

HUD Sued by AARP Over Reverse Mortgage Rule Change

By: Jann Swanson | Wed, Mar 9 2011, 9:57 AM

The Department of Housing and Urban Development was **sued** this week by the American Association of Retired Persons (AARP) on behalf of three homeowners facing foreclosure on HUD guaranteed reverse mortgages that were issued to their late spouses. The Foundation claims that the surviving spouses are facing "imminent foreclosure and eviction from their homes" because HUD abandoned federal rules and violated protections assigned to those spouses.

The suit, which was filed in the filed in U.S. District Court for the District of Columbia, seeks an injunction against pending foreclosure and/or eviction actions and prohibits HUD from abandoning long-standing rules that would allow foreclosure on the surviving spouse of a deceased reverse mortgagor. **That action it says does not just violate HUDs own rules but violates existing contracts between borrower and lender and negates a key purpose for which those borrowers had been paying an insurance premium to HUD.**

The three litigants, who reside in Indiana, New York, and Maryland, are all 69 to 79 years of age and of "modest means." For various reasons and in one case what appears to be lender error none were parties to their spouse's mortgage.

Home Equity Conversion Mortgages (HECM), or reverse mortgages, are popular financial planning mechanisms for equity-rich senior citizens. Arranged through private lenders but guaranteed by HUD, they allow homeowners to draw out the equity in their homes through either a one-time lump sum payment or periodic cash installments. While interest accrues and increases the principal balance of the loan, payments are not required until ownership of the home is transferred. **The intent of Congress in setting up the program was to allow seniors to remain in their home and still have spending liquidity rather than be forced to sell it for financial reasons.**

Borrowers must be at least 62 to qualify for the program and because of their age and other considerations several protections are in place. The first is that the payoff of the mortgage may not exceed the market value of the house and the second major rule protects homeowners from being displaced from their homes as long as they own and physically occupy it. **HUD has specifically extended the term "homeowner" to the spouse of the borrower even if that spouse is not party to the mortgage.** Loans are limited by a somewhat modest LTV to buffer it against an underwater mortgage and borrowers pay an annual premium to HUD for guaranteeing the loan and its protections.

The **spousal inclusion information has appeared in HUD promotional materials since 1994 but despite the clear language, AARP's attorneys maintain HUD has never recognized the protection this non-displacement provision affords the spouse of a homeowner and abandoned it in 2008**, stating that if spouses or heirs wished to retain the house after the death of the mortgagee they had to purchase or refinance the house at the full mortgage value. This, plaintiffs say, means that the effect of this change is that a stranger can purchase the property for its appraised value, but a surviving spouse cannot and in the current depressed market a family member who wishes to retain the property may not be able to obtain financing sufficient to pay off the HECM loan. It also means that the surviving spouse, if he or she cannot pay the full value of the mortgage, may be displaced from the home.

"HUD has inexplicably turned existing reverse mortgage policies upside down," said Jean Constantine-Davis, a senior attorney with AARP Foundation Litigation, in discussing HUD's actions. "These are older individuals with limited means who have been blindsided by arbitrary, retroactive decision making."

Steven A Skalet, of Mehri & Skalet PLLC, the Foundations attorneys, stated, "Rather than protecting borrowers, HUD retroactively changed the terms of the loans to make these elderly borrowers' spouses and heirs pay more to keep their home than an unrelated purchaser would have to pay to purchase the property." He added: "This is shameful and we intend to make HUD honor the representations and promises they made to borrowers when they signed up for these government-insured loans."

HUD has not yet commented on the suit.

View this Article: <https://www.mortgagenewsdaily.com/news/03092011-reverse-mortgages>