

ask the servicer

Does a servicer ever foreclose on a reverse mortgage? If so, what happens to the property after the foreclosure is complete?

By Ryan LaRose

The quick answer to the first question is “Yes, from time-to-time a servicer must initiate foreclosure proceedings on a reverse mortgage.” Quite often people express surprise when they learn that foreclosure is, in fact, another responsibility of a reverse mortgage servicer.

News of the escalating number of home foreclosures occurring throughout the country continues to pervade media outlet headlines. It is shocking to read that according to RealtyTrac, 2,824,674 properties in the United States were in some stage of foreclosure during 2009. This figure represents a 21% increase from 2008 – and a staggering 120% increase from 2007.

In previous ‘Ask the Servicer’ columns, I’ve written about various “maturity events” that may occur with a reverse mortgage. Primary among those events are the death of the last surviving borrower or the permanent vacancy of the property as the borrower’s principal residence. In both of these situations the servicer will attempt to work with the heirs and assist them in satisfying the outstanding balance due on the mortgage. If the servicer is receiving regular communication and cooperation from the heirs, and documentation from them to support their efforts to pay off the loan, then the servicer can obtain time extensions from HUD. These extensions can provide them up to a one-year extension from the date of death or the date the loan was approved to be called Due and Payable for non-occupancy by HUD.

When all time extensions granted by HUD have expired, or the estate is uncooperative or unwilling to make an effort to satisfy the loan balance, then the servicer is required to initiate foreclosure action.

The reverse mortgage foreclosure process follows a similar path to that of forward mortgage foreclosures. There are required notices, timelines and actions, and they vary from state-to-state. For example, in the State of Michigan, it may take 60-75 days from the time the borrower’s file is referred to the attorney for the property to go to foreclosure sale. In sharp contrast, in the State of New York, depending on the complexity of the estate and number of heirs, a foreclosure may take anywhere from 12-24 months to complete. At present time, court systems in Florida, New York, and California are simply overwhelmed by the tremendous volume of foreclosure activity and this can result in uncontrollable delays for the servicer.

To complicate what is already an overwhelmed system, many state governments have recently passed legislation that has an impact on the foreclosure process. The particular challenge created by this legislation is that these new laws are often written and tailored strictly for the forward mortgage foreclosure process. They do not consider the unique characteristics of the HECM program. As such, attorneys must work closely with the courts to determine if the legislation applies in the case of a reverse mortgage foreclosure.

What happens to the property after foreclosure is complete?

It is a common misperception that HECM loans are treated the same way as “forward” HUD loans. When foreclosure is completed on a “forward” HUD



loan, the property is conveyed to HUD. In contrast, once the foreclosure is completed on a HECM loan, title to the property is transferred to the investor – which could be Fannie Mae, the GNMA HMBS issuer, etc.

Once title transfers (often times referred to as a Real Estate Owned, or REO), it is the responsibility of that investor to dispose of the property in a timely manner. This may not be as simple as it first appears. HUD has very specific guidelines that the investor and/or servicer must follow. HUD guidelines control the marketing process during the first six months after the investor receives marketable title to the REO property. A HUD appraisal at the beginning of the six-month marketing period sets the minimum sales price for the home. Any additional repairs or preservation work must be approved in writing by HUD and the property must be maintained during that time.

If the investor is fortunate enough to sell an REO property within the six-month marketing period, then a sales-based claim can be filed with HUD to recover the shortfall between the sales price of the property and the outstanding loan balance.

If the property is not able to sell during the six-month marketing period, a second HUD appraisal is obtained. An appraisal-based claim can then be filed with HUD, whereby the investor can recover the difference between the second appraised value and the outstanding loan balance at that time. In this scenario, the investor is left holding a property that they must still sell – and an outstanding loan balance equal to the appraised value of the property.

Once the six-month period has expired, the HUD guidelines, including the minimum sales price restrictions, are no longer applicable. The investor now has the freedom to sell the property for whatever price they wish. Any shortfall between the final sales price and the outstanding loan balance is considered a loss to the investor and cannot be recouped through the filing of an additional HUD claim.

Foreclosures are a difficult but necessary measure to protect an investor’s interest in a property. However, servicing professionals do not forget that foreclosure and eviction from one’s home can be one of the most difficult and traumatic events in a person’s life. Servicers - both forward and reverse - face the difficult challenge of counterbalancing compliance with strict investor or insurer guidelines with the compassion and sensitivity required when dealing with this difficult situation.

I look forward to receiving any questions you may have regarding servicing at: ryan@celink.com. There is no such thing as a stupid question. The question you ask may be in the minds of other readers as well.