

# Essential Information for Non-Borrowing Spouses of Home Equity Conversion Mortgage Borrowers

If you are or will be a non-borrowing spouse (NBS) or non-owner spouse of a Home Equity Conversion Mortgage (HECM) borrower it is important to read and understand the following.

## General information for non-borrowing spouses:

- NBS or common-law spouses (in community property states) must attend counseling and sign the HECM counseling certificate. (ML 2011-31). For questions regarding marital status in community property states seek legal advice.
- NBS is defined as either eligible or ineligible for a deferral period before the HECM loan becomes due and payable.
- Borrowers must state whether or not they are legally married at the time of their initial HECM loan application.
- All borrowers on a HECM loan must be 62 or older. If a potential borrower has an underage spouse, it does not mean they cannot obtain a HECM loan.
- A non-borrowing spouse (and other non-borrowing owners) may remain on title and not be HECM borrowers.
- Non-borrowing owners will be required to sign a consent form acknowledging the HECM loan.

- A HECM is not assumable by the non-borrowing spouse or heirs.
- HECM loans become due and payable upon the death of the last surviving borrower, the sale of the home and other conditions including failure to reside in the property and failure to pay required taxes and insurance.

## Eligible non-borrowing spouse definition:

- HECM loans now contain a provision to protect an eligible NBS from displacement if the borrower dies before them when they meet certain qualifying criteria.
- NBS protections may not apply in every state, be sure to check with your lender for non-participating states.
- In order to be considered an eligible NBS, the NBS must:
  - Be the spouse of the HECM borrower at the time of closing and for the duration of the borrower's lifetime;
  - Be identified and named in the loan documents as an eligible NBS; and
  - Occupy and continue to occupy the property subject to the HECM loan as their principal (main) residence.
- This is a factual determination and may not be waived by election.
- When determining the principal limit, or maximum loan amount, lenders must base the principal limit on the age of the youngest borrower or eligible NBS.
- The lender must disclose the amount of loan proceeds that would have been available if there were an eligible NBS.

## Borrower and eligible and ineligible NBS certifications:

- Borrowers and NBS both must sign specific certifications at closing stating their status and certifying they understand the implications and obligations of being either an eligible or ineligible NBS.
- Lenders must obtain additional certification that the borrower and eligible NBS continue to meet the requirements for the deferral period:
  - On an annual basis;



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- Within 30 days of the death of the last surviving borrower; and
- Upon occurrence of any event that would cause the eligible NBS to become ineligible such as:
  - Divorce;
  - NBS no longer resides in the property as primary residence; or
  - NBS dies before the borrower.

## Deferral period requirements:

- To be eligible for the deferral period requirements an eligible NBS must:
  - Establish legal ownership of the property within 90 days of the death of the borrower;
  - Ensure all other obligations contained in the loan documents are satisfied; and
  - Ensure the loan does not become due and payable for any other reason.
- During the deferral period no HECM funds may be disbursed to the borrower, the borrower's estate, or the eligible NBS once the loan is in deferred due and payable status. (**Exception:** repair set-aside established at closing).
- Interest and fees will continue to accrue in accordance with the terms of the mortgage and loan agreement.
- In some circumstances, if in default, an eligible NBS may be granted 30 days to cure a default and reinstate the deferral period. This does not apply if the NBS became an ineligible NBS because they no longer meet the qualifying attributes for a deferral period.

## Ability to repay unaffected:

- The borrower, borrower's estate or borrower's heirs can sell the property, whether or not the mortgage is due and payable, for at least the lesser of the outstanding balance or the appraised value.
- If the mortgage is due and payable, the borrower, borrower's estate or borrower's heirs maintain the ability to sell the property for at least the lesser of the outstanding balance or 95% of the appraised value or the borrower may give the property back without foreclosure, also known as a deed in lieu of foreclosure.



## Additional information:

- A NBS may be added to a new HECM loan when he/she reaches the age of 62 through a HECM refinance but this is not a guaranteed option.
- Additional owners, added to the deed after closing, are not borrowers on the HECM, and have no right to loan proceeds.
- Refinancing the loan means getting a brand new loan to replace the current one. It is not possible to add a borrower or access higher home value without getting a new loan.
- HECM refinancing is not guaranteed, and will depend on the eligibility of the clients and the equity in their property as well as other reverse mortgage market conditions.

The HECM telephone is **866.834.0428**.  
It is open Monday through Friday, from 8:00AM to 5:00PM Central Time.

*These notes are provided for informational purposes only and are not intended as legal or tax advice. You should consult with your personal attorney regarding your specific situation and legal rights.*