

National Reverse Mortgage Lenders Association

# 2023 Annual Meeting

October 24, 2023, Nashville, TN



# Level-Setting Client Expectations After Loan Closing

We will educate you so that you can better serve and educate your Reverse Mortgage borrower



# First Things First – Privacy Protection

Before Death of Borrower	Permissions
Alternate Contact on Loan Application	Used only to locate Borrower; cannot discuss account
Authorized Third-Party	Can discuss account
Attorney-in-Fact, Guardian or Conservator	Can discuss account and can act on behalf of the borrower (i.e., request funds)

*Note: Loan Officers must provide a signed third-party authorization form or letter to discuss the account after loan boarding.*

# First Things First – Privacy Protection

After Death of Borrower	Permissions
Authorized Third-Party	No longer authorized to discuss account
Attorney-in-Fact, Guardian or Conservator	No longer authorized to discuss account or act on behalf of borrower
Executor Personal Representative of the Estate (with supporting documentation)	Can discuss account-specific information and can act on behalf of borrower (i.e., Short Sales/DIL, marketing the property)

This information should not be regarded as compliance or legal advice and is for informational purposes only.

# Prepare Borrower for Servicing

Provide phone #s and email addresses for alternate contacts and authorized 3<sup>rd</sup> parties at origination.

Encourage Borrowers to Prepare for Maturity & Inform their Heirs of the following:

- Name and Phone Number of Servicer (on monthly statement)
- Recent monthly statement
- POA or Authorized Third Party letter (post-death will no longer be valid)
- Copy of Last Will & Testament / Trust
- Death Certificate

Discuss LOC Advances, Occupancy Certificate, Repair Set Aside, and Loss Draft

# Line-of-Credit Advances

- Attorney-in-Fact: must sign "*POA Name, Attorney-in-Fact for <Borrower Name>*"
- Timeframe: 5 business days from receipt of a complete and approved request
- Disbursement Method: Direct Deposit or Check (*encourage Direct Deposit*)
- First Year Restriction: LOC advances subject to Initial Disbursement Limit (IDL)
  - ❖ *The redrawing of prepayments made in first year, or drawing of additional funds brought to closing in a purchase to create LOC is subject to IDL*
- Default Status: LOC and any monthly payments are frozen
- Last Borrower's Death: Unused funds (LOC, LESA & Repairs) are not available and not included in the loan balance (won't be in Payoff quote).

# Occupancy

- Annually borrowers must certify their occupancy
- Borrowers should notify their Servicer if they will be out of home for >2 months
- Borrowers can be out of their homes for up to 12 months for health reasons

## Process:

- 1<sup>st</sup> occ cert is mailed annually within 30 days of the closing date anniversary
  - 2<sup>nd</sup> occ cert is mailed 30 days later
  - Phone calls begin 30 days later
  - A Property Inspection is ordered (and possibly a door knock)
  - Loan required to be referred to HUD for approval to call due & payable
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- **Default:** Failure to complete the verification results in a Default, the LOC and monthly payments are frozen when the loan is Called Due and Payable, and Foreclosure could commence.

*HUD requires the signed form that includes the required HUD-prescribed certification language.*

# First Year Repairs / Repair Set Aside

- **Repair Rider to Loan Agreement:** Shows required completion date and list of required repairs
- **Timeframe:** Maximum of 12 months to complete (including any extensions)
- **Communication:** Borrower should stay in contact with Servicer to report progress
- **Initial Disbursement of Funds:** to pay for materials (with receipts and delivery to home/job site)
- **Remaining Funds:** An inspection is required prior to disbursement of additional funds
  
- **Affidavit & Lien Waiver:** required from the contractor(s) to close out repairs; or **Homeowner's Certification Form** if they completed repairs without a contractor
  
- **Excess Funds in RSA:** upon completion and inspection, remaining funds can be accessed by Borrower if the loan is open-ended; if closed-ended, no additional funds will be available.
  
- **Default:** Failure to complete by the deadline results in a Default and the LOC and monthly payments are frozen.



