



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

November 18, 2009

MORTGAGEE LETTER 2009-49

**TO: ALL FHA-APPROVED MORTGAGEES
ALL HUD-APPROVED HOUSING COUNSELING AGENCIES**

SUBJECT: Home Equity Conversion Mortgage Program: Subordinate Liens

This Mortgagee Letter iterates guidance issued under Mortgagee Letter 2006-20 addressing FHA requirements for secured subordinate financing under the Home Equity Conversion Mortgage (HECM) Program.

I. PROHIBITED SUBORDINATE LIENS

HECM regulations at 24 CFR 206.32(a) require that there shall be no outstanding or unpaid obligations, either unsecured or secured, incurred by the HECM mortgagor in connection with the HECM transaction, except in cases involving repairs to the property required under 24 CFR 206.47, or mortgage servicing charges permitted under 24 CFR 206.207(b), or both.

For example, a homeowner has an existing forward mortgage and seeks HECM financing to pay off that mortgage and some other debts. The HECM proceeds, however, will be insufficient to cover a payoff of the forward mortgage, HECM closing costs and other debts. In such a case, if the borrower, in order to close the HECM transaction, obtains subordinate financing which then gives rise to a third or other subordinate lien against the property, the subordinate financing would violate § 206.32(a), because it is made in connection with the HECM transaction. Therefore, any excess balance due on an existing lien must be paid in full, forgiven, or otherwise extinguished prior to or at closing of the HECM loan transaction.

II. ALLOWABLE SUBORDINATE LIENS AT HECM ORIGINATION

The following subordinate liens are allowed.

1. State and Local Court Judgments and Judgment Liens

FHA does not require a prospective HECM mortgagor to satisfy an unpaid or local court-ordered judgment prior to or at closing, although the mortgagee may impose such a requirement. Liens against the real estate resulting from outstanding state or local court judgments must be satisfied and removed or subordinated to the HECM first and second liens at closing.

2. Federal Judgments and Debts

A Federal judgment or debt must be paid-in-full or a satisfactory repayment plan between the prospective mortgagor and the Federal agency owed must be in place prior to closing of the HECM. In addition, a prospective HECM mortgagor's credit report must be reviewed to check for any claims, defaults or debts owed to the Federal government, and any existing debts against the real estate that will serve as collateral for the HECM. Any delinquent Federal debts or liens against the real estate must not be in excess of the mortgagor's net principal limit, unless the mortgagor has a separate source of funds from which to draw and pay those debts. Liens against the real estate resulting from outstanding Federal obligations must be satisfied and removed, or subordinated to the first and second HECM liens at closing.

III. LIEN PRIORITY AND ACCESS TO OTHER FINANCING

It is the mortgagee's responsibility to ensure that the first and second HECM liens are the first and second liens of record, and that other liens, where permitted, do not intervene between the first and second HECM liens.

The mortgagor may seek a home equity loan, or another type of real estate financing transaction, after a HECM is endorsed for insurance by the FHA. Liens required by the additional financing must be subordinated to the HECM first and second liens.

MORTGAGEE COMPLIANCE

Mortgagees are subject to disciplinary action and all other remedies available to the FHA for failure to comply with FHA requirements addressed in this Mortgagee Letter.

If you have any questions regarding this Mortgagee Letter, please call 1-800-CALL-FHA. Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

David H. Stevens
Assistant Secretary for Housing-
Federal Housing Commissioner