



Being Vigilant

NRMLA's Legal Advisers Discuss New Developments

By M. Diane McCormick

RESTRAINED ECONOMY. VOLATILE politics. Ever-present barriers and opportunities. Amid the turbulence, vigilance is needed to protect the people and ideals of reverse mortgages. So *Reverse Mortgage* magazine spoke with three leaders of NRMLA's outside counsel team at Weiner Brodsky Kider PC about the top issues, challenges and opportunities facing the profession. Counsel Joel A. Schiffman, Partner James A. Brodsky and Member Soroush Shahin offer insights into developments involving housing appraisal bias, the London Interbank Offered Rate (LIBOR) transition, resolving liquidity challenges for mortgagees and state legislative trends expanding access to reverse mortgages.

Combating Appraisal Bias

Early in his administration, President Joseph Biden signaled one of his top priorities by convening 13 federal agencies, including the U.S. Department of Housing and Urban Development (HUD) and Federal Housing Administration (FHA), to examine the causes and consequences of housing appraisal bias and to recommend solutions.

As Brodsky notes, NRMLA shares the goal of ending appraisal bias, while also alerting members to the initiative's impact on their practices and the need to protect themselves from liability.



Joel A. Schiffman



James A. Brodsky



Soroush Shahin

Being Vigilant continued on page 24

In March 2022, the presidential interagency Property Appraisal and Valuation Equity (PAVE) Task Force released its action plan. The report highlighted Freddie Mac's research showing that 12.5 percent of appraisals for mortgage financing in majority-Black neighborhoods and 15.4 percent in majority-Latino neighborhoods result in values below the offered contract price. Those findings compare with 7.4 percent in predominantly White neighborhoods.

"As stated in the PAVE report, over time, even a slight imbalance of undervaluation can have a material effect on the property values in the community and therefore on the accumulated wealth of homeowners, including intergenerational wealth, in that community," Schiffman said during the NRMLA Western Regional Meeting in June.

Regulators are deploying reconsideration of value (ROV) as a key tool in combating appraisal bias. As explained in FHA Info 2023-1, proposed new rules are meant to strengthen the processing and documentation of ROV requests while making it clear to consumers of their rights to seek ROVs. Those ROVs can be in order when initial valuations seem low, illegal bias is indicated, fair housing regulations have been violated or unlawful discrimination has been identified.

According to an accompanying draft mortgagee letter, proposed handbook revisions would include:

- Adding indications of unlawful bias in material deficiency examples;
- Requiring underwriters to review appraisal quality for additional material deficiencies, including possible bias against protected classes;
- Requiring revised appraisals to include the appraisers' responses to the ROV requests;
- Adding a new section, "Borrower Request for Review of Appraisal Results," outlining the mortgagee's record-keeping requirements; and
- Providing appraisers' responsibilities when ROVs are requested.

Schiffman advises mortgagees to align their ROV policies with FHA's upcoming new standards. Well-designed ROV policies should include clear, actionable disclosures to help prevent discriminatory appraisals and potentially

avoid and defend against government investigations and consumer complaints. "Reverse mortgage lenders need to be putting the gears in motion to proactively deal with this," he says. "Appraisal bias promises to create liability for mortgagees pursuant to FHA regulations."

As the appraisal bias policy was in development, NRMLA and the Weiner Brodsky Kider team commented on an incongruity: The proposed rules' failure to address the second appraisals was sometimes triggered by HUD's collateral risk-assessment requirements. Under new scenarios, that second appraisal could be followed by an ROV, potentially generating three appraisals. "We showed them the areas where improvements or additional clarity are needed because the HECM product is unique with a collateral risk assessment that isn't imposed on the forward side," Schiffman says.

Operational Relief

NRMLA's collaborative relationship with FHA, HUD and other federal agencies fosters an atmosphere where policies can be adapted to address rapidly changing conditions. Often, the vehicle for staying agile is the mortgagee letter and the 2013 Reverse Mortgage Stabilization Act. The law allows FHA to adopt critical changes to the HECM program more swiftly by mortgagee letter instead of by rulemaking that can take years to finalize, thus assuring the safety and solvency of HECMs and their recipients.

