

CONSUMER CONCERNS

Information for Advocates Representing Older Adults

Assisting Homeowners with Reverse Mortgages after a Natural Disaster: A Guide for Advocates

After a disaster, older homeowners may struggle to meet their obligations under a reverse mortgage and may be concerned about losing the home to foreclosure. This guide spells out the resources and options that are available to help older adults maintain homeownership.

The Nature of a Reverse Mortgage

Reverse mortgages allow older homeowners to convert a portion of their home equity into cash without the immediate need to repay the loan. Reverse mortgage borrowers are not required to make monthly payments of principal or interest on the loan. Instead the loans become due and payable in full when the last surviving borrower dies, the home is sold or transferred, or the borrower fails to occupy the home for at least a year, pay property-related charges or comply with other terms of the mortgage.¹ The due and payable status of the loan may be deferred if an eligible surviving spouse lives in the home.

Borrowers may receive the loan proceeds as a lump sum, in monthly payments, through a line of credit, or through a combination of these options. Reverse mortgage borrowers are required to pay property taxes, homeowner's insurance, homeowners' association dues and other property charges (collectively called "property charges") or the lender may foreclose.

Home Equity Conversion Mortgages (HECMs) are federally-insured reverse mortgages. The U.S. Department of Housing and Urban Development (HUD) oversees the HECM program and issues regulations, Mortgagee Letters, and other guidance regarding the loans. Private lenders and mortgage servicers make and service the loans according to HUD guidelines. Among their duties, servicers are responsible for sending timely loan disbursement payments to borrowers, or the servicer can face a late penalty.

How a Disaster Affects a Reverse Mortgage Borrower

Older homeowners with reverse mortgages may face unique challenges when recovering from a natural disaster. Homeowners, family members, and caregivers may be temporarily or permanently displaced by the disaster. Damage to homes, businesses, and community may limit access to health care and other essential services, exacerbating existing medical conditions. At this vulnerable time older adults must make complex decisions regarding home repair, insurance claims, and application for financial and other benefits.

Borrowers who are receiving the proceeds of the reverse mortgage in the form of monthly payments may find that delivery of the proceeds is disrupted during the disaster. They should receive their payments on time if the funds are directly deposited into their bank accounts or mail delivery is not disrupted. But even if their income from the reverse mortgage is not interrupted, they may face new, unanticipated expenses such as the need for temporary housing and replacement of personal items or medical devices. Other expenses, such as newly required flood insurance, may add to the financial burden. Funds available from insurance, government, and nonprofit organizations may be insufficient to meet day-to-day living expenses and repair the home.

In the months and years following a disaster, many consumers suffer financial hardship. Financial instability puts older homeowners at risk of foreclosure if they are unable to meet the core requirements under a reverse mortgage to pay property charges and to repair, maintain, and occupy the home.

Reverse mortgage borrowers must monitor the loan to ensure the loan is not improperly called due and payable. Advocates report that the most common reasons HECM loans are called due and payable after a disaster and end up in foreclosure are:

- failure to pay property charges or meet the other terms of the mortgage, and
- the death of the last surviving borrower.

The borrower has the right to cure the default and restore the HECM loan to current status even after foreclosure begins.² A HECM loan that enters due and payable status remains in that status until the default is cured (i.e. the borrower moves back into the property or advances for property charges are repaid) or foreclosure is initiated. Unless the borrower attempts to cure the default or there is an eligible non-borrowing spouse in the home, the foreclosure process will move quickly. Where the default is based on death of the last borrower, foreclosure will be initiated within 180 days (six months) of the loan becoming due and payable.³

HUD's Moratorium on Foreclosure Activity in Disaster Areas

Immediately after a major disaster HUD will impose a 90-day moratorium on foreclosure-related activity for forward and reverse mortgages.⁴ The moratorium stops the initiation and continuation of foreclosure, including foreclosure sales and post-foreclosure evictions for properties located in the disaster area. HECM borrowers who faced foreclosure on a reverse mortgage prior to the disaster will receive temporary relief. The initial moratorium may be extended several times depending on the severity of the disaster and impact on the community.⁵

Both during and after the moratorium, HECM borrowers, family members and heirs can take the following measures to stave off foreclosure.

