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# Reverse Mortgage Issues in the COVID-19 Pandemic



National  
Consumer Law  
Center

*Fighting Together  
for Economic Justice*

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# NCLC CARES Act Webinar Series

- COVID-19 and Mortgage Relief for Homeowners
- Forbearance Options and CARES Act Requirements
- Reverse Mortgage Issues in the COVID-19 Pandemic
- An Overview of Post-Forbearance Options
  - May 28<sup>th</sup>

# NCLC's Mortgage Training Conference

## June 15-17, 2020



- Intro to TILA/RESPA Servicing Claims
- COVID-19 Mortgage Relief: Forbearance and Loan Mod Options for Federally Backed Mortgages
- Home Equity Theft and Foreclosure Rescue Scams 101
- Home Purchase Scams: Investigation, Funding Structure, Claims and Defenses
- FCRA Issues in Mortgage Cases
- Multi-Servicer Cases
- Strategic Advocacy on Home Scams: Working with Local Government, Effective Outreach

# Overview

- Foreclosure moratorium in the CARES Act, as extended by HUD
- Non-borrowing spouse and MOE issues
- “Forbearance” for HECMs under the CARES Act
- New property charge defaults
- Existing Repayment Plans and At-Risk Extensions

\* Note: a **quickly shifting** landscape; Watch for updates in email blasts.

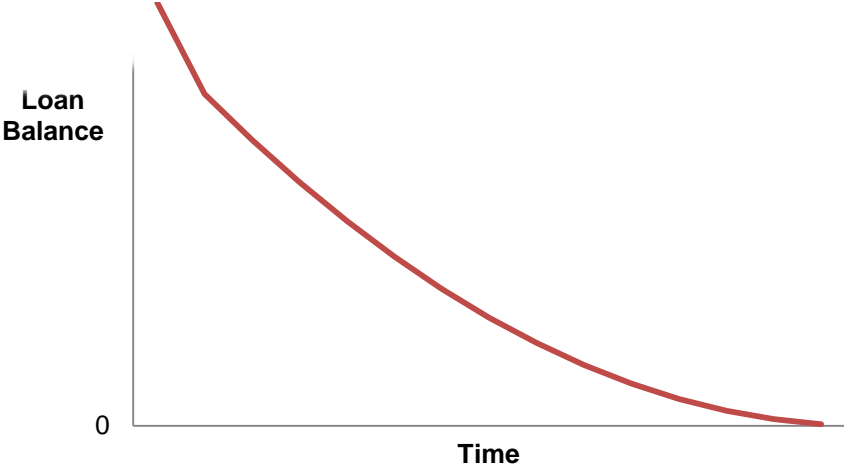
# Reverse Mortgage Basics

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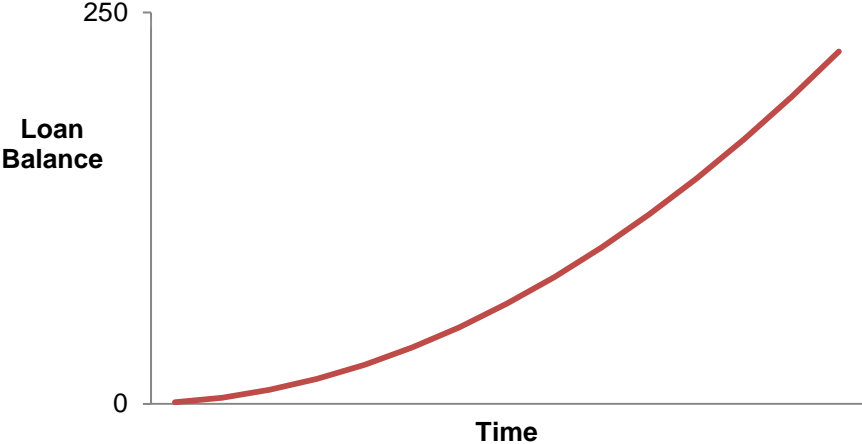
- FHA-Insured Reverse Mortgages: the Home Equity Conversion Mortgage (HECM); borrower must be at least 62 years old
- Proceeds may be taken as a lump sum, line of credit, or an annuity
- No monthly payments of principal or interest; interest and servicing fee is added to the loan balance each month
-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

# Reverse Mortgage Basics

### Regular/Forward Mortgage



### Reverse Mortgage



# Reverse Mortgage Basics

- 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 lesser of:

