# Reverse Mortgages

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Presenters:

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# Presenter: Lynn M. Connors

- Reverse Mortgage Specialist and Sales Manager for Commonfund Mortgage Corp., based in Syracuse, N.Y.
- Over 9 years of Reverse Mortgage experience
- Licensed to originate mortgage loans in New York and Maine, NMLS #413869
- Prides herself on her high degree of ethics and her compassion for assisting the elderly
- Has helped hundreds of seniors to remain in their homes

# Reverse Mortgage Basics

A Reverse Mortgage is a **FHA-insured** home equity mortgage that allows **seniors**, aged 62 and older, to convert a portion of their **home equity into cash**.

- **HECM**: Home Equity Conversion Mortgage



# HECM Features

- **Non-Recourse Loan** (no risk to borrower or their heirs)
- **No Repayment Required** until the home is sold, or borrower no longer lives in the home
- **Borrower retains title to the home** – responsible for paying property taxes, homeowner's insurance, and home maintenance
- Borrower can use proceeds of the loan to **supplement retirement/fixed income**
- Reverse Mortgage Proceeds are **Tax-Free**

# Eligible Property Types

- Single-family homes & townhomes
- Multi-family Homes (1-4 unit, owner occupied)
- Manufactured Homes (certain conditions apply)
- HUD approved condos
- Co-ops are **NOT** eligible
- All properties must meet FHA Standards and be borrower's primary residence



# Typical Uses of Proceeds

There are no restrictions on the usage of proceeds from a Reverse Mortgage.

- Supplement daily living expenses
- Cover medical expenses
- Pay off existing mortgages and other debts
- Improve monthly cash flow
- Avoid foreclosure and tax auctions
- Fund home repairs and modifications
- Build an emergency fund

# Typical Uses of Proceeds

- Proceeds can be taken out in any combination of cash, monthly payments to borrowers, and/or line of credit (draw proceeds as and when needed)



# How Much is Available?

Formula based upon age, home value, and interest rate

- Amount available based on age of the youngest homeowner
- Minimum age is 62, but younger non-borrowing spouses are allowed and protected under the loan
- The older the borrower, the more they can borrow ("*Age to Value*")

# How Much is Available?

- Loan proceeds must be used to satisfy all mortgages, liens, and judgments on title
- Closing costs typically financed with the loan for minimal out-of-pocket expense
- FHA lending limit is $625,500



# Borrower Financial Assessment

HUD introduced Financial Assessments in 2015 to ensure that borrowers can afford to remain in their homes

- Borrowers must qualify for income and credit
- "*Credit Character*" – not credit score based, but look at payment history for the past 24 months
- Residual Income ("RI") Calculation after paying all taxes, maintenance, HOI, HOA, and all debts

# Borrower Financial Assessment

- If borrowers do not pass, a Lifetime Escrow Set Aside account ("LESA") will be required to pre-fund the taxes and HOI for their expected lifetimes
- Borrowers are allowed to explain extenuating circumstances– subject to approval
- LESA reduces proceeds available to borrowers, but reduces chances of tax/insurance defaults and foreclosures under the loan



# Borrower Financial Assessment

- If required, the LESA cannot be waived
- Some borrowers opt to have a LESA even if not required
- Can assist borrowers with credit repair and to apply for all NYS Property Tax Exemptions to reduce the amount of the LESA, if required
- Pending Foreclosures will require LESA's

# Non-Borrowing Spouses

- All borrowers must be 62 or older
- Younger spouses must be removed from title prior to closing and are considered to be a Non-Borrowing Spouse (“NBS”)
- Non-titled, age-eligible borrowers can be a NBS
- Proceeds available to borrower are based upon the younger spouse’s age



# Non-Borrowing Spouses

Upon the death of the borrowing spouse, the loan will not become due and payable and NBS is able to remain in the property after the death of the borrower, provided that they:

- establish legal ownership or other legal right to remain in the property within 90 days
- are married to the borrower at the time of their death
- currently reside in the home as their primary residence
- maintain all requirements of the loan (taxes, HOI, maintenance)