Default on Property Charges

Homeowners with HECM loans are required to pay property-related charges, including property taxes and hazard insurance premiums, in a timely manner. Older homeowners displaced by the disaster may incur additional disaster-related expenses or lose income and quickly fall behind on paying taxes, insurance, and other property charges.⁶ Others may miss payment deadlines as they deal with the aftermath of the disaster.⁷

When the homeowner falls behind on property charges, the servicers will pay the outstanding property charges by withholding amounts from the monthly payment it sends to the homeowner or by charging the loan's line of credit. Money may also have been set aside at the beginning of the loan to pay property charges. If funds were not set aside from the loan's principal limit to pay property charges or if the loan funds run out and the borrower is unable to pay, the lender will advance funds to pay property charges. The borrower is responsible for reimbursing the lender for these advances.

Borrowers can pursue a repayment plan or other loss mitigation option during and after the moratorium period to catch up on the missed payments. For HECM borrowers, loss mitigation includes repayment plans, an "at-risk" extension of the foreclosure timeline for certain borrowers, lender-funded cures, and other relief.⁸ Refinancing the loan into a new HECM loan, if feasible, and referral to local assistance programs may first be offered.

Servicers may offer repayment plans of up to five years to repay advances for delinquent taxes or insurance premiums. A repayment plan will be calculated based on borrowers' monthly surplus income, taking into account necessary living expenses. To qualify for a repayment plan, a borrower whose financial capacity has been impacted by the disaster will need to document permanent income, such as Social Security or VA benefits.⁹

If the borrower suffers a new hardship or the current plan becomes unaffordable, the repayment plan can be revised. Borrowers on a repayment plan prior to the disaster can also seek a new plan that better reflects their current circumstances.¹⁰ Repayment plans are limited to repaying advances for delinquent taxes and insurance. Other property charges, including homeowners' association fees, and other special assessments must also be paid. If the servicer pays these charges, the servicer will call the loan due and payable unless the default is cured.

Servicers may elect to delay calling the HECM due and payable for a small property charge delinquency of \$2,000 or less. This is likely to occur in a disaster related scenario where the servicer is unable to contact the borrower but has no indication that the borrower has permanently vacated the property.¹¹ Alternatively, if the borrower has contacted the servicer and expressed a willingness to repay or is attempting to repay, the servicer may use its own funds to cure the default.

If a repayment plan is not feasible and the youngest borrower is at least 80 years of age, the servicer may request an extension of the foreclosure timeline for "at-risk" borrowers. This option is granted to borrowers experiencing critical medical conditions such as a terminal illness, long-term physical disability, or serious illness of a family member receiving care at the home, or other unique need.¹² Borrowers must provide

documentation of the critical condition to support the initial request and must annually certify the condition still exists to continue the deferral of foreclosure. Foreclosure will be delayed until HUD or the servicer asserts that the borrower is no longer eligible for deferral or the last surviving borrower dies. Elders who did not qualify for an “at-risk” extension in the past may newly qualify after disaster-related trauma exacerbates or creates new medical conditions.

Shifting income, increased expenses, and other issues that arise during the post-disaster period may make an application for loss mitigation relief challenging. Older adults may struggle with documentation requirements or communicating with the servicer. They may also need a critical third eye to ensure that property charges are correct and improper fees are not added to their loan balance. Counseling and other assistance is provided by HUD-approved housing counseling agencies to assist with the process.¹³

Occupancy

Generally, HECM loans require that older borrowers occupy the home as their principal residence. The loan will be called due and payable if the borrower is absent from the home for more than 12 consecutive months due to physical or mental illness.¹⁴ Borrowers, and surviving spouses who qualify for a deferral, must annually certify that the home remains their principal residence. The servicer may order an inspection of the property or take other steps to determine occupancy if it does not receive the annual certification. Borrowers must sign and send back this certification indicating the home is still the principal residence of at least one borrower. A fee will be charged for this inspection and added to the loan balance.