- Appraised value of the house

OR

- \$726,525

# Property Charges

The reverse mortgage borrower must continue to cover “property charges,” including:

- Property taxes
- Homeowner’s insurance
- HOA and other fees

# “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 Policies

- Statute: 12 U.S.C. § 1715z-20
- HUD Regulations: 24 C.F.R. Part 206
- [HECM Final Rule: 82 Fed. Reg. 7094 \(effective September 19, 2017\) Redline Copy](#)
- [Mortgagee Letters](#)
- [HECM Handbook 4235.1](#)
- FAQs

# **CARES Act Moratorium and Recent Extension**

# CARES Act

- Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136
- [Link to the CARES Act \(NCLC summary\)](#)
- Provides two types of relief to borrowers with federally backed mortgage loans:
  - Foreclosure moratorium
  - Forbearance
- Section 4022 of the CARES Act

# CARES Act

- **Federally backed mortgage loans**
  - any loan which is secured by a first or subordinate lien on residential real property (including individual units of condominiums and cooperatives)
  - designed principally for the occupancy of 1- to 4-families
  - that is owned or backed by a federal agency
    - Fannie Mae, Freddie Mac, FHA, USDA, VA

# CARES Act Foreclosure Moratorium

- Foreclosure Moratorium
  - servicer of a federally backed mortgage loan
  - may not initiate any judicial or non-judicial foreclosure process,
  - move for a foreclosure judgment or order of sale,
  - or **execute a foreclosure-related eviction** or foreclosure sale for not less than the 60-day period beginning on March 18, 2020
  - Except for vacant or abandoned properties
  - Ended **May 17, 2020**



# HUD Moratorium

- For FHA-insured single family mortgages covered under the CARES Act
- ML 2020-04 (March 18, 2020)
  - 60 day foreclosure and eviction moratorium for forward and reverse mortgages
  - Initiation and completion of foreclosures in process
  - Deadlines for initiating foreclosure and reasonable diligence deadlines extended 60 days
- ML 2020-13 (May 14, 2020)
  - June 30, 2020
  - Except for vacant or abandoned properties
  - Deadlines extended 90 days

# CARES Act Forbearance

- Forbearance – temporary suspension of the requirement to make mortgage payments
- Interest will still accrue, but not late fees and the borrower is not considered in breach of the contract
- Borrower will be reported as current if he or she was current before the forbearance period

# CARES Act Forbearance

- A borrower with a federally backed mortgage loan experiencing a financial hardship due, directly or indirectly, to the COVID–19 may request forbearance by—
  - (A) submitting a request to the servicer; and
  - (B) affirming that the borrower is experiencing a financial hardship
- Request forbearance regardless of delinquency status

# CARES Act Forbearance

## ***Covered period***

- Not defined in § 4022
- In § 4023 for multifamily forbearance:
  - the period beginning on the date of enactment of this Act (3/27/2020) and ending on the sooner of—
    - (A) the termination date of the national emergency concerning the novel coronavirus disease (COVID–19) outbreak declared by the President on March 13, 2020 under the National Emergencies Act ([50 U.S.C. 1601](#) et seq.); or
    - (B) December 31, 2020.

# CARES Act Forbearance

- Upon a request by a borrower for forbearance,
  - such forbearance shall be granted for up to 180 days, and shall be extended for an additional period of up to 180 days at the request of the borrower, provided that, at the borrower's request, either the initial or extended period of forbearance may be shortened
- One year of relief

# CARES Act Forbearance

- **Servicer's Requirements:**
  - Upon receiving a request for forbearance:
    - **No additional documentation required** other than the borrower's attestation to a financial hardship caused by the COVID-19 emergency
    - **No fees, penalties, or interest** (beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract) charged to the borrower in connection with the forbearance,

# HUD COVID-19 Extension Period

- ML 2020-06 (April 1, 2020)
  - 6 month extension+ additional 6 month with approval
- Delay calling loan due and payable upon request of borrower
  - Must waive any late charges, fees and penalties
- Loans automatically due and payable, in deferral, or become due and payable with HUD approval
  - Automatically extend foreclosure deadlines and deadlines for lenders to file a claim with HUD
- No documentation requirement

# Deadlines Foreclosure Process

- Notice to HUD of due and payable status
- Notice to borrower or heirs of due and payable status
- Notice to HUD of the initiation of foreclosure
- Sale of home, deed in lieu, payoff
- Cure of conditions which cause the loan to become due and payable
- Foreclosure/ post foreclosure disposition of property