# NBS Important Facts

- NBS does **not** have any access to the borrower's Line of Credit or any future proceeds upon the death of the borrower
- Funds withdrawn prior to death can be retained by NBS, but no additional funds are available
- The NBS has the option of satisfying the loan by paying off 95% of the outstanding principal balance (same provided to the Estate)



# NBS Important Facts

For FHA Case Numbers issued:

- On or after August 4, 2014 – NBS rights to remain are automatically provided if loan is not in default and all loan requirements continue to be met
- Prior to August 4, 2014 – HUD now allows the lender the option to defer, calling the loan due and payable and grant the NBS the ability to remain in the home
- The loan must not be in default and the NBS must meet all requirements for the Mortgagee Optional Election Assignment.

# HECM for Purchase

Seniors can use a HECM for Purchase to purchase a new primary residence

- Same terms as a Standard FHA HECM but used to purchase a new primary residence
- Can enjoy living in a new, more suitable home and have no mortgage payments for as long as they live in the new home
- Can "upsize" to a more costly home than the departure residence; often times the home desired is more expensive than the home they are selling



# HECM for Purchase

- Borrower can access 100% of the net proceeds available, applied towards the purchase of the home. Balance must come from savings/investments or sale of the borrower's departure home (funds must be verified and seasoned)
- Borrower must pass all Financial Assessment as with the standard HECM

# Reverse Mortgage Myths

A reverse mortgage is one of the most misunderstood products

- Myth #1: I cannot get a reverse mortgage if I have an existing mortgage.
  ***False. If your house isn't paid off, the reverse mortgage must be used to payoff your mortgage. However, you will be relieved from having to make further mortgage payments!***



# Reverse Mortgage Myths

- Myth #2: The lender (or the government) will own my home if I get a reverse mortgage.
  ***False. The borrower retains ownership to the home and is responsible for paying the property taxes, homeowners insurance and maintaining the home.***
- Myth #3: Only low-income seniors get reverse mortgages.
  ***False. A growing number of seniors who have no immediate need for the proceeds are taking a reverse mortgage so that they have a financial cushion for the future.***

# Reverse Mortgage Myths

- Myth #4: The lender will evict me if I live longer than expected.
  ***False. There is no time limit on how long a borrower can remain in their home. The borrower can remain in the home for as long as it is their primary residence and as long as the taxes and HOI are paid.***



# Reverse Mortgage Myths

- Myth #5: A reverse mortgage will affect my government benefits.
  ***False. A reverse mortgage generally does not affect regular Social Security or Medicare benefits. Medicaid eligibility may be affected, and we recommend potential borrowers contact their benefits administrator or financial advisor.***

## Reverse Mortgage Myths

- Myth #6: My children will be responsible for the repayment of the loan when I die.
  ***False. If the borrower's heirs wish to retain the home, they must pay off the loan. However, the heirs are never responsible for any repayment of the loan -- only the sale proceeds of the home are used to payoff the debt. This is a non-recourse loan (no personal responsibility of the borrower or their heirs.)***



## Reverse Mortgage Case Examples

# Example #1

Home Value: $500,000
Borrower Age(s): 72
Current Mortgage Balance: $175,000 – Monthly $805 (P&I)
Financial Assessment Results: Pass – No LESA Required

**Background:**
Borrower recently lost her spouse and has suffered a significant loss of household income. She's fearful that she will be unable to meet all debt obligations and lives on **$1,700/mo**. from Social Security. She lost her husband's pension upon his passing, and lost her Social Security (retained his under spousal benefit).



# Example #1

**Result:**

After financing closing costs and paying off the current mortgage, borrower will have access to about **$97,673**, which she can take up to $29,550 at closing or in the first year, with the balance of $68,123 in year 2 and beyond.

Borrower's cash flow is **increased by $805/mo**. (excluding any additional funds drawn from her Reverse Mortgage Line of Credit).