Older adults may temporarily move away from the home for an extended period of time after a disaster, especially if there is significant damage. Generally, HUD considers borrowers displaced by a disaster to be maintaining a principal residence at their home as long as they intend to return.¹⁵ A borrower who temporarily moves out of the home cannot be denied a loss mitigation option simply based on failure to occupy the home.¹⁶

Homeowners should provide servicers with up-to-date contact information. Borrowers can designate an alternative contact person, such as a friend or family member, whom the servicer can contact if unable to reach the borrower. Mail should be forwarded to the new address or checked regularly to intercept the annual occupancy certification. If the loan is called due and payable due to non-occupancy, the borrower may cure the default by moving back into the home, if feasible. The borrower can provide other documentation of occupancy (e.g., utility or other bills), and send a letter explaining that non-occupancy is due solely to displacement from a natural disaster.

Homeowners displaced by disaster should communicate with lenders and servicers regularly during and after the moratorium period to report damage to the property and filing of insurance claims, facilitate payment of insurance proceeds to contractors, discuss the progress of repairs, and otherwise ensure that the lender and servicer send key notices, and provide information and other assistance.

It will likely take time for a home to be repaired or restored to a habitable condition. Environmental hazards, such as mold, may make the home uninhabitable for a long period of time, especially for adults with fragile medical conditions. Servicers, especially those supervising the repair process, should acknowledge that the home is still considered the borrower’s principal residence during this time and allow for delays. Disabled older borrowers who are being squeezed by certification requirements or strict deadlines may wish to

request a reasonable accommodation of their disability or may challenge servicer action based on federal or state civil-rights laws.¹⁷

Deferral of Foreclosure for Eligible Non-Borrowing Spouses

If the HECM borrower passes away, a surviving spouse who was not listed as a borrower on the loan, a so-called “non-borrowing” spouse, may qualify to remain in the home. The due and payable status of the loan will be deferred until the death of the non-borrowing spouse. During the deferral period the spouse is obligated to pay property charges, including taxes and insurance, maintain the property and meet other requirements of the mortgage.¹⁸ Though the spouse is allowed to stay in the home, she will not receive any proceeds, such as monthly disbursements or access to funds in a line of credit, from the HECM.

An eligible non-borrowing spouse may be designated as such at closing or for loans made before August 4, 2014, qualify under HUD guidelines. Generally, the spouse must have been married to the borrower at the origination of the loan, and be able to obtain marketable title to the property or a legal right to stay in the home within 90 days of the death of the borrower.¹⁹ This option, called Mortgagee Optional Election (MOE) Assignment, gives servicers the option of transferring qualified loans to HUD. However, the agency has established strict deadlines for election of the MOE Assignment. If a spouse is newly widowed due to the natural disaster and may qualify as an eligible non-borrowing spouse, he or she should quickly contact the servicer and work with an advocate to meet the documentation requirements.

An eligible non-borrowing spouse who falls behind on property charges during the deferral period is not eligible for a repayment plan.²⁰ The deferral period will end unless the default is cured within 30 days. Another critical difference is that the spouse will not receive proceeds from the loan or have access to money set aside to pay property charges. This can hamper his or her ability to recover from the disaster should she need more resources than provided by insurance or government funds.

Death of Last Surviving Borrower

The initial moratorium will suspend the foreclosure of all HECM loans, but any extension of the moratorium may apply only to loans that become due and payable for reasons other than the death of the last surviving borrower or an eligible non-borrowing spouse.²¹ After the death of the last surviving borrower, family members and other heirs must decide whether to keep or sell the home or turn the home over to the lender to satisfy the outstanding obligation on the reverse mortgage.