# Loss Drafts/Property Insurance Claims

- **File Claim:** Borrowers should contact their Insurance Carrier(s) and file a claim ASAP
- **Document Damages:** Borrowers should document all damages, including taking photos
- **Insurance Adjuster:** will inspect damages to determine claim proceeds
- **Claim Funds:** Checks are typically made payable jointly to both the servicer and borrower as the servicer is a Loss Payee. The borrower must sign and send a check to Servicer to hold & disburse funds.
- **Communication:** Borrowers should contact their Servicer regularly to report progress
- **Inspection:** A completion inspection is required prior to the disbursement of funds
- **Disbursement of Funds:** When inspection shows 100% complete, remaining funds are sent to the borrower
  - HUD requires evidence that all repairs are satisfactorily completed. Servicers cannot cut and release checks like forward mortgage servicers.
- **Contractor Affidavit & Lien Waiver:** required from the contractor(s) to close out repairs; or **Homeowner's Certification Form:** if they completed repairs without a contractor.

# Sample Forms

## Homeowner's Certification of Completed Repairs

I/We certify that the repairs to the above property have been satisfactorily completed and there were no contractors, sub-contractors, or material handlers involved. We further agree to hold the Reverse Mortgage Department harmless to any future damages pertaining to these repairs.

Borrower(s) Name:

Property Address:

Loan Number:

  
  

Borrower Signature

Date

Co-Borrower Signature (if applicable)

Date

## Contractor Affidavit and Conditional Waiver of Lien

I,  (contractor/representative) being duly sworn, deposes and says that this affidavit for and on behalf of  (person/company) represents completion of repairs and improvement for which I was hired for on the property listed below:

Borrower Name:

Borrower Address:

Loan Number:

  
  

Upon receipt of \$  the undersigned does hereby waive and release any and all liens or claims, or right to place a lien on the above-listed property.

Furthermore, the undersigned certifies subcontractors or material handlers have been paid in full if used.

**Please accompany with a signed final invoice (signed by the borrower) or an invoice indicating paid in full.**

Contractor's Signature

Title:

Date:

# Prepayments

- Borrowers can make prepayments at any time, BUT to keep their LOC open, they must maintain a nominal balance. If the prepayment is enough to pay the loan in full, the loan will close, and the liens will be released.

## Payment Application Waterfall:

- First to MIP
  - Second to Servicing Fees (if any)
  - Third to Interest
  - Fourth to the remaining portion of the Principal Balance.
- A HECM borrower with a LOC can re-borrow 100% of prepayments made, subject to the first-year restriction.
- ❖ **IRS Tax Docs:**
    - ❖ Borrowers will only be sent a Form 1098 if they prepaid >\$600 in MIP and/or interest or paid in full during the tax year (in compliance with IRS rules).
    - ❖ After death, if loan is paid off by heirs, a 1098 is issued in name of the Estate with the borrower's SSN.

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# Payoff Quotes

- All quotes must be requested by an authorized party or be accompanied by a signed Borrower's Authorization
- Only incurred fees may be included. No future estimated fees can be included
- Turn times may be longer for loans in default or foreclosure (must get current incurred fees from attorneys/vendors)
- Quotes on loans in foreclosure have a shorter good-through date as fees are accruing regularly

# Taxes & Insurance - LESAs

Purpose: Set Aside for Tax & Insurance Payments

- Fully-Funded LESA: required when the borrower *has not* demonstrated a satisfactory credit history and/or property charge payment history, even if residual income is sufficient. Property charges will be paid by the servicer out of the LESA Set-Aside until depleted. (mandatory; determined at underwriting)
- Partially-Funded LESA: required when the borrower *has* demonstrated a satisfactory credit & property charge payment history, but residual income is not sufficient. The borrower will receive semi-annual payments designed to bring residual income up to the standard. The Borrower is responsible for the payment of all property charges. (mandatory; determined at underwriting)

*Note: A LESA must be set up at origination; servicer cannot establish a T&I set aside after origination.*

# Taxes & Insurance - LESAs

## Restrictions:

- A LESA cannot be canceled or changed during the life of the loan.
- Funds are set aside for the specific intent of payment of property charges (Taxes & Insurance only) and a borrower may not access them for any other reason.
- If the borrower passes away, any Non-Borrowing Spouse (NBS) would **NOT** have access to the LESA, and LESA payments cease (LESA is established based on the borrower's age).
- If the borrower passes away, LESA funds are neither available nor "lost". They were never borrowed, and thus not added to the loan balance (and not included in a payoff quote).