The current administration is quick to respond to needs in the reverse mortgage field, Brodsky says. "The government is being very thoughtful," he says. "This leadership team at HUD is particularly thoughtful and creative and nimble."

The collaborative process is evident in two additional federal issues: the LIBOR transition and improving liquidity.

LIBOR Out, SOFR In

LIBOR ceased publication on June 30, and no longer provides a reference rate for benchmarking funding costs and investment returns on adjustable-rate HECMs and other financial contracts. For contracts that don't provide for the use of a replacement benchmark, the default U.S. Dollar LIBOR replacement, designated by Congress, is a spread-adjusted term rate based on the Secured

Overnight Financing Rate (SOFR). It differs from LIBOR in several key areas. It's a daily rate, as opposed to LIBOR's varying duration terms. It relies purely on transaction data, and it does not incorporate a credit-risk component because it is based on U.S. Treasury securities, the global default risk-free standard.

The differences mean that SOFR is not a plug-and-play alternative for LIBOR in existing contracts. "The change not only affects new annually and monthly adjusted HECMs that are being originated, but more importantly, it affects existing HECMs, where borrowers originated their loans long ago," Schiffman says.

Under new HUD guidance through Mortgagee Letter 2023-09, existing annually and monthly adjusted HECMs must transition to the 12-month or one-month Chicago Mercantile Exchange Term SOFR, respectively. Interest rates are determined by the index in effect 30 days before the interest rate change date, plus the spread provided in the note. Multiple changes overlay new adjustable-rate HECMs, originated beginning July 1, 2023:

- The index value can never be below zero;
- A monthly adjustable rate may only be offered if an annual adjustable rate is also offered;
- Lifetime caps cannot exceed ten percent above the initial note rate; and
- New model HECM adjustable notes are mandatory for case numbers assigned after July 1, 2023.

"These changes will have a material impact, which you will need to explain to new borrowers," Schiffman says. "Perhaps even more importantly, this transition will have a profound impact on your existing HECM borrower who may not simply be calling their servicer with questions but will likely be contacting their originators—namely many of you—with questions and concerns."

For several years, NRMLA has been working with FHA on "formulating the path forward" through the transition, Shahin adds. "NRMLA has been actively involved with guiding suggestions on how to deal with it for quite a while."

Easing Liquidity


By design, any loan securitized through Ginnie Mae must be purchased out of the pool when the loan-to-value (LTV) ratio reaches 98 percent of the maximum claim

amount. The purchase requires capital, and it goes on the buyer's balance sheet as it's assigned to HUD. But high interest rates are forcing LTVs to 98 percent more quickly than models had predicted, putting stress on balance sheets and consuming the holders' capital.

Ginnie Mae and HUD are aware of the issues, and "conversations continue to identify areas where there may be some relief," says NRMLA President Steve Irwin. HUD has streamlined the process and documentation requirements for assigning cases purchased from the Ginnie Mae pool for faster and more efficient payment of insurance claims, Irwin says. Another possible solution would allow mortgagees to securitize draws against loans more than once a month.

The dialogue and solutions made possible through the Reverse Mortgage Stabilization Act of 2013 provide timely relief for NRMLA members, Irwin says. They help businesses stay viable and available for potential


Being Vigilant continued on page 26



REVERSE MORTGAGE DATA.


OUR ANALYTICAL TOOLS.

YOUR INCREASED SUCCESS.



Heading to NRMLA?
Email Jon McCue to meet! →

RMINSIGHT.NET



Being Vigilant continued from page 25

customers in need of solutions. “The end goal is to make sure there’s a healthy and robust marketplace so we can further assist those people who want to effectively age in place with a reverse mortgage,” Irwin says.

State Issues

The Weiner Brodsky Kider team helps chart the legislative proposals that could impact reverse mortgage lenders and servicers state by state, Shahin says. Weiner Brodsky Kider and NRMLA’s State and Local Committee, including Committee Chair Scott Norman of Finance of America Reverse, identify the bills that are more problematic and might warrant a letter, a grassroots campaign or draft language that addresses lawmakers’ concerns while recognizing the realities of reverse mortgages.