# HUD COVID-19 Extension Period

- Automatically upon request from borrower
  - Occupancy no longer principal residence
  - Elder in health care facility
  - Property charges/ MOE – more later
- Emailed or verbal certification of occupancy
- Approve COVID extension up till October 30, 2020

# **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 blocked access for many non-borrowing spouses.

# Mortgagee Letter 2019-15: MOE - NEW version (3.0)

- Effective 9/23/19
- Like prior MOE, gives servicers the option to assign the loan to HUD and allow eligible spouse to remain in the home.
- Prior version, ML 2015-15:
  - Had strict deadlines and requirements that made it difficult for many spouses and servicers to comply
  - Many problems, many denials, and a lot of advocacy led to new policy
- **IMPORTANT:** Spouses denied under the prior MOE have a **new window** for the loan to be assigned to HUD (within 6 months of ML 2019-15) if servicer hasn't already foreclosed.
  - This includes spouses who received "in house" MOE's from their servicer.

# New Window for MOE Assignments Extended

- New “reasonable diligence” window running six months from the later of the borrower’s death or issuance of ML 2019-15 on 9/23/19 >> 3/21/2020
- Covid-19 emergency began in mid March
- ML 2020-06 extends the MOE “reasonable diligence” window by an additional 6 months >> 9/21/2020

# New Window for MOE Assignments Extended

- See Mortgagee Letter 2020-06, page 7 (“... the Mortgagee may take an automatic extension of any deadline relating to foreclosure and claim submission for a period of up to 6 months”)
- HUD clarified that this includes extension of the MOE “reasonable diligence” window in a webinar (slide 11)
  - [https://www.hud.gov/sites/dfiles/SFH/documents/ha\\_updated\\_guidance\\_HECM\\_covid\\_19\\_4\\_22\\_20.pdf](https://www.hud.gov/sites/dfiles/SFH/documents/ha_updated_guidance_HECM_covid_19_4_22_20.pdf)

# NBS Deferral Period: Post-2014 Loans

- Loans made after 8/4/14 are required to include a deferral period for an eligible NBS (identified at the time of origination). **These loans don't need the MOE.**
- Emerging problems:
  - Servicers ignoring deferral period altogether
  - Initiating foreclosure if spouse doesn't respond within 30 days of the borrower's death
  - Requiring proof of "good and marketable title" be provided within 90 days of the death
  - Be on the lookout for these issues, and contact NCLC about problems



# Property Charge Defaults

# Obligation to Pay Property Charges “Timely”

- Property charges, 24 CFR 206.205(e)(2)
  - If the borrower fails to pay property charges in a timely manner...
  - Mortgagee shall provide a written notification to the borrower and HUD within 30 days of the missed payment;
  - borrower shall have 30 days to respond;
  - servicer may provide loss mit;
  - if borrower unable or unwilling to repay the servicer advance, mortgagee shall submit a due and payable request to HUD.

# Property Charges Due During the State of Emergency

- Some localities have extended the due date for property taxes that came due during the state of emergency
- HUD considers taxes to be “current” when they are paid prior to delinquency as defined by the local taxing authority (for purposes of claim type 22 assignment requests...arguably should apply here too)
- Mortgagee Letter 2018-08 (Oct. 22, 2018)

# Property Charges Due During the State of Emergency

- Communicate with the servicer if the taxing authority has granted a broad extension or an individual extension/grace period
- Help the borrower plan for how they will pay the taxes by the end of the extension
- Be prepared that servicers may advance the taxes anyway. **Please tell NCLC if this happens.**

# Property Charge Foreclosure



DEFAULT OCCURS

DUE AND PAYABLE  
REQUEST

INITIATE  
FORECLOSURE

# Property Charge Foreclosure





DEFAULT OCCURS

DUE AND PAYABLE  
REQUEST

INITIATE  
FORECLOSURE

# CARES Act > HUD Policy

Mortgagee Letter 2020-06:

-  Upon a request from the Borrower, the Mortgagee **must** delay submitting a due and payable request by up to 6 months; add'l 6 month extension may be approved by HUD
-  Mortgagee **may** take an **automatic** extension for any deadline relating to foreclosure and claim submission for up to 6 months; add'l 6 months may be approved by HUD.

# CARES Act > HUD Policy



- Arguably, both delays should be mandatory (not discretionary with servicer)
- CARES Act says “shall” and “regardless of delinquency status”
- Even after the loan has been called due and payable, if the borrower requests a forbearance, the servicer should delay foreclosure
- HUD says the delay is mandatory if requested by a borrower, even after due and payable, at slide 13 of this [HUD webinar](#)
- Escalate if problems arise!