# Default/Maturity Events and Resolution

**Death** - of last remaining borrower or non-borrowing spouse

- Payoff Loan
- Short Sale \* – if in default, can sell for 95% of market value; if no default, sell for 100%
- Deed-in-Lieu \* – title must be clear and property broom-swept

**Occupancy** - move out of all borrowers

- One borrower moves back into the property and certifies occupancy

**Property Charge Default** – failure to pay taxes, insurance, HOA, etc.

- Repayment plan (excluding HOA), At Risk Extension, or Borrower Financial Assistance Program (HAF)

**Property Condition** - Failure to maintain condition/condemnation

- Repair or Sell property, execute a Deed-in-Lieu of Foreclosure

**Title Transfer** - no borrower remains on the title

- Return at least one borrower to the title (if trust, contact servicer ahead of time for approval)

\* An authorized representative must be appointed to convey the title

# Property Charges – Taxes & Insurance

- Servicers send letter cycles pre- and post-payment due date
- **Property Charge Delinquency Letter (PCDL):**
  - States an obligation of the borrower to pay property charges has not been met
  - States failure of the borrower to pay property charges will result in loan becoming Due & Payable
  - Includes the amount advanced by the Servicer
  - Provides notice of the availability of Housing Counseling
  - Provides notice of all available loss mitigation options the mortgagee may offer
- **Note:**
  - Mortgagee must be a named loss payee on the insurance policy
  - HO-6 coverage is required on condominiums (“walls-in” coverage)



# Taxes & Insurance – Default Remedies

- Repayment Plan (ML 2015-11)
  - Term length depends upon income
  - May be required to repay the default balance before MCA reaches 98%
  - Payment should not exceed 25% of the borrower's surplus income
    - If a term less than the max allowable term is not possible, the payment at max term may exceed 25%
  - Taxes & Insurance only; cannot include HOA dues
  - If the default balance is <\$2k, Due & Payable is deferred
  
- At-Risk Extension of Foreclosure
  - Youngest living mortgagor is at least 80 **and** has critical circumstances
  - Must be supported with documentation and renewed annually
  
- Borrower Financial Assistance Programs (Housing Counselors can advise)

# Maturity / Death Process

- Upon notification: Demand Letter is Sent
  - HUD prescribed language; 30 days to satisfy the debt or provide a letter of intent outlining their intentions for the property / loan
- Servicer initiates first legal action of Foreclosure
  - Timing of referral for foreclosure depends on state law
  - Servicers must make first legal on or before 6 months after death or default so servicers must refer around 90 days after death or default to allow counsel to prepare what is required to make first legal
    - Earlier referral in states where opening probate is required to meet first legal  
DC, DE, ME, MD, MA, NH, OR, TX, VT
- Foreclosure timeframes vary by jurisdiction
  - Loan resolution can happen almost up to the foreclosure sale date
- Probate must be completed if required in the jurisdiction

# Sample Letter of Intent

Loan Number:  
 Borrower Name:  
 Property Address:

In addition to the documentation listed below, as applicable, please provide a copy of the borrowers death certificate and proof that you are authorized to act on behalf of the Estate (for example, a copy of any application for probate or filings with probate court).

This form is to be used to indicate how the Estate intends to resolve the default on the reverse mortgage loan secured by the property referenced above. Please complete, sign, and return this form by <DATE>.

The Estate intends to resolve the default by: (choose one)	Documentation Required
<input type="checkbox"/> Listing the property for sale.	A copy of the real estate listing agreement, realtor's MLS printout, or proof property is listed "For Sale by Owner".
<input type="checkbox"/> Obtaining financing to pay the loan balance in full and keep the property.	Provide proof that financing has been approved (loan approval or commitment; pre-approval not acceptable), or a bank or life insurance statement.
<input type="checkbox"/> Requesting a short sale approval to sell property at 95% of appraised value.	Completed Short Sale Request Form at <a href="http://www.reversedepartment.com">www.reversedepartment.com</a> (see Common Forms).
<input type="checkbox"/> Requesting the property be deeded back to the owner of the loan via a deed-in-lieu of foreclosure.	Completed Deed-in-Lieu of Foreclosure Request Form at <a href="http://www.reversedepartment.com">www.reversedepartment.com</a> (see Common Forms).
<input type="checkbox"/> Requesting that the servicing department proceed with foreclosure on my property.	Please ensure you have signed below if you are selecting this option.

By completing this form and signing below, you are not obligating the Estate to take the actions above. This form simply documents the Estate's intentions.