Recent wins include:

- Utah lowered the minimum age for proprietary reverse mortgage borrowers from 62 to 55. The new law, signed by Gov. Spencer Cox, also reduces the cooling-off period from seven days to five. In other words, after a prospective borrower accepts a lender’s written commitment to make a reverse mortgage, the lender may not bind the prospective borrower to the reverse mortgage earlier than five days after the day

on which the prospective borrower gives the written acceptance to the lender.

- In a partial victory, Massachusetts extended a coronavirus-era rule allowing counseling by telephone or video for prospective reverse mortgage borrowers. However, the one-year extension sunsets March 31, 2024. With leadership from George Downey, CRMP, and Brett Kirkpatrick, CRMP, of The Federal Savings Bank, NRMLA and its members will continue to advocate for permanency and ease of access for consumers. “The same arguments that were valid three years ago are still valid today,” Shahin says.
- A new Colorado law prevents a HECM from being called due and payable because of the borrower’s temporary absence from the home due to a natural disaster. Eligible homeowners must meet certain conditions, including compliance with the terms and conditions of the reverse mortgage.

Often, advocacy involves education to dispel misunderstandings and remind lawmakers that strong guardrails protect today’s reverse mortgages and their customers. “By educating them, they realize that some of the language or restrictions proposed aren’t necessary because the product already has those safeguards built into it,” Shahin says. That was the case in Colorado, where the

NATIONWIDE REVERSE MORTGAGE FIELD SERVICE EXPERTS FOR OVER 30 YEARS

Inspections - Preservation - Insurance Loss Inspections - Violation Management - Vacant Property Registrations - Utility Management - REO Services - Special Services



www.nfronline.com

NATIONAL FIELD REPRESENTATIVES 
Protecting your properties. Protecting you.

1.800.639.2151

near foreclosure of a reverse mortgage borrower whose home was damaged by wildfire caught the attention of lawmakers. The initial proposed legislative remedy was rooted in a misunderstanding of the product and potentially contradicted some HUD requirements.

With the original bill's potential to make lending and servicing "very problematic," NRMLA and members cooperated with lawmakers, lobbyists and HUD to identify the root of the problem and quickly make the legislation more palatable, Shahin says. "We were able to change the language to the final bill that actually got enacted, and the revised language was much more favorable," he adds.

A Powerful Voice

While federal and state issues ebb and flow, the effort to protect the reputation of reverse mortgage professionals never ceases. The Weiner Brodsky Kider team advised NRMLA in developing its code of ethics and works with NRMLA's Ethics Committee to craft the principles and best practices upholding the highest standards of behavior for all members.

The team also assists when complaints are filed. Complaints about NRMLA members are reviewed by the Ethics Committee, while grievances against

nonmembers are assessed and, if supportable, forwarded to appropriate agencies.

"The core motivating principle behind the ethical responsibility of NRMLA members—and it's enforced—is that the interchange with the consumer must bring to the consumer a bona fide advantage," Brodsky says. In a standard relatively unique among trade associations, violators can be forced to withdraw membership, or in Brodsky's words, "get voted off the island."

Public reproval is "an even bigger concern and remedy" for those indulging in egregious behavior, Schiffman adds. "Getting kicked off the island is not the worst thing that could happen. The worst thing that could happen is that NRMLA could make it very public that you're a bad actor," he adds.

In the constant drive to wrap the reverse mortgage industry and its clients in policy protections, the most powerful tool is a fully engaged NRMLA membership, the Weiner Brodsky Kider team members say. "The board and leadership always make a pitch for members to get more involved," Shahin says. "That's what it takes. Join the committees. Express your concerns. Get involved if issues come up at the state or federal level. Just get involved. That's the biggest thing that members can do to advance their cause." **RM**

**LAUNCH YOUR PRODUCTION IN 2023!
HTL WILL CHART THE WAY!**

 HighTechLending

**BECOME AN HTL BRANCH OR
100% RATE SHEET MLO TODAY!**

888.369.1573 | HTLWHOLESALE.COM



HighTechLending, Inc. All Rights Reserved. NMLS #7147 (nmlsconsumeraccess.org).
For more information on licensing please visit www.hightechlending.com/compliance-information