



Reverse Mortgage Foreclosure Updates & Methods of Resolution

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BIOGRAPHY

- ◆ Jennifer is a Senior Staff Attorney at JASA Legal Services for the Elderly in Queens
- ◆ Jennifer received her B.A. from New York University and her J.D. from Hofstra University School of Law
- ◆ Jennifer is admitted to practice law in the State of New York as well as the Southern District of New York and Eastern District of New York
- ◆ Jennifer is the Center's Older Homeowner Services Network Advisor

Presenter Bio

Issues Facing Senior Citizens

Senior citizens face economic hardship for the following reasons:

- ◆ Spouse passed away, reduction 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

Senior Clients

How to Evaluate for a Possible Reverse Mortgage Foreclosure Case

- ◆ Ask whether the homeowner has been **served with papers**
- ◆ Always check to see if a **foreclosure has been filed** by checking e-Courts and e-File websites.
- ◆ Ask to see the homeowner's reverse mortgage **statement**
- ◆ Ask to see all letters from the reverse mortgage servicer to check for a **default notice**
- ◆ Check the homeowner's **property taxes** and whether current on their homeowner's **insurance**

Evaluate

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 charges which include property taxes, homeowner's insurance or water/sewer
- ◆ Failure to make repairs
- ◆ Named spouse on Deed & Mortgage passes away

Default Status

As soon as the homeowner fails to comply with the reverse mortgage loan terms, the account is placed into default and the loan is immediately called due and payable

- ◆ Once the account is placed into a default status, the servicer will advance all property charge payments and charge it to the homeowner's account, creating a default (negative) balance
- ◆ Sometimes the servicer will advance the next quarter property taxes before they are due
- ◆ Servicers will often pay the full year of homeowner's insurance, even if a Borrower is making payments

Reverse Mortgage Defaults

Non-Occupancy Issues

- ◆ There are many cases where the servicer incorrectly concludes that the homeowner no longer lives at the property or has passed away
- ◆ This is an issue, because not only is the reverse mortgage loan account immediately called due and payable, but because the account is now in a default status, the Servicer will automatically advance payments towards property charges – causing the account to have a default balance due
- ◆ Failing to sign a Certificate of Occupancy sent by the servicer annually does not constitute non-occupancy- avoid the foreclosure by showing proof of occupancy to servicer

Reverse Mortgage Defaults

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/LESA 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)

Reverse Mortgage Defaults

Failure to Pay Homeowner's Insurance:

- ◆ When a homeowner fails to keep current on their homeowner's insurance, the Servicer will often place very expensive force-placed insurance and hold loan in default
- ◆ Make sure to reinstate homeowner's own insurance and remove the force-placed insurance
- ◆ Request credit or refund for force-placed insurance if homeowner had coverage for contested period

Reverse Mortgage Defaults

Non-Borrowing 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, the reverse mortgage is called due and payable.
- ◆ Eligible Non-Borrowing Surviving Spouse now has a right to remain in home under new [Mortgagee Letter 2015-15](#)

Reverse Mortgage Defaults

Statutory Rights of Non-Borrower Surviving Spouse

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” definition includes spouse of homeowner.

Reverse Mortgage Defaults

Confusion by Homeowners

- ◆ Homeowners are often confused as to who is responsible for paying their property charges
- ◆ Many borrowers had a Line of Credit in which they either elected to have the servicer pay their property charges or they failed to pay but the servicer advanced the payments from their Line of Credit, but at some point was depleted.
- ◆ Insufficient notice to borrower to explain that they are now responsible for paying for their property charges or that the account is in default status with a negative balance due.
- ◆ Insufficient or non-existent notice to surviving non-borrower spouse regarding their rights

Reverse Mortgage Defaults

Confusion by Homeowners (continued)

- ◆ Lack of proper counseling and disclosure at origination
 - ◆ No attorney required for closing
- ◆ Many were victims of predatory lending & high pressure tactics
- ◆ Diminishing capacity:
 - ◆ Dementia
 - ◆ Confusion

Reverse Mortgage Defaults

Loss Mitigation: How to Cure a Default Balance

How to Cure a Default Balance

*Loss Mitigation is **permissive**, not required*

- ◆ Re-payment plan with servicer. (Homeowner will have to be financially evaluated).
- ◆ At Risk Extension
- ◆ Grant programs:
 - ◆ NYC HRA One Shot Deal (default balances < \$20,000)
 - ◆ NYS MAP(default balances > \$20,000)
 - ◆ Bridge Fund
 - ◆ Other grants/funding
- ◆ Bankruptcy, Chapter 13 repayment plan

HUD Mortgagee Letter 2016-07 allows Re-Payment Plans

HUD issues Mortgagee Letters which govern the HECM program. The Mortgagee Letters can be found on the HUD website.

- ◆ [Mortgagee Letter 2016-07](#) lifts a previous ban on re-payment plans – now allows Servicers to approve re-payment plans. Refer to [Mortgagee Letter 2015-11](#) as well.
 - ◆ This includes loans that are already in foreclosure
 - ◆ Recent FAQ published clarifying that re-payment plans are allowed, regardless of when a foreclosure action was commenced

Reverse Mortgage Defaults

At Risk Extension

HUD issues Mortgagee Letters which govern the HECM program. The Mortgagee Letters can be found on the HUD website.