# Example #2

Home Value:  $500,000
Borrower Age(s):  72
Current Mortgage Balance:  $175,000 – Monthly $805 (P&I)

**Mortgage is in Default** – Lender threatening foreclosure
**Unpaid Taxes of  $15,000** – Tax auction pending (Taxes 3,600 /yr., HOI $1,500/yr.)
**Financial Assessment Results** – Fail: full LESA required (due to Foreclosure)



# Example #2

**Background:**

Borrower recently lost her spouse and has suffered a significant loss of household income. She has been unable to meet all debt obligations and lives on **$1,700/mo**. from Social Security.  Lost her husband's pension upon his passing, and lost her Social Security (retained his under spousal benefit).

# Example #2

**Result:**

After financing closing costs, paying off the current mortgage and unpaid taxes, borrower will have access to about **$27,998**, which she can take at closing or leave in a Line of Credit. A fully funded LESA is established to pay all taxes and HOI for 19 years. Tax auction and foreclosure proceedings are no longer a threat to borrower, who can remain in her home and know taxes and HOI will be paid. Cash flow is **improved by $805/mo**.



# Example #3

**Background:**

Borrower (aged 72) is selling a home for **$350,000** and has a current mortgage balance of **$80,000**. He is looking to purchase a home in a retirement community for **$500,000**. Borrower can be approved for a traditional mortgage but prefers not to have a mortgage payment in retirement. Borrower also wishes to reduce the amount of funds needed to be withdrawn from investment accounts to purchase home.

# Example #3

| | |
|---|---|
| Departure Home Sale: | $350,000 |
| Less: Real Estate Commissions (7%): | -24,500 |
| Less: Mortgage Payoff: | -50,000 |
| Net Sale Proceeds: | **$275,000** |
| | |
| Purchase Price New Home: | $500,000 |
| Net Reverse Mortgage Proceeds: | -$272,673 |
| Net Cash Required/Down Payment: | **$227,327** |



# Example #3

**Result:**

Borrower purchases new, more suitable home, will have no mortgage payments and nets **$47,673** that they can invest or have in a Line of Credit for future usage. Avoided drawing funds from investment account.

# Example #4- Short Payoff

Home Value: $500,000
Borrower Age(s): 72
Current Mortgage Payoff: $490,000 – In foreclosure (includes all fees & interest)

**Mortgage is in Default** – Lender threatening foreclosure
Financial Assessment Results Fail: full LESA required



# Example #4- Short Payoff

**Background:**

Borrower has been unable to make mortgage payments due to her illness and loss of spouse. The lender has commenced foreclosure proceedings. After establishing the LESA and financing closing costs, the net proceeds available from reverse mortgage only allow for a payoff of **$217,998**. Lender must accept a short payoff to avoid foreclosure and will continue to incur legal expenses.

Reverse Mortgage Examples

# Example #4- Short Payoff

**Result:**

Lender **accepts short payoff** to avoid foreclosure. Borrower is able to remain in the home, without mortgage payments. Lender avoids costly legal expenses and reputational risk of evicting an ailing senior. A fully funded LESA is established to pay the taxes and HOI for the borrower's expected lifetime (age 91).



Questions?

# Presenter: Jennifer N. Levy, Esq.

- Senior Staff Attorney at JASA Legal Services for the Elderly in Queens
- B.A. from New York University and her J.D. from Hofstra University School of Law
- Admitted to practice law in the State of New York and New Jersey as well as the Southern District of New York, Eastern District of New York, and the Federal Court of New Jersey
- Jennifer is a member of the New York Women's Bar Association



# Issues Facing Senior Citizens

Most common reasons Senior citizens face economic hardships:

- Spouse passed away, causing a loss of income
- Live on limited fixed income (Social Security, Pension, SNAP benefits, etc)
- Increase in medical expenses
- Increase in other monthly expenses
- Non-paying tenants
- Family members not contributing financially
- Victims of various type of scams and financial abuse

# Interviewing Older Individuals

Consider these factors:

- Individual variables (age, race, ethnic background, etc.)
- Physical abilities
- Cognitive abilities (usually better to interview in the morning)
- May be hard of hearing or unable to see well
- May need medications and accommodations for disabilities and limitations (wheelchairs, walkers, transportation, etc.)



