include:
 - Property taxes (even if in a payment plan for arrears?)
 - Homeowner’s insurance
 - HOA fees
 - Utilities?
 - Servicers pay utility liens (e.g. water) even though senior is on a direct payment plan with utility provider
 - HUD’s Proposed Rule would include utilities as property charges that can result in default if not paid by the borrower.

What's changed? Why are there so many more RM foreclosures now?

- Mortgagee Letter 2015-11. (April 23, 2015)-- loss mitigation for unpaid property charges is now permissive, not mandatory.
- Requires servicer to call the loan due and foreclose if default is not cured.
 - Servicer must submit due & payable request to HUD
 - May request from HUD an extension of foreclosure deadlines if servicer determines a loss mitigation option is available
 - Must complete foreclosure within prescribed due diligence time periods

Reverse mortgage foreclosures filed in Philadelphia, PA



Verify Charges Claimed

- Ask for an itemized list of disbursements made for property charges
- In some cases, property charges are incorrect
 - E.g. lender took out forced-place insurance policy, even though the borrower had coverage; FPI charge can be reversed with borrower's proof of coverage
- Note: borrower cannot be required to repay other fees, such as property inspections, foreclosure costs, etc. Those charges can only be added to the loan balance, not assessed for reimbursement by the borrower

Cure Default in Full

- Borrower has the right to cure the default in full at any time prior to foreclosure.
- Cure amount is only for property charges advanced (not for foreclosure costs, etc.)
- Could be an option for low default balances, or seniors with savings or family able to contribute
- Explore local programs that might be able to assist; e.g. Hardest Hit funds

ML 2015-11: Repayment Plans

Servicer should:

- **Determine the total amount due for unpaid property charges and property charges coming due in the next 90 days**
 - **Minus HOA fees, which cannot be included in the repayment plan**
- **Determine the borrower's ability to repay the charges through a repayment plan**
 - **No longer than 5 years**
 - **Payment no more than 25% of monthly surplus income**
 - **Or such shorter period so as to ensure repayment before the loan hits 98% of the Maximum Claim Amount**

98% of Maximum Claim Amount

- **“Maximum Claim Amount” = appraised value at the time of closing, up to \$625,500**
 - Amount on recorded security instrument is 150% of the MCA (i.e. $\text{secured amount} \div 1.5 = \text{MCA}$).
 - Max HUD will pay on lender’s FHA insurance claim
- Per ML 2016-07, may offer a repayment plan that will go beyond 98% of the MCA, but claim amount cannot exceed MCA
- Some servicers are exercising their “discretion” to deny payment plans where loan balance would exceed 98% MCA

Loss Mitigation After Foreclosure Initiated?

- **ML 2015-11:** Payment plan not available after foreclosure initiated
- **ML 2016-07:** for loans that were in foreclosure when ML 2015-11 was issued (April 23, 2015), a repayment plan is allowed
- **NEW FAQ 5/26/16:** “Mortgagees may evaluate a HECM borrower for permissive loss mitigation after first legal action has been taken [to initiate foreclosure].”
- **Problem:** servicers are still refusing loss mitigation once in foreclosure unless HUD grants an extension (b/c they can lose interest and fees on their insurance claim if they don't foreclose timely)

ML 2016-07: Additional Options

- Issued March 30, 2016
- New option: Servicer may delay foreclosure if the arrearage is less than \$2,000 and the borrower has expressed willingness to pay and is attempting to pay, or lender has not yet been able to reach the borrower. But unevenly followed.
- New option: “Mortgagee Funded Cure”
 - Mortgagee may advance the funds to pay property charges
 - May not include the advanced funds in a claim to HUD
 - May not assign the loan for 3 years has passed where borrower has paid the T&I on time

TO:

Philadelphia, PA 19140

NOTICE OF INTENTION TO FORECLOSE MORTGAGE
under Section 403 of Penna. Act No. 6 of 1974
(READ ALL PAGES OF THIS NOTICE CAREFULLY)

The MORTGAGE held by NATIONSTAR MORTGAGE LLC D/B/A CHAMPION MORTGAGE COMPANY and serviced by CHAMPION MORTGAGE (hereinafter referred to as we, us, or ours) on your property described above is in SERIOUS DEFAULT. The mortgage has come due under paragraph 9(b)(iii) which states that the lender may require immediate payment in full of an obligation of the borrower under the Mortgage is not performed, such as payment of taxes, hazard insurance premiums, ground rents and assessments in a timely fashion. The borrower has defaulted in payment of the Taxes & Insurance. Pursuant to the aforesaid provisions of the mortgage, if the borrower has not paid the taxes or insurance, the entire unpaid balance of the mortgage and note is immediately due and payable. THE TOTAL AMOUNT OF TAXES AND/OR INSURANCE TO BE PAID TO CURE THIS DEFAULT AS OF THE DATE OF THIS LETTER, IS NOTED BELOW.

- (a) Taxes & Insurance: \$267.37
- (b) TOTAL AMOUNT REQUIRED AS OF THIS DATE: \$267.37

You may cure this default within THIRTY (30) DAYS of this letter by paying to us the amount above, plus any additional charges WHICH MAY FALL DUE DURING THIS PERIOD. Such payment must be made either by CASH, CASHIER'S CHECK, MONEY ORDER, OR MONEY ORDER.

