



Home Equity Conversion Mortgage

Provisions for the Non-Borrowing Spouse Following the Death of the HECM Borrower: Counselor Provisions

The Federal Housing Administration (FHA) provides insurance on Home Equity Conversion Mortgages (HECM) originated by lenders. This fact sheet is an overview of the steps following the death of the HECM borrower, and the impacts on, and rights of, a non-borrowing spouse for loans with Case Numbers assigned on or after August 4, 2014. See the link provided to the referenced FHA Mortgagee Letters (ML) for complete details and requirements.

Housing Counseling Requirements

Counselors should counsel prospective HECM borrowers and non-borrowing spouses about the requirement that a non-borrowing spouse obtain ownership of the property or other legal right to remain in it upon the death of the last surviving borrower. Counselors must emphasize that failure to establish this legal right will end or prevent a deferral of the HECM becoming due and payable.

Surviving Non-Borrowing spouse

A surviving non-borrowing spouse is the spouse of a deceased HECM borrower, who was not named as a borrower in the original loan application and legal documents. When the HECM borrower dies, the balance of the HECM becomes due and payable. The non-borrowing spouse may not withdraw any unused loan funds; however, interest, FHA mortgage insurance premiums, and service fees will continue to accrue on the unpaid principal balance. Special deferral provisions, which vary based on the date the FHA Case Number was assigned to the HECM, may be available for the non-borrowing spouse, permitting him/her to remain in the home.

Determination of Eligibility for Deferral (FHA Mortgagee Letter (ML) 2015-02)

At application, the lender must identify any current non-borrowing spouse and determine if the non-borrowing spouse is eligible or ineligible for a deferral period. An eligible non-borrowing spouse may become ineligible if any of the qualifying attributes cease to be met during the loan term. If a non-borrowing spouse fails to continue to meet the qualifying attributes and is determined to be ineligible, he or she cannot later become eligible for a deferral period. The lender must base the Principal Limit for the HECM on the age of the youngest borrower or non-borrowing spouse.

REACH THE FHA RESOURCE CENTER

Online FAQ:

www.hud.gov/answers

Email: answers@hud.gov

Phone: (800) CALL FHA (225-5342)

TTY: (800) 877-8339

Housing Counseling

Housing counselors can reach the Office of Housing Counseling by email at: housing.counseling@hud.gov. Program information is available at: <https://www.hudexchange.info/programs/housing-counseling/>.

HECM Mortgagee Letters

Mortgagee Letters specific to the HECM program are listed at: https://www.hud.gov/program_offices/housing/sfh/hecm/hecmml.

Counseling Mailing List

If you work in the housing counseling industry, subscribe to the HUD Mailing List for counselors employed at HUD-approved housing counseling agencies. You can register for this free service at: <https://www.hudexchange.info/programs/housing-counseling/mailing-list/>.



Deferment of Due and Payable Status of HECM

The special deferment provisions apply only if the HECM loan was closed on or after August 4, 2014, the non-borrowing spouse was properly disclosed to the lender and named as a non-borrowing spouse at loan origination, and the lender has obtained annual recertifications of the borrower's and non-borrowing spouse's marital status and principal residence. The following conditions must be met at closing:

- The non-borrowing spouse must be legally married, as determined by state law, to the borrower; or they must be engaged in a committed relationship akin to marriage but are prohibited from legally marrying based on the gender of both the borrower and non-borrowing spouse.
- The surviving spouse must reside in the property secured by the HECM as his or her principal residence.

Upon the death of the borrowing spouse, the non-borrowing spouse must fulfill the following requirements to obtain a deferment:

- He/she must have been legally married to the borrower for the duration of the HECM.
- He/she must have resided in the property for the duration of the HECM and continue to reside there.
- He/she must have, or be able to obtain, good, marketable title to the property or a legal right to remain in the property for life.
- All associated obligations, such as property charges, taxes, insurance and maintenance must be kept current.

Should a non-borrowing spouse fail to meet any of the qualifying attributes listed above or should any of the requirements for deferral not be met, the deferral of the due and payable status shall cease and the HECM will become immediately due and payable. The chart below outlines the options available, based on the date the loan's Case Number was assigned. Counselors can obtain the Case Number date from the HECM lender, to determine which provisions apply.

Date of Case Number Assignment	Lender Options	Deferment of Repayment	Sale of Property
<p>Prior to August 4, 2014 (See FHA MLs 2015-15 and 2016-05)</p>	<p>May begin foreclosure or utilize the Mortgagee Optional Election (MOE) Assignment</p>	<p>Deferment may be arranged after assignment to HUD</p>	<p>The property securing the HECM may be sold by the borrower's estate and/or heirs (regardless of the presence of any non-borrowing spouse) for the lesser of the unpaid principal balance or 95 percent of the property's appraised value.</p>
<p>On or after August 4, 2014 (See FHA ML 2014-07)</p>	<p>May defer the due and payable status of the loan resulting from the death or incapacity of the borrower</p>	<p>Deferment is not mandated. FHA can amend the mortgage insurance contract to defer foreclosure and assignment of the HECM to HUD</p>	<p>The non-borrowing spouse, or the borrower's heirs or estate, maintains the ability to sell the property, whether or not the loan is due and payable, for at least the lesser of the outstanding balance or the appraised value. Further, if the HECM is due and payable, they may sell the property for at least the lesser of the outstanding balance or 95 percent of the appraised value or present the lender with a deed-in-lieu.</p>
<p>On or after September 19, 2017 (See FHA ML 2017-11)</p>			<p>When a HECM is due and payable, the borrower, eligible non-borrowing spouse, borrower's estate, or borrower's heir(s), as applicable, may sell the property for a minimum of 95 percent of the appraised value.</p>