# Reverse Mortgage Foreclosure

How to evaluate for a possible foreclosure case:

- Ask whether the homeowner has been served with Court papers
- Check to see if a foreclosure has been filed by checking e-Courts and e-File websites
- Ask to see the homeowner's mortgage statement

# Reverse Mortgage Foreclosure

How to evaluate for a possible foreclosure case (continued):

- Ask to see all letters from the reverse mortgage servicer to check for a default notice
- Check the homeowner's property tax payment history
- Check whether the person is current on his or her Homeowner's Insurance (flood insurance if applicable)



# Defaults on Reverse Mortgages

# Reasons for Default

Unlike a traditional forward mortgage, the homeowner does not have to repay the loan until the homeowner passes away UNLESS the homeowner defaults on the terms of the mortgage for any of the following reasons:

- Homeowner no longer lives in the home as their primary residence
- Homeowner fails to pay property taxes, homeowner's insurance or water/sewer charges
- Failure to make necessary repairs & maintenance
- Named spouse on deed & mortgage passes away



# Failure to Pay Property Charges

Depending on terms of mortgage, either the reverse mortgage servicer will pay for the property charges through a Line of Credit/LESA or the homeowner is responsible for paying

- If homeowner is responsible or Line of Credit runs out: The servicer will advance payments on behalf of homeowner if homeowner misses a property tax, insurance, and/or water/sewer payment.
- Loan account is placed into default with a negative balance (default balance due in order to bring account current)

# HUD Mortgagee Letter 2016-07

HUD issues Mortgagee Letters which govern the HECM program.

- Most recent Mortgagee Letter 2016-07 lifted a previously placed ban on repayment plans – now allowing servicers to **approve repayment plans**
- This includes loans that are already in foreclosure
- Recent FAQ published clarified that **repayment plans are allowed**, regardless of when a foreclosure action was commenced



# Non-Borrower Surviving Spouse

- Younger spouse removed from deed and only older spouse is left on deed & mortgage in order to qualify for a larger reverse mortgage loan
- Issue arises when named spouse passes away and the reverse mortgage is called due and payable

# Non-Borrower Surviving Spouse

Statutory Rights:

- **12 U.S.C. 1715z-20(j)**: HUD may not insure mortgage unless it **protects "homeowner" from displacement** until death or sale of property.
- "Homeowner" **includes** spouse of homeowner.



# HUD Mortgagee Letter 2015-15

Regarding non-borrower spouses:

- Mortgagee Letter 2015-15 allows an eligible non-borrowing surviving spouse to elect the MOE assignment
- Must show the following:
  - Marriage Certificate
  - Good Marketable Title or other legal interest in the property within 90 days of borrower's death
- Must cure any default prior to being considered for HUD's NBS deferral program

# Pre-Foreclosure

If a reverse mortgage servicer has not yet filed a foreclosure action, the counselor can at intake:

- Seek default balance by calling servicer
- Send a qualified written request – Request for Information – to servicer seeking the current default balance with details of the disbursements made
- Seek a repayment plan with servicer
- Apply for a grant to cure the Default Balance



# How to Cure a Default Balance

- Seek a repayment plan with servicer. Homeowner will have to be financially evaluated.
- Apply for a grant to cure the Default Balance
  - NYC HRA One Shot Deal
  - Bridge Fund
  - Other grants

# Case Example #5

Homeowner received a notice from their reverse mortgage servicer stating that they are **in default**. The notice states the borrower failed to pay their property taxes and that they owe a total of **$2,340.00**. Homeowner was in the hospital due to illness and forgot to pay property taxes for the first quarter of 2015. Homeowner is able to make property tax payments going forward, but **needs help paying the default balance** owed to the servicer.

- Advocate applies for a **repayment plan** with reverse mortgage servicer and homeowner is able to afford the monthly payments. Foreclosure prevented.



# Case Example #6

Homeowner received a notice from the reverse mortgage servicer stating that they are in default. The notice states the borrower failed to pay property taxes and a total of **$15,000 is owed**. Homeowner **was unaware** of responsibility for paying **property taxes and insurance** because lender/servicer had always paid through a Line of Credit. Homeowner was never notified that the **Line of Credit was diminished**. Homeowner is able to afford property tax and insurance payments going forward, but **needs help paying the default balance** owed to the servicer.