# Available Property Charge Loss Mitigation Options

- Repayment plan (Option 1, ML 2015-11)
  - Includes any property charges coming due in next 90 days
  - Not include HOA dues
  - Term as long as 60 months, unless shorter is affordable (25% of surplus income rule)
- At-Risk Extension (Option 2, ML 2015-11)
  - Youngest borrower over age 80
  - Critical circumstances, including terminal illness, long-term disability, or “unique” occupancy need

# Loss Mitigation Options, cont.

- ML 2016-07: Informal Delay of Due and Payable Notice
  - If arrears less than \$2,000; and
  - Borrower expressed willingness to pay and is attempting to pay or lender has not yet been able to reach the borrower.
  - Not available after loan already called due (per HUD NSC).
- ML 2016-07: Mortgagee-Funded Cure
  - Advanced amount is not added to HECM loan balance;
  - Advanced funds may not be included in a claim to HUD; and
  - Mortgagee agrees not to assign loan for three years after the cure.
- Mediation (if state has a program)
- Reinstatement
- Refinance
- Chapter 13 Bankruptcy

# Borrowers in RPPs: Recalculation

- If the borrower faces a hardship/ loss of income due to Covid-19, may be a basis to request recalculation of the RPP
  - Eg, stretch out the term to lower the monthly payment. Must solicit new financial info.
- Or, borrower fails to pay new property taxes that have come due
  - Evaluate for a revised repayment plan including the new arrears; must solicit new financial info.
- See ML 2015-11, page 7

# Borrowers in RPPs: Default/ Second Chance

- RPP is unsuccessful if a full monthly payment is not made within 60 days of the due date
- Normally, borrower not eligible for a new RPP if the total arrearage is >\$5,000
- But, **WAIVER** of this policy until Oct. 30, 2020. Borrower may be evaluated for a new RPP **regardless of the amount** of arrears.
- See [HUD Waiver](#), April 14, 2020

# At-Risk Extension Renewals

- At-Risk Extension runs for a one year period, renewable
- Usually servicer demands documentation for the renewal process just before the anniversary date
- Even if the Extension expires, the servicer and HUD will usually process a renewal late (even up to 11 months late in one instance)
- If Borrower cannot get a doctor letter right now
  - explain situation to servicer;
  - request a Reasonable Accommodation;
  - submit renewal app when it can be safely obtained

# Non-occupancy Defaults

# Non-Occupancy During Covid-19

- Foreclosure **moratorium** has an exception for properties that are **vacant or abandoned**
  - Both in CARES Act and ML 2020-13, the HUD extension through June 30, 2020
- Forbearance right has **no such exception** (and the property may not be vacant anyway)
- HUD has clarified in **FAQs** that a **borrower not living in the home** may request the delay of due and payable, and servicer must comply

# FAQs re Covid-19 and HECMs

- <https://www.hud.gov/answers>
- On the left, go to **Covid-19** and then **LSC HECM Servicing**
- See also this [HUD webinar](#)

**COVID-19: For HECM borrowers impacted by the COVID-19 National Emergency, must mortgagees delay requesting due and payable approval for HECMs when the borrower is no longer occupying the property, and the borrower requests the delay?**

Yes. Mortgagees must delay submitting a request to call the HECM due and payable upon request of the borrower impacted by the COVID-19 National Emergency.



# Escalate Problems with the National Servicing Center

## Home Equity Conversion Mortgage (HECM) Borrowers:

U.S. Department 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](mailto:hecm.servicing@novadconsulting.com)

\*Contact NCLC if still having problems

# File CFPB Complaints!

- Consumer complaint database remains public
- Pattern & practice evidence
- Information for enforcement team at CFPB
- Info sharing between CFPB and FHFA through recently announced [Borrower Protection Program](#)
- Populations being left out (LEP, other?)

# Resources for Advocates

- Please share your experiences!

[Link](#) to NCLC/AFR survey

- Pubs article -

<https://library.nclc.org/mortgage-relief-homeowners-affected-covid-19>

- Chart -

[https://library.nclc.org/sites/default/files/COVID19\\_Mortgage\\_Chart\\_0.pdf](https://library.nclc.org/sites/default/files/COVID19_Mortgage_Chart_0.pdf)

**QUESTIONS?**



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