



Advancing Fairness
in the Marketplace for All

BOSTON HEADQUARTERS
7 Winthrop Square, Boston, MA 02110-1245
Phone: 617-542-8010 • Fax: 617-542-8028

WASHINGTON OFFICE
1001 Connecticut Avenue NW, Suite 510, Washington, DC 20036
Phone: 202-452-6252 • Fax: 202-296-4062

www.nclc.org

November 18, 2016

VIA ELECTRONIC MAIL

Edward L Golding
Principal Deputy Assistant Secretary for Housing
U.S. Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

Dear Mr. Golding:

HUD is reportedly scheduled to sell approximately 1,700 Home Equity Conversion Mortgage (HECM) notes on November 30, 2016, through HUD-Held Vacant Loan Sale 2017-1. We write to request that HUD not proceed with the scheduled HECM note sale and refrain from scheduling any further sales of HECM loans until appropriate protections are in place for HECM borrowers and their spouses and heirs.

As you know, HECM borrowers are a particularly vulnerable population of senior homeowners. Many are dealing with reduced income, increased medical costs, and physical and mental health challenges as they age. Congress saw the value of allowing these seniors to age in place when it authorized HUD to create the HECM program. HUD has a unique responsibility to protect this vulnerable population and the goals of the HECM program. The proposed HECM note sale on November 30th could put these elders' homes in jeopardy.

While all of the loans scheduled to be sold in Loan Sale 2017-1 are supposed to be secured by vacant properties,¹ the National Consumer Law Center is aware of numerous examples of false claims of non-occupancy leading to servicers initiating foreclosure wrongfully on this basis, including in loans directly serviced by HUD. The attached appendix details just a few of those reports. In a national survey of elder advocates and attorneys NCLC conducted in February 2016, more than half the respondents (41 of the 79 advocates that answered the question) noted that they had at least one client whose loan had been called due and payable for an alleged failure to occupy the home even though an eligible borrower was living in the home.

¹ Brad Finkelstein, "HUD to Sell HECM Notes Secured by Empty Properties," National Mortgage News (Nov. 14, 2016), <http://www.nationalmortgagenews.com/news/servicing/hud-to-sell-hecm-notes-secured-by-empty-properties-1090851-1.html>.

For this reason, the scheduled sale raises serious concerns regarding whether the properties in question are in fact vacant and whether HUD can adequately protect the rights of HECM borrowers, their spouses, and their heirs prior to conducting such a sale. Mistakes about vacancy are especially likely for these elder homeowners because of their likelihood of temporary hospitalization or nursing home care.

To address this concern, we recommend that no sale proceed until HUD has protected the following important rights of HECM borrowers and their spouses and heirs:

- *The right to remain in the home until the borrower dies or permanently vacates the home.* Unfortunately, all too often servicers falsely certify that a property is vacant and initiate foreclosure on the basis of non-occupancy when a borrower or spouse is still living in the home. There is a serious concern that properties HUD believes to be vacant may not actually be vacant. A borrower might temporarily be in a hospital or nursing home facility, and might not be able to respond to an occupancy certification, but might still be occupying the home as his or her principal residence.
- *The right of any non-borrowing spouse to live in the home until his or her death.* HUD has taken the position in the past that it has no way of tracking whether there is a non-borrowing spouse for any given HECM transaction (in loans originated prior to August 2014). There is a serious concern that properties HUD believes to be vacant may be occupied by a non-borrowing spouse who should be eligible to remain in the home under HUD's MOE Assignment program, as provided in Mortgagee Letter 2015-15.
- *The right to satisfy the HECM for the lesser of the loan balance or 95% of the current fair market value of the house.* Too often servicers fail to notify heirs of this option. Heirs may wish to sell the house or pay off the HECM through a refinance, in order to continue living in the family home, and must be given this opportunity prior to any note sale.

To protect these rights of HECM borrowers, their spouses, and heirs, HUD should implement the following protections before conducting any HECM note sale.

Pre-Auction

Before placing a loan into the pool, HUD should require its servicers to do the following:

1. *Send a notice* to the property address and any other address contained in the servicing file notifying the borrower and any occupant that HUD believes the property to be vacant and plans to sell the loan on the date of the anticipated note sale. Include in the notice a request to contact the servicer within 30 days if someone is occupying the property. Such notice should be sent at least 60 days before any note sale. The notice should clearly state that the note sale will terminate the loan's association with the FHA program.

2. *Send a letter* to the property address and attempt to contact any known heirs (or purported heirs) regarding the opportunity to sell the house or otherwise satisfy the HECM loan for the lesser of the current loan balance or 95% of the current fair market value. If an heir responds by expressing interest in selling or satisfying the HECM loan, retain the HECM loan in order to allow the heir to do so within a reasonable time. Such letter should be sent at least 60 days before any note sale.
3. *Send a representative* in person to knock on the door to verify that the property is not occupied. If no one answers the door, the representative should leave a dated card requesting a return call within one week and explaining that HUD believes the property is vacant and plans to take action on the date of the anticipated note sale. Such an in-person visit should occur at least 30 days before any note sale.
4. *Do not sell HECM loans less than six months after the death of the last surviving borrower or*, if an heir has made contact with the servicer within six months of the death and is still marketing the property for sale, within a year after the death of the last surviving borrower.
5. *Require the servicer to have a copy of the death certificate* of any person named on the recorded mortgage or deed and any non-borrowing spouse documented in the loan file before any note sale.

