

LGBT Senior Homeowners: What You Should Know About Reverse Mortgages

Lesbian, gay, bisexual and transgender seniors are particularly vulnerable to housing instability because of disproportionate levels of poverty and lack of family support. Historic workplace and housing discrimination directed at the LGBT community has contributed to decreased life-time earnings, savings and investments. Lack of reliable family support can result in greater susceptibility to fraud, elder abuse and financial mismanagement. The intersectionalities of race and culture play an additional role in determining financial insecurity with greater levels of poverty among African-American and Latina lesbians than white gay men. The transgender community faces even greater poverty and housing instability across racial categories.

This article focuses on reverse mortgage loans, a retirement planning tool of particular relevance to the LGBT community that has many benefits but also some significant pitfalls. Many members of our community have a single, valuable asset, their home. This is especially true in New York City, which has seen a significant increase in home values over the past thirty years. Whether the home is an apartment purchased when a rental building converted to co-op ownership, a home in a newly mapped flood zone, or a brownstone purchased in an area of the city that has greatly gentrified, there are many perils that can result in the erosion of home equity and loss of the home entirely.

Reverse mortgage loans are often part of careful retirement planning, available only to occupant homeowners over the age of 62 and typically insured by FHA. They are like regular mortgage loans except that instead of making a principal and interest payment each month, you can allow the interest to accrue against the equity in the home. You can thus tap into the equity to increase your monthly disposable income by greatly reducing your housing expense. Most people believe you hand over the equity in the home in exchange for the security of staying put for the remainder of your life. This, however, is a common

misunderstanding. There are many ways you can default resulting in the lender calling the loan due and commencing foreclosure.

Reverse mortgage loans can be uniquely advantageous for the childless LGBT community because leaving a large asset to heirs is less of a concern. These loans may not be a good idea, however, if a child or other non-spouse heir lives in the home and wants to continue living there when you pass away. The loan will have to be paid off in full when you die or the occupant heir will be required to refinance with a traditional mortgage loan. Same-sex spouses who were married at the time the loan was originated are exempt from the payoff requirement, but the surviving spouse must show the lender a legal right to the property within 90 days of the borrowing spouse's death.

The most common type of default we are seeing at the City Bar Justice Center is failure to keep up with property taxes and homeowners insurance. Traditional mortgage lenders typically escrow these expenses, but with a reverse mortgage loan the borrower is responsible for keeping these expenses current. If you fail to timely pay the taxes or insurance, the lender may pay the expense, demand reimbursement, and commence foreclosure. Failure to keep up with these property charges is common and carries few immediate consequences except in this situation. For example, you can be several years behind on property taxes and as a matter of course arrange for a repayment plan with New York City to catch up. We have witnessed, however, that reverse mortgage lenders are not giving seniors an opportunity to fix these easily curable defaults before foreclosing. Other common defaults are failure to complete the annual occupancy certification and failure to keep the home in good repair.

New York, in response to the foreclosure crisis, enacted a series of laws to give homeowners better tools to address predatory and deceptive lending practices and save the home from unnecessary foreclosure. For example, lenders are now required to send pre-foreclosure notices advising borrowers of their rights and how to seek assistance. Foreclosure lenders are also required to attend court-monitored settlement conferences with borrowers to try to modify the loan. Most recently, the law has been amended to give borrowers a fair opportunity to appear in the action

and assert defenses. The federal government for its part has established the Consumer Financial Protection Bureau and has overseen the implementation of workout programs most notably through Making Home Affordable and revisions to the rules governing FHA-insured loans. While these measures are not perfect, they have significantly mitigated the harshness of the foreclosure crisis.

While New York State and federal agencies have focused on protecting homeowners in general, this category of loans solely affecting seniors has slipped through the cracks. In a reverse mortgage foreclosure, the lender is not required to provide the 90-day pre-foreclosure notice, and the borrower has no statutory right to the Court-monitored settlement conferences to give you a chance to workout a solution. The mortgage statements are unclear about what is owed and the consequences of failing to repay disbursements. Seniors often do not realize there is a risk of foreclosure and often come to us after there has been a default judgment. Lenders are also pushing homes into foreclosure because they feel pressure from HUD to do so, at the risk of otherwise losing their ability to recover their loss following the final foreclosure.

Before you take out a reverse mortgage loan, you should consult with an attorney regardless of the type of loan to make sure the transaction is explained fully and from an unbiased perspective. Many seniors rely solely on the advice of a mortgage broker or the lender's attorney not realizing the attorney is not representing their interests and the broker may have an incentive to sell a high-cost mortgage product. It's also important to have a support network in place such as a community group, church, neighbors or even a social worker who can check in on you periodically to make sure you are able to keep current.

The City Bar Justice Center's Foreclosure Prevention and LGBT Advocacy Projects provide free legal services to low-to-moderate income residents of New York City. If you or someone you know is experiencing foreclosure or is a senior with a reverse mortgage in trouble, please reach out to us at 212-382-6766. We provide free legal advice and representation to eligible homeowners when possible. K. Scott Kohanowski is a CBJC staff attorney and directs both projects.