“At Risk” F/C Extension (ML 5-11)

Mortgagee may request foreclosure extension if:

- Youngest living mortgagor is at least 80 years old, and
- Critical circumstances such as terminal illness or long-term physical disability of borrower or family member living in the home
- Submit written request with supporting medical records or doctor’s letter
- Must resubmit supporting documentation on an annual basis for ongoing extension each year
- NEW FAQ says the “at risk” extension is not available if loan is already in foreclosure; seek a waiver from HUD?
 - **Trigger?: first legal action vs. F/C referral**

Can Chapter 13 bankruptcy help?

- Servicer refuses to offer repayment plan or offers a shorter repayment plan than what the borrower can afford
- Cure the taxes and insurance through chapter 13 plan
 - Unlike a typical mortgage creditor, no P&I will be included in Proof of Claim
 - Attorney's fees and foreclosure fees should not be included in Proof of Claim (just property charges)

Occupancy Issues

Servicers Claim Non-Occupancy

- Servicers send annual occupancy recertification, borrower is supposed to return it under HUD regs
- Sometimes servicers claim the home is not occupied and seek to foreclose, even though borrower is still living there
 - Did borrower return occupancy verification? Did servicer take any additional steps to verify occupancy (e.g. calls, inspection)?
- Security deed says failing to occupy as principal resident is a due and payable event, not failing to return the occupancy verification
- Proof of occupancy should “cure” any default under the mortgage (utility bills, ID listing property address, etc).

After the Borrower's Death: Options to Prevent Foreclosure

- **Sale**
- **Refinance**
- **Surviving Spouse – Special Provisions**

Guidelines: after Death of Borrowers

- **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 sale/purchase for 95% of appraised value
- **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).

Option to Sell or Refinance at 95% of FMV if Home Underwater



Estate can sell the property to an heir/family member (to pay off HECM) for the lesser of:

- the current loan balance or
- 95% of the Fair Market Value, **whichever is less.**
- FMV determined by servicer's FHA appraisal.

Practical considerations:

- Can heir qualify for a loan (credit, income)?;
- \$\$ for down-payment (look at assistance programs if insufficient savings)

Non-Borrowing Spouse Problem

- Until Aug. 2014, reverse mortgages only protected the borrower from foreclosure, even if there were a non-borrowing spouse.
- Lenders regularly remove 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**;
- HUD regs/loan docs did not protect non-borrowing spouse, contrary to language in HECM statute that expressly protects the homeowner *and* “the spouse of a homeowner” (not only HUD–defined “borrowers”)

ML 2015-15: “Mortgagee Optional Election” (MOE) Criteria

- (1) 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;
- (2) Home must be spouse's principal residence from the time of origination to the present;
- (3) 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.
 - Loans in the MOE “deferral period” cannot get a repayment plan for T&I default; spouse must cure the default within 30 days

ML 2015-15: MOE Criteria (cont.)

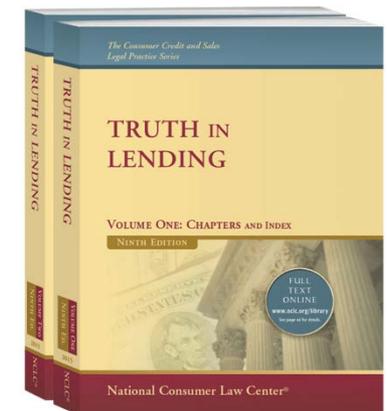
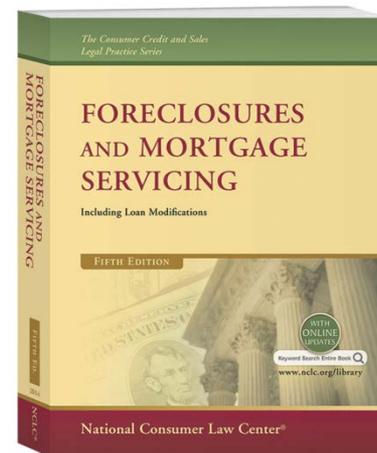
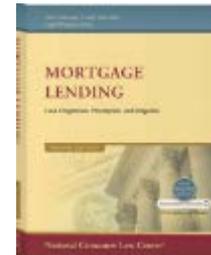
- (4) Spouse must have, or be able to obtain within 90 days of the death of the borrower, “good, marketable title to the property” or a legal right to stay in the home until his/her death.
 - Timing: within 90 days of the death (but what about deaths that occurred years ago and you are now trying to meet conditions for the MOE? Argue that so long as spouse can arrange it now, in time to meet MOE deadlines, should be OK)
 - What is “good, marketable title”?
 - Legal right to stay until death
 - Long-term lease
 - Court order
 - Partial ownership interest? (one of several heirs)
 - Silent requirement: homeowner’s insurance in spouse’s name

Planning Ahead for Non-Borrowing Spouse While Borrower Still Living!

- **Make sure spouse will take title to the property immediately, or as quickly as possible, after borrower's death:**
 - **Transfer on death deed (statute?)**
 - **Joint tenancy/quitclaim deed**
 - **Trust**
- **Same-sex couples need to marry if they haven't already**
- **Keep taxes and insurance current – if lender advances funds for these expenses, ideally couple should repay immediately as opposed to repayment plan (because spouse will have to bring current quickly after borrower's death)**

Resources for Advocates

- National Consumer Law Center
- HUD
- Consumer Financial Protection Bureau (CFPB)





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