The lack of an extended moratorium in a hard-hit area may prove problematic for surviving spouses and family members who seek to purchase the property or sell the home to satisfy the mortgage. In general, family members have six months after the death of the borrower in which to sell the house or otherwise pay off the loan, though with proper documentation they may obtain two additional three-month extensions.

After the death of the last surviving HECM borrower, the borrower’s heirs (including a non-borrowing spouse) may sell the property for the lesser of the principal balance or 95% of the appraised value. As families are displaced by the disaster, and commercial and public infrastructure is impaired, heirs in particular may not receive relevant letters or notices from servicers outlining their options. Should they receive such notices, they may not have the capacity to quickly submit the paperwork and other information necessary to engage in a financial or real estate transaction. Unless HUD grants ad-hoc extensions of the foreclosure timeline, family members and other heirs will not have a meaningful way to sell or retain the

property. In addition, the heirs may benefit from a reevaluation of the home's value if the value has decreased due to the disaster because they have the right to satisfy the loan by paying 95% of the current appraised value. Although this is not a priority for all surviving family members impacted by a disaster, those who occupy the home with the elder may need a real opportunity to purchase the home by refinancing the reverse mortgage. This can be an issue for spouses of the borrower who are not eligible for the MOE Assignment discussed previously but may want to retain the home.

Repair of Damaged Property and Ongoing Maintenance

If the home is damaged by the disaster, the borrower must file a claim with the insurance company and report the damage to the servicer. After a covered loss occurs, the insurance company may issue a claim check identifying the borrower and servicer as payee. The servicer will hold the insurance proceeds, release portions of the funds as work is completed, monitor the progress of the repairs, and disburse final funds to the contractor after inspection of completed repairs. There is no deadline to complete the work, but if the home remains unrepaired for an extended time the servicer may request that the loan be called due and payable after issuing a notice and request to repair.²²

Generally, homeowners intend to re-occupy the home upon its restoration to a habitable condition. At all times borrowers should be treated as owner-occupants if they are taking steps to return to their home even if that timeline is long delayed, due to the need to repair or rebuild critical infrastructure, such as wheelchair ramps. If the servicer believes the home is abandoned it will take steps to protect and preserve the property, and property preservation fees will be added to the loan balance.

Some older adults may wish to move away from the home permanently rather than invest the time and effort in rebuilding or repairing the property. If the borrower wants to satisfy the loan rather than repair damage to the home, the insurance proceeds the servicer and/or the borrower receives will be applied to the HECM loan balance. If the loan has been called due and payable, the borrower may sell the property for the lesser of the mortgage balance or 95% of the current "as is" appraised value of the property. Any excess insurance proceeds over an amount required to satisfy the outstanding loan balance should be returned to the borrower.²³ If the loan is in good standing, meaning it has not become due and payable based on death or default, the borrower may sell the property for the lesser of the mortgage balance or 100% of the current "as-is" appraised value of the property. Excess insurance proceeds over the amount needed to repay the loan should be returned to the borrower.²⁴

Conclusion

Recovering from a disaster can be a lengthy and difficult process. HECM borrowers will need to closely monitor the status of their loans to avoid foreclosure. Maintaining homeownership going forward may be a financial struggle. Bankruptcy may be an option to alleviate significant debt or to spread repayment of a property charge default over a maximum of sixty months.²⁵ HECM borrowers, especially those without insurance or adequate insurance, may need extensive assistance from government, nonprofit organizations, and other aid agencies, to successfully age in place and maintain homeownership.