Post-Auction

HUD should include the following requirements in the sale contract with note buyers:

1. *The note buyer should affirmatively reach out* to the borrower and any occupant(s) of the home through mail and in-person contact before initiating foreclosure to determine whether the property may be occupied.
2. *If at any time after the sale it is determined that a borrower or spouse of a borrower is residing in the home as their principal residence, the note buyer should sell the loan back to HUD and HUD will accept repurchase.* HUD should identify a contact person at HUD who will have authority to respond to buy-back inquiries and requests.
3. *The note buyer should allow any heir or estate representative of a borrower to satisfy the HECM* for the lesser of the current loan balance or 95% of the current fair market value of the home.

Senior homeowners who have paid for FHA insurance and entered into HECM transactions are entitled to rely on the protections that insurance provides for borrowers and their spouses and heirs. HUD should not engage in any note sale without adequately guaranteeing these protections. HECM borrowers and their spouses and heirs are a particularly vulnerable population. A note sale on November 30th would be premature, because there is much more work to be done to ensure adequate protections are in place. Thank you for your attention to this letter, and we look forward to hearing back from you to address these concerns.

Sincerely,

Alys Cohen
Staff Attorney
National Consumer Law Center

Richard Dubois
Executive Director
National Consumer Law Center

Appendix A: Examples of HECM Borrowers Who have Faced Foreclosure as a Result of False Claims of Non-Occupancy

M. D., Philadelphia, PA, Age 82

Catherine Martin, Community Legal Services

M.D. was an 82 year old widow with health problems living in Philadelphia, PA. She had a reverse mortgage with Wells Fargo, but failed to maintain the property taxes as her health failed. Wells Fargo paid the delinquent taxes, but foreclosed based on alleged non-occupancy. Ms. D was still living in the property as her primary residence, although she was intermittently hospitalized for a few weeks at a time. I visited her at her home, and she definitely resided in the mortgaged property. Wells Fargo insisted that she sign a non-occupancy form, but the client would not sign because she lived in the property. We provided an affidavit to that effect in hopes that Wells Fargo would discontinue the foreclosure action so she could enter into a repayment plan. We couldn't get anywhere with repayment of the delinquency, because Wells Fargo continued to demand that she sign the non-occupancy form. There was a clear lack of communication among Wells Fargo employees, because some representatives were convinced the foreclosure was about delinquency, when clearly on its face it was erroneously about non-occupancy. This issue was not resolved, but the homeowner passed away during the foreclosure action. It was impossible for the client or me to make any headway in negotiating with Wells Fargo.

L.M., Marietta, GA, Age 71

J. Rachel Scott, Atlanta Legal Aid Society

L.M. has resided in her home continuously for the past 30 years, with no extended absences. She remembers returning her annual occupancy certifications each year when she receives them. Nonetheless, Celine called her loan due and payable for non-occupancy and conducted a foreclosure sale in December 2015. When the Atlanta Legal Aid Society requested rescission of the foreclosure, Celine was initially resistant and denied any wrongdoing. Accordingly, Atlanta Legal Aid Society contacted HUD on L.M.'s behalf. Upon reviewing the file, HUD stated that there was an appraisal conducted prior to the foreclosure sale which came back as "occupied." In fact, L.M. allowed the appraiser into her home to photograph the interior of the property. On this basis, Celine agreed to rescind the foreclosure sale so that L.M. can continue to reside in her home. Many other homeowners who do not have the benefit of Atlanta Legal Aid or HUD investigating their cases may not be so fortunate.

E. M., Jacksonville, FL, Age 76

Lynn Drysdale, Jacksonville Area Legal Aid

Client has significant health problems. Nationstar refused to set up a post-judgment repayment plan for a property charge default. Client was able to get Hardest Hit Funds/Elmore funds to pay

the back taxes and insurance. Now Nationstar is refusing to dismiss the foreclosure because they claim the home is not occupied, and they will not accept my letter explaining that the client is living in the home. This foreclosure cannot proceed under Florida law.

O. L., Lakeland, FL, Age 92

Lynn Drysdale, Jacksonville Area Legal Aid

Client is very feeble and has a very difficult time getting around. She also has poor eyesight. Her children are trying to help her as much as possible. Her servicer, Financial Freedom/CIT Bank, filed a foreclosure claiming alleged non-occupancy regarding her home of 40 years. They figured out their mistake when we explained she was living in the home, and through our advocacy, we were able to get them to dismiss the foreclosure.

Client 1, New Jersey, Age 82

Renee Cadmus, Legal Services of New Jersey

Client 1 is an 82 year old with a reverse mortgage with Reverse Mortgage Solutions, Inc. ("RMS"). He suffers from depression and failed to send in the certificate of occupancy to RMS. Although he was current on his taxes and insurance and lived in the property at all times, RMS filed a foreclosure action against him for failing to send in the certificate of occupancy. Client 1 immediately sent RMS and its attorneys proof that he was living in the property, including a utility bill, a property tax statement, a credit card bill, and a bank statement. RMS and its attorneys refused to accept this proof and demanded Client 1 sign and return the certificate of occupancy. Client 1 sent the proof of occupancy to RMS. RMS continued with the foreclosure for months after receiving proof Client 1 was living in the property and for more than a month after receiving the certificate of occupancy. Only after intervention by Legal Services of New Jersey, did RMS dismiss the foreclosure.

Client 2, New Jersey, Age 70

Renee Cadmus, Legal Services of New Jersey

Reverse Mortgage Funding, LLC ("RMF") filed a foreclosure on Client 2's reverse mortgage for an alleged failure to occupy the property. Client 2 occupied the property at all times and even spoke to a property inspection agent who was sent to client's home to determine occupancy and take pictures. Eventually, with the assistance of Legal Services of New Jersey, RMF dismissed the foreclosure.