Defending Reverse Mortgage Foreclosures

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Presenter – Tara Twomey

• Is currently Of Counsel to the National Consumer Law Center and the Amicus Project Director for the National Association of Consumer Bankruptcy Attorneys.

• She has been a Lecturer in Law at Stanford, Harvard and Boston College Law Schools.

• Ms. Twomey is a former Clinical Instructor at the Hale and Dorr Legal Services Center of Harvard Law School where her practice focused, in part, on sustainable homeownership for low- and moderate-income homeowners.

• She is a contributing author of several books published by the National Consumer Law Center including, Foreclosures: Defenses, Workouts and Mortgage Servicing and Bankruptcy Basics..
Past HECM Products

Fixed v. Adjustable
Standard v. Saver
Special Purpose HECMs

Fixed v. Adjustable

Figure 35: HECM loan volumes by rate type, FY 1990-2011.

Standard v. Saver

Source: CFPB analysis of FHA data.
The Silver Tsunami

Borrowers' Age

Secondary Market

HECM Lender

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Special Purpose HECMs

<table>
<thead>
<tr>
<th></th>
<th>2010</th>
<th>2011</th>
</tr>
</thead>
<tbody>
<tr>
<td>Regular HECM</td>
<td>92.2%</td>
<td>96.4%</td>
</tr>
<tr>
<td>HECM for Purchase</td>
<td>1.8%</td>
<td>2.3%</td>
</tr>
<tr>
<td>HECM Refinance</td>
<td>6%</td>
<td>2.3%</td>
</tr>
</tbody>
</table>
HECM Lenders

12 Months Through April 2013

<table>
<thead>
<tr>
<th>Rank</th>
<th>Lender</th>
<th># of Loans (Pct)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Liberty Home Equity</td>
<td>8,665 (15.8%)</td>
</tr>
<tr>
<td>2.</td>
<td>Urban Financial Group</td>
<td>7,124 (13.0%)</td>
</tr>
<tr>
<td>3.</td>
<td>Security One Lending</td>
<td>6,744 (12.3%)</td>
</tr>
<tr>
<td>4.</td>
<td>Generation Mortgage</td>
<td>5,712 (10.4%)</td>
</tr>
<tr>
<td>5.</td>
<td>One Reverse Mortgage</td>
<td>5,020 (9.1%)</td>
</tr>
<tr>
<td>6.</td>
<td>American Advisors Group</td>
<td>4,867 (8.9%)</td>
</tr>
</tbody>
</table>

Source: Reverse Mortgage Insight, Inc.

Defending Foreclosures
Non-borrowing spouse

- Repayment demand can not occur until death of “homeowner”, sale of property or other terminating event. 12 U.S.C. 1715z-20(j).
- Homeowner defined to “include the spouse of the homeowner”
Bennett v. Donovan

Non-Borrowing Spouse

Non-recourse rule

95% rule
24 C.F.R. § 206.125
FMV rule

- **Mortgagee Letter 2008-38**
  - Non-recourse provision only applies when property is sold
  - Heirs (surviving spouse or children) must pay full mortgage balance to keep the home even if it exceeds the value of the property
  - Arm's length transaction required for sale at 95% or more of appraised value

Non-recourse rule

- **Chandler v. Wells Fargo (N.D. Cal.)** proposed (b)(2) class action alleging Wells Fargo failed to observe FMV Rule
- **ML 2008-38 rescinded by ML 2011-16 (April 5, 2011).** No further guidance from HUD to date.
Taxes and Insurance

- Taxes and insurance can be escrowed or must be paid by the borrower.
- About 10% of RMIs in default for failure to pay T&I.
- ML 2011-01 sets forth guidance for dealing with T&I defaults.

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Taxes and Insurance

<table>
<thead>
<tr>
<th>Corporate Amount Advanced</th>
<th>Repayment Schedule</th>
</tr>
</thead>
<tbody>
<tr>
<td>$1 - $500</td>
<td>up to 3 months</td>
</tr>
<tr>
<td>$501 - $1,000</td>
<td>up to 6 months</td>
</tr>
<tr>
<td>$1,001 - $5,000</td>
<td>up to 12 months</td>
</tr>
<tr>
<td>$5,001 or more</td>
<td>up to 24 months</td>
</tr>
</tbody>
</table>

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Taxes and Insurance

- T&I default may be cured through a chapter 13 bankruptcy.
- Material misrepresentation
  A promise that no payments will be required during the term of the loan is clearly misleading.
Yield Spread Premiums

- RM Origination Fees Capped
  - $2,500 or 2% of max claim amount up to $200k + 1% of max claim amount above $200k; overall cap $6,000
- Origination fees cover full array of origination services. ML 2008-34
- Lenders don’t count YSP as part of origination fees
- New YSP rules limiting compensation to broker from both borrower and lender only apply to fixed-rate (closed end) HECM loans. 78 Fed. Reg. 59509 (Sept. 24, 2010); 24 C.F.R. §§ 226.5b, 226.36
Suitability

- Complexity of HECM products has increased
- Some are touting RMs as an investment tool
- Fixed rate loans can be inappropriate but generate larger profits for lenders

Moving Forward

Reverse Mortgage Stabilization Act of 2013
The maximum amount of money borrowers can take out goes down.

60% Rule
Mandatory Obligations + 10%
MIP Changes

60% Rule
Upfront MIP .5%

Otherwise
Upfront MIP 2.5%

FINANCIAL ASSESSMENT

LE Set Aside
Residual Income Analysis
Credit Analysis
Required Set-Aside
Voluntary Set-Aside

Proprietary RM
Financial Planning Tool