Additional Resources

- FEMA individual disaster aid: <https://www.disasterassistance.gov>
- HUD (for all FHA-insured loans): <https://www.hud.gov>
- HUD HECM Homepage for Lenders (with program information): https://www.hud.gov/program_offices/housing/sfh/hecm
- Housing Counseling
 - HUD-approved housing counseling agencies: <https://apps.hud.gov/offices/hsg/sfh/hcc/hcs.cfm>
 - HOPE NOW: <http://www.hopenow.com/index.php>
 - HOPE Senior Homeownership Preservation Project (SHOPP): <https://hopeforseniorsstl.org/help-for-hecm-borrowers/>
- State and Federal Consumer Protection Agencies
 - Consumer Financial Protection Bureau (CFPB): www.consumerfinance.gov
 - Office of Older Americans: consumerfinance.gov/practitioner-resources/resources-for-older-adults/
 - State Insurance Commissioners
 - National Association of Insurance Commissioners membership list: http://www.naic.org/documents/members_membershiplist.pdf
- Legal Assistance & Legal Resources
 - National Legal Aid & Defender Association (NLADA) Disaster Legal Aid: <https://www.disasterlegalaid.org>
 - Legal services/ Legal aid: lsc.gov/what-legal-aid/find-legal-aid
 - Volunteer lawyers: americanbar.org/groups/legal_services/flh-home/flh-free-legal-help.html
 - National Association of Consumer Advocates: www.consumeradvocates.org
- Free publications related to disasters
 - National Consumer Law Center: Obtaining Mortgage Relief for Survivors of Disasters: A Guide for Advocates: <http://www.nclc.org/images/pdf/pr-reports/report-mortgage-relief-for-victims-of-disasters.pdf>
 - National Center on Law and Elder Rights: Helping Older Homeowners Recover From Natural Disasters, <https://www.nclc.org/images/pdf/disaster-relief/ib-helping-older-recover-disaster.pdf>
- Books and Legal Manuals
 - National Consumer Law Center, *Guide to Surviving Debt*
 - National Consumer Law Center, *Foreclosure and Mortgage Servicing*
 - National Consumer Law Center, *Mortgage Lending*

More advice and materials about other consumer issues related to survivors of natural disasters can be found at <https://www.nclc.org/issues/disaster-relief-consumer-protections.html>.

ENDNOTES

¹ 24 C.F.R. § 206.27(c). When the loan comes due, the home can be turned over to the lender or the loan may be paid off through a sale or refinance. After a loan has entered due and payable status, the loan may be satisfied by paying the lesser of the loan balance or 95% of the appraised value of the property. 24 C.F.R. § 206.125(c).

² 24 C.F.R. § 206.125(a)(3). The servicer will send the borrower a default notice with the opportunity to cure the default.

³ Once foreclosure begins attorney fees and costs will be added will be added to the loan balance, and will remain on the account if the foreclosure process is suspended. Fees may also be incurred earlier for property inspection.

⁴ See FHA Handbook 4330.1, Administration of Insured Homes, chapter 14. The moratorium expires 90 days from the date of the disaster declaration, unless extended by HUD. Compare FHA Single Family Handbook 4000.1 for forward mortgages which broadly outlines the policies regarding properties located in Presidentially-declared major disaster areas. Though this handbook applies to forward mortgages, HUD broadly reference these policies in disaster related guidance and communication to servicers. See also HUD HECM regulations that address property condition on conveyance to HUD (24 C.F.R. § 206.141) and the handbook (4235.1) which is largely silent with respect to disaster policies specific to HECM loans. HUD’s Mortgagee Letters and FAQ announcements provide more guidance.

⁵ See, e.g., Mortgagee Letters 2017-15 (Oct. 20, 2017); 2018-02 (March 1, 2018); 2018-03 (May 16, 2018) (conditional extension). See also FHA-INFO #1840, September 14, 2018, available at https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_18-40.pdf; FHA-INFO #1812, March 19, 2018 available at https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_18-12.pdf; FHA-INFO #1821, May 16, 2018 available at https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_18-21.pdf. FHA INFO #1812 may have been issued in response to the industry’s request for clarification of Mortgagee Letter 2018-02, which did not expressly include HECM loans in the moratorium. HUD also extended the foreclosure timeline for properties in Puerto Rico and the U.S. Virgin Islands due to the extensive damage caused by Hurricane Maria; the foreclosure timelines for HECM loans goes through September 15, 2018. FHA/ FAQ, August 17, 2018, available at: <https://www.hud.gov/fhaFAQ>.

