



Home Equity Conversion Mortgage

Provisions for the Non-Borrowing Spouse Following the Death or Incapacity of the HECM Borrower

The Federal Housing Administration (FHA) provides insurance on Home Equity Conversion Mortgages (HECM). This is an overview of the issues arising from the death or incapacity of the HECM borrower; and the impacts on and rights of a non-borrowing spouse, the heirs or estate. See the referenced FHA Mortgagee Letters (ML) for complete details and requirements.

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 or fails to inhabit the property for 12 months, the balance of the HECM becomes due and payable. The non-borrowing spouse may not withdraw any unused loan funds, while interest, FHA mortgage insurance premiums, and service fees continue to accrue on the unpaid principal balance. Special deferral provisions, which vary based on the date of Case Number Assignment for the HECM, may be available for the non-borrowing spouse, permitting him/her to remain in the home.

Determination of Eligibility for Deferral (FHA 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.

This is a factual determination and cannot be changed or waived by any election. An eligible non-borrowing spouse may not elect to be ineligible. Similarly, a non-borrowing spouse who is ineligible at application because he or she does not satisfy the qualifying requirements may not elect to be eligible.

An eligible non-borrowing spouse may become ineligible if any of the qualifying attributes listed in the ML cease to be met during the loan term. A non-borrowing spouse's failure to meet and continue to meet the qualifying attributes cannot be cured. Once a non-borrowing spouse is determined to be ineligible, he or she cannot later become eligible for a deferral period.

At closing, the lender must obtain the appropriate certification from each borrower identified as married, and from each non-borrowing spouse. 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

FHA Home Equity Conversion Mortgages Handbook 4235.1

The *HECM Handbook* is available at:
www.hud.gov/program_offices/administration/hudclips/handbooks/hsg/4235.1

HECM for Lenders Page

Additional information for lenders on FHA's HECM program is available at:
www.hud.gov/program_offices/housing/sfh/hecm

HECM Mortgagee Letters

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

Certification Requirements

See FHA Mortgagee Letter 2015-02 for certifications required at closing, annually thereafter, and upon the death of the last borrower.



Qualifying Attributes for Deferment of Due and Payable Status of HECM

The special deferment provisions apply only if 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 and non-borrower's marital status and principal residence.

The non-borrowing spouse must have been legally married, as determined by state law, to the borrower at the time of loan closing, and remained married until the HECM borrower's death. Alternatively, they may have been engaged in a committed relationship akin to marriage but were prohibited, at the time of HECM loan origination, from legally marrying based on the gender of both the borrower and non-borrowing spouse, but were subsequently legally married prior to the death of the borrower, and remained married until his or her death.

The surviving spouse must have resided, and currently reside, in the property secured by the HECM, as his or her principal residence. The spouse 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, and insurance must be kept current, and the property must be adequately maintained.

Should a non-borrowing spouse fail to meet any of the qualifying attributes 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.

Date Case Number Assigned	Lender Options	Deferral 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% 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 for the lender. 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 to sell the property for at least the lesser of the outstanding balance or 95% 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% of the appraised value.</p>