- ◆ [Mortgagee Letter 2015-11](#), allows Servicers to request extension of foreclosure timeframes if:
 - ◆ Youngest borrower is at least 80 years old and
 - ◆ Servicer has determined that borrower has critical circumstances (terminal illness, long-term disability)
 - ◆ Must re-apply annually

Reverse Mortgage Defaults

Grants/Loans/Bankruptcy

- ◆ Homeowner can apply for a grant to cure the Default Balance
 - ◆ NYS MAP
 - ◆ HRA One Shots (NYC)
 - ◆ For outside of NYC, you can apply for any Other grants that may exist where you practice
- ◆ Last resort option: Bankruptcy

Reverse Mortgage Defaults

HUD's Non-Borrower Surviving Spouses Deferral Program

- ◆ [Mortgagee Letter 2015-15](#) allows an eligible Non-Borrowing Surviving ("NBS") spouse to remain in home
 - ◆ 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
- ◆ [Mortgagee Letter 2016-05](#) allows a 60 day extension for NBS to obtain title

Reverse Mortgage Defaults

Pre-Foreclosure

If Reverse Mortgage servicer has not yet filed a foreclosure action, the counselor should at intake:

- ◆ Seek accurate 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 re-payment plan with servicer
- ◆ Apply for a grant to cure the default balance

Reverse Mortgage Defaults

Escalate!

- ◆ Escalate with the Center
- ◆ Escalate directly with specific servicer's escalation contacts
- ◆ Ask for default balance on letterhead with detailed breakdown of all disbursements on the loan
- ◆ File complaints with DFS, AG, and CFPB

Reverse Mortgage Defaults

Property Tax Exemptions

- ◆ Make sure to check whether the homeowner has their appropriate property tax exemptions (Enhanced STAR, SCHE, etc)
- ◆ If not, make sure to have them apply
 - ◆ Exemptions can reduce senior's property tax rates by 50% and make a significant difference in their living expenses and/or ability to qualify for a reverse mortgage

Reverse Mortgage Defaults

Increase in Filings of Reverse Mortgage
Foreclosures

Formal Foreclosure Filed

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

- ◆ Immediately refer the case to an attorney
- ◆ At intake, also check:
 - ◆ Has an Answer has been filed? (clerk's minutes online)
 - ◆ Is there is an upcoming Court appearance? (e-Courts website)
 - ◆ Has homeowner asked servicer for a re-payment plan? Were they already in a re-payment plan?

Reverse Mortgage Foreclosures

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 balance
- ◆ 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 NYS Attorneys, you must obtain written permission from opposing counsel to speak directly with servicer)

Reverse Mortgage Foreclosures

Legal Defenses to Foreclosure

- ◆ Prior approval from HUD to accelerate loan is a Condition Precedent (Requirement in the terms of the Note and Mortgage)
- ◆ Notice to borrower 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

Reverse Mortgage Foreclosures

Equity & Public Policy Arguments

- ◆ **Remember!** The purpose of the HECM program is to help Senior Citizens 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

Reverse Mortgage Foreclosures

Using a Reverse Mortgage to Prevent a Forward Mortgage Foreclosure

Using a Reverse Mortgage to Prevent a Forward Mortgage Foreclosure

For elderly homeowner's who are in foreclosure for a forward mortgage, obtaining a Reverse Mortgage to pay off the existing forward mortgage is often a great option.

- ◆ Depends on homeowner's age and other factors considered when applying for a reverse mortgage
- ◆ Consider offering a short pay-off
- ◆ Make sure senior has all eligible property tax exemptions
- ◆ Closing costs and fees are costly

Legislative Advocacy and Recent Changes in the Law

New Changes to New York law

Settlement Conferences

- ◆ Reverse mortgage foreclosure cases are now included in mandatory Settlement Conferences under CPLR 3408

Required 90 Day Notice

- ◆ 90 Day Notices are also now required to have been sent by the lender prior to filing a reverse mortgage foreclosure

Changes to HECM Reverse Mortgage Program

- ◆ As of October 2, 2017, HUD has revised its rules:
 - ◆ Increase the upfront mortgage insurance premiums (MIP) to 2% of the Maximum Claim Amount, making loans more expensive for most borrowers and
 - ◆ Lower available proceeds, preserving more equity
 - ◆ More information can be found here:
 - ◆ HUD HECM [Fact Sheet](#)

Reverse Mortgage Foreclosures

Legislative Advocacy

There is ongoing legislative advocacy at the New York State and Federal level

- ◆ HUD's Mortgagee Letters need to require loss mitigation
- ◆ Need stronger protections for Non-Borrower Surviving Spouses to provide more time to prove a legal interest

Reverse Mortgage Foreclosures

Resources from the Center

There is ongoing legislative advocacy at the New York State and Federal level

- ◆ Older Homeowners [Resource Guide](#) for Advocates
- ◆ [Policy Brief](#)
- ◆ Reverse Mortgage Responsibilities [Tip Sheet](#)

Reverse Mortgage Foreclosures

Quiz

Question #1:

What are the reasons why seniors may find themselves in foreclosure of their reverse mortgages?

Question #2:

If a foreclosure action has been filed and a homeowner has been served with court papers, what should they do?

Question #3:

Does the non-borrowing spouse have a right to live in the home even after their spouse, who's name is on the Deed and Reverse Mortgage, passes away? If yes, what do they need to do?

Questions?

If you have any questions, please feel free to contact me at
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