- Advocate applies and **obtains a grant** to cover the **$15,000** default balance. Foreclosure prevented.

## Increase in Filings of Reverse Mortgage Foreclosures

# Foreclosure

If the servicer has already filed a foreclosure action, the counselor should:

- Immediately refer the case to a legal services provider
- At intake, also check:
  - Has an answer has been filed? (clerk's minutes online)
  - Is there an upcoming court appearance? (e-Courts website)
  - Has homeowner asked servicer for a repayment plan? Were they already in a repayment plan?

# Issues with Foreclosures

Commenced for failure to pay property charges:

- Complaint is often vague and does not state exactly why the homeowner is in default and does not state how much is owed in order to cure the default
- Opposing counsel often delays in responding to requests for a current detailed default balance or reinstatement letter
- Often need to escalate with servicer directly (For New York State attorneys, you must obtain written permission from opposing counsel to speak directly with servicer)



# Defenses to Foreclosure:

- Prior approval from HUD to accelerate loan is a Condition Precedent (Requirement in the terms of the note and mortgage)
- Notice requirements under terms of mortgage, note, HUD rules, NY's R.P.L. §280-a, and DFS rules
- Complaint is vague, fails to provide specific reason for default and how much is owed to cure default
- Equity Argument

(See handout for sample *Pro Se* Answer)

# Equity & Public Policy Arguments

- Remember! The purpose of the HECM program is to help seniors stay in their homes
- The Congressional intent behind the HECM Statute was to safeguard seniors from being displaced from their homes
- Law is still developing
- Ongoing national advocacy



# Legislative Advocacy

For reverse mortgage foreclosures:

- CPLR §3408 does not include reverse mortgage foreclosures in the settlement conference part
- Certificate of Merit or 90-day notice also not required for reverse mortgage foreclosures. As a result, reverse mortgage foreclosures move through the foreclosure process much faster
- HUD's mortgagee letters need to **require** loss mitigation
- Need stronger protections for non-borrower surviving spouses

# Using a Reverse Mortgage to Prevent a Forward Mortgage Foreclosure

## Forward Mortgage Foreclosure

For elderly homeowners who are in foreclosure for a forward mortgage, obtaining a reverse mortgage to pay off the existing forward mortgage may be a great alternative to foreclosure.

- What are the homeowner's intentions? Do they want to keep their home?
- Depends on homeowner's age and other factors considered when applying for a reverse mortgage
- Consider offering a short pay-off

# Case Example #7

Situation:

- Age:  84
- Homeowner is in foreclosure
- Owes $143,000.
- Homeowner's monthly income is $1,500 in Social Security and $600 in Pension
- Property taxes and homeowner's insurance is approximately $700 per month.



# Case Example #7

Resolution:  reverse mortgage

- Home value and maximum claim amount:  $580,000
- Principal limit:  $390,920
- LESA required: $19,868

# Case Example #7

Resolution: foreclosure prevented

- Upfront mortgage insurance of $14,500 and origination costs of $10,000
- Maximum pay-off after origination fees & other costs: $346,000
- Homeowner uses $143,000 to pay off prior mortgage and has $203,000 in line of credit



# Case Example #8

Situation:

- Age: 84
- Homeowner is in foreclosure
- Owes $580,000.
- Homeowner's monthly income is $1,500 in Social Security and $600 in Pension
- Property taxes and homeowner's insurance is approximately $700 per month.

# Case Example #8

Resolution: reverse mortgage

- Home value and maximum claim amount: $580,000
- Principal limit: $390,920
- Upfront mortgage insurance $14,500 and origination costs of $10,000
- LESA required: $19,868



# Case Example #8

Resolution: foreclosure prevented

- Maximum pay-off after origination fees and other costs: $346,000
- Bank agrees to short pay-off of $320,000, with $260,000 in principal forgiveness
- Homeowner uses $320,000 from reverse mortgage funds to pay off prior mortgage and has $26,000 in line of credit.

# Escalations

HOPP partners and the Center's Network Partners can escalate reverse mortgage issues to escalations@cnycn.org or by calling 646-786-0891.



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