_____ Signature	_____ Printed Name	_____ Date
_____ Signature	_____ Printed Name	_____ Date

# Extensions of Foreclosure

- Estate can request up to two 90-day extensions of Foreclosure
  - With proof property is being marketed
    - ✓ Listing agreement
    - ✓ Sales contract
  - With proof or loan is being refinanced or paid in full
    - ✓ Proof of funds
    - ✓ Loan Approval
  
- There is no extension just for probate – Estate must show they are working to resolve the debt

# Probate Process Overview

- Legal process of administering a deceased person's estate
  - Purpose is to administer organize assets, money, and possessions and distribute inheritance
  - For property, allows for legal title to transfer from deceased party to another
    - In many states, title transfers at death to heirs at law
    - In others, need personal representative to effectuate transfer
- Sliding scale of judicial role vs. decedent's control: Intestate → Testate → Trust
- Borrower dies **without a Will**: intestate succession
  - Must go through legal process
  - Judge will follow state succession rules
- Borrower dies **with a Will**: testate succession
  - Someone is appointed by borrower to administer estate
  - Details who gets assets, etc.
  - Must still go through legal process and obtain orders

# Trusts

- ❖ **Borrower(s) is/are** the beneficiaries of the Trust
  - ❖ All must be eligible borrowers at origination and until the mortgage is released and occupy the property as their principal residence.
  - ❖ Cannot add new beneficiaries during life of loan.
  
- ❖ **Acceptable trusts types:** Inter Vivos trusts (Living Trusts), Land Trusts
  
- ❖ **Trust holds title to property**
  - ❖ Security Instrument: Trustee and each borrower/beneficiary must sign
  - ❖ Note: Borrower/beneficiary must sign; lender may require trustee to sign
  - ❖ Loan Agreement: Borrower/beneficiary must sign; Trust is not a party.
  
- ❖ **After Closing:** A borrower may choose to transfer vesting of their property to a Trust after the loan closes.
  - ❖ Trust must meet HUD requirements. Submit trust to Servicer for review prior to finalizing.
  - ❖ Trust approval may be subject to investor approval on non-HECM loans.
  
- ❖ **HECM Handbook 4235.1, Section 4.5 B - Transfer of the Property Into or From a Trust**
  - ❖ 1) The borrower under an insured HECM may transfer the property to a living trust without causing the mortgage to become due and payable if the lender finds that the trust meets all requirements that would have applied if the trust owned the property at closing.
  - ❖ 2) If the trust is terminated, or the property is otherwise transferred from an eligible trust holding the property, the mortgage will not become due and payable, provided that one or more of the original borrowers who signed the Note and Loan Agreement continue to occupy the property as a principal residence and continue to retain title to the property in fee simple or on a leasehold interest.

# Drawbacks to Probate

- Cost
  - Filing fees– some states may be \$1200+
  - Attorney fees – higher amount if no Will, if someone contests validity of Will, or heirs are not in agreement
  - Probate fees may apply – tax that applies to estate (ex: CT could be up to \$12,500)
  - Certified Judgments/Orders – may need certified or original orders
  - Miscellaneous fees – appraisal fees, postage fees, notary fees, estate sale prep fees
- Time
  - Timelines for probate case can vary from 6 months to 2 years
    - Depends on presence of Will, size of estate, ability to locate beneficiaries

# Creditor Probate

- Probate cases generally require some type of notice to a creditor, who can make formal claims against the estate
- Nine jurisdictions require creditors to open a probate or declaratory action prior to proceeding to foreclosure to properly transfer title
- The purpose is to appoint a Personal Representative so title can pass hands or to divest heirs of their statutory probate interest and give marketable title to creditor
- District of Columbia, Delaware, Maine, Maryland, Massachusetts, New Hampshire, Oregon, Texas, Vermont