⁶ Property charges include real estate taxes, hazard insurance premiums and, if applicable, condominium or homeowner association fees, ground rents, or other assessments.

⁷ States may offer property tax relief for homes impacted by a natural disaster, including waiving late fees and other penalties, or may authorize that a property damaged in a disaster to be reappraised at its current market value.

⁸ See Mortgagee Letters 2015-11 (April 23, 2015); 2016-07 (March 30, 2016). See generally, FHA Handbook 4330.1, Administration of Insured Homes, chapter 14; “Servicing FHA-Insured Mortgages in Presidentially Declared Disaster Areas” at https://www.hud.gov/sites/dfiles/Housing/documents/wb_Servicing%20FHA-Forward%20Mortgages_10-18-17.PDF.

⁹ Borrowers should keep all receipts and other documentation of increased expenses due to the disaster, especially those items that document or support any special circumstances. This could include, for example, replacement of medical or assistive devices. Income from temporary sources such as government and private relief-aid organizations may be useful to report to the extent these funds offset or reimburse for increased disaster-related living expenses.

¹⁰ See FHA/ FAQ Topic Number: KA-01370 available at <https://www.hud.gov/fhaFAQ> (if the disaster caused default on the repayment plan the borrower should be re-evaluated for a subsequent repayment plan in-keeping with Mortgage Letter 2015-11 and Mortgagee Letter 2016-07). Note that there are restrictions on entering repayment plans with arrears greater than \$5,000 or where the loan will reach, prior to cure, 98% of the Maximum Claim Amount.

¹¹ See Mortgagee Letter 2016-07 (March 30, 2016) (servicers may delay requesting that the loan be called due and payable).

¹² See Mortgagee Letters 2015-11 (April 23, 2015).

¹³ See e.g., HOPE, a HUD-approved housing counseling agency, Senior Homeownership Preservation Project (SHOPP) at <https://hopeforseniorsstl.org/help-for-hecm-borrowers> or call 773-262-7801. This program provides counseling to HECM borrowers.

¹⁴ 24 C.F.R. § 206.27(c).

¹⁵ See HUD Handbook 4000.1, § III.A.3.c.iv (rev. Dec. 2016) (discussing principal residence for loss mitigation purpose for forward mortgages).

¹⁶ See *id.*

¹⁷ See National Consumer Law Center, *Foreclosure and Mortgage Servicing*, Chapter 16 (5th ed. 2014).

¹⁸ Mortgagee Letters 2015-15 (June 12, 2015).

¹⁹ *Id.*

²⁰ Mortgagee Letters 2015-11 (April 23, 2015).

²¹ See FHA-INFO #1812, March 19, 2018 available at https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_18-12.pdf.

²² See HUD Handbook 4330.1 Rev. 5, § 13-22. See also 24 C.F.R. § 206.141 (generally property must be repaired before being transferred to HUD or sold by the lender). If repairs are required on the home after closing, as a condition of extending the loan, loan funds will be set-aside for the repairs. The Repair Rider, included in the loan documents, will describe the needed repairs and the deadline to complete the repairs. If the repairs are not completed on time, the servicer will stop monthly payments and use the proceeds to complete the repairs. See 24 C.F.R. §§ 206.26, 206.47. Non-borrowing spouses have access to funds set aside by the Repair Rider to repair the property. 24 C.F.R. §§ 206.61.

²³ FHA/FAQ Topic Number: KA-01549 available at <https://www.hud.gov/fhaFAQ>.

²⁴ FHA/FAQ Topic Number: KA-01542 available at <https://www.hud.gov/fhaFAQ>.

²⁵ See National Consumer Law Center, *Foreclosure and Mortgage Servicing*, Chapter 16 (5th ed. 2014). If a repayment plan or other loss mitigation option is not feasible, for example, the borrower may be able to cure property charge defaults through a chapter 13 bankruptcy.

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