# Probate Varies by State

DC	A probate case needs to be opened and PR appointed before foreclosure can proceed. DC Code Section 42-815.
DE	Personal Representative must be appointed. 190. 12 Del. Code §1505 (d) Del. Chancery Court Rule
MA	In MA, when a property owner dies, all heirs of that individual become owners immediately and automatically by operation of law, as confirmed in National Shawmut Bank v. Joy, 315 Mass. 457 (1944) When a foreclosure is involved, those heirs must then be identified through probate research to ensure they are all named in the complaint and sent notice of the foreclosure sale. A failure to name all heirs will mean a lack of compliance with the Servicemembers Civil Relief Act (SCRA) and as well as the Massachusetts Foreclosure Statute (MGL c. 244), most specifically Sections 14 and 15
ME	Pursuant to Rule 80A. (e) of the Maine Rules of Civil Procedure, no real action shall be abated by the death of a party after it has been commenced
MD	Probate: Per MD Rule 14-205 & §7-105 (a-1); Rule 14-206 (b)(2)(a), requires that we give notice to the debtor, record owner and any subordinate lien holders. In a Deceased situation, we need to have a PR appointed so that we can have the PR receive Notice for the Deceased Owner/Debtor to comply with the statute. Foreclosure is legally prohibited from moving forward until these requirements have been met.
NH	Guardian Ad Litem must be appointed. A court order must also be obtained to proceed with foreclosure as per RSA 479:25 RSA 556:1,
OR	A legal representative of the deceased borrower's estate must be appointed in order to properly effectuate service for the foreclosure. ORS 86.756 et seq.
TX	<b>Probate: TX State Law Tex. Prob. Code §§37, 38 and 45 and Tex. Prob. Code 147 and 146(b)(2) requires that a probate search be conducted, and a personal representative be appointed by the Courts.</b>
TX Probate filed by Heir	<b>Heirs filed for probate. Per Tex. Prob. Code §§37, 38 and 45; and Tex. Prob. Code §147 and §146(b)(2) a probate search must be conducted, and a personal representative be appointed. Property cannot be sold in a foreclosure sale until 6 months has passed after the order appointing PR has been granted.</b>
VT	Per 14 VSA 903(2), In a deceased situation, when the mortgagor's beneficiaries have not opened an estate, a creditor's administration must be opened in order for foreclosure to proceed.

# Borrower Divorce

- “Gray Divorce” or “Silver Divorce” occurring more frequently than in the past, according to the National Center for Family & Marriage Research at Bowling Green State University.
- The gray divorce rate (represented as the number of divorces per 1,000 married women aged 50 and older) increased more than twofold between 1990 (4.9) and 2017 (10.3).
- One-third of people getting divorced over the age of fifty.
- Divorce is a legal proceeding that typically results in a court order dividing assets/liabilities of former spouses, among other things.

# Borrower Divorce

- When court awards marital home encumbered by a HECM to one spouse, court order may relieve spouse vacating the marital home of any liability, but servicers do not have a mechanism to simply “remove” a borrower in HERMIT. This presents a few practical issues:
  - Correspondence (periodic statements, D&P notices, etc.) may still be addressed to spouse who has vacated the home; and
  - Spouse who has vacated home cannot obtain a new HECM.
- HUD regulations at 24 C.F.R. § 206.34(a) provide that borrowers can “provide legal documentation, in a manner acceptable to [HUD], evidencing release of the borrower’s financial obligation to satisfy the existing HECM.”
  - HUD comments in publication of 2017 Final HECM Rule suggest this is supposed to be avenue borrowers/servicers should follow to release vacating spouse.
- Avoid making representations that servicer can “remove” a borrower from the loan following divorce.

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# Resources

- **NRMLA Consumer Guides:** [www.nrmlaonline.org/category/consumer-guides](http://www.nrmlaonline.org/category/consumer-guides)
  - What You Need to Know About Your HECM After Closing
  - What Do I Do When My Loan is Due?
  
- **CFPB:** <https://pueblo.gpo.gov/CFPBPubs/CFPBPubs.php?PubID=13459>
  - You have a reverse mortgage: Know your rights and responsibilities
  
- **HUD Websites:**
  - [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/sfh/hecm/hecmhome](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/hecm/hecmhome)
  - [http://portal.hud.gov/hudportal/HUD?src=/topics/information\\_for\\_senior\\_citizens](http://portal.hud.gov/hudportal/HUD?src=/topics/information_for_senior_citizens)
  
- **HUD Counseling** (800)569-4287 or [www.hud.gov/program\\_offices/housing/sfh/hcc](http://www.hud.gov/program_offices/housing/sfh/hcc)
  
- **Treasury's Homeowner Assistance Fund (HAF):** [www.ncsha.org/homeowner-assistance-fund/](http://www.ncsha.org/homeowner-assistance-fund/)