



**POWERED BY PEIRSON PATTERSON**

**TEXAS HOME EQUITY LENDING  
BASICS (CLOSED-END)  
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**By:**

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# ***TOPICS***

- I. HOMESTEAD PROTECTIONS UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)***
- II. REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD***
- II. HOME EQUITY ERRORS AND CURES***
- III. REFINANCING A HOME EQUITY LIEN***
- IV. OTHER CONSIDERATIONS FOR TEXAS HOME EQUITY LENDING***

# **HOMESTEAD PROTECTIONS UNDER TEXAS CONSTITUTION ART. XVI, SEC. 50(a)**

- Texas law is unique among the states in the level of protection granted to a personal or family homestead against the claims of creditors.
- “Homestead” is defined as follows in Art. XVI, Section 51 of the Texas Constitution:

Sec. 51. SIZE OF HOMESTEAD; USES; RELEASE OR REFINANCE OF EXISTING LIEN. The homestead, not in a town or city, shall consist of not more than two hundred acres of land, which may be in one or more parcels, with the improvements thereon; the homestead in a city, town or village, shall consist of lot or contiguous lots amounting to not more than 10 acres of land, together with any improvements on the land; provided, that the homestead in a city, town or village shall be used for the purposes of a home, or as both an urban home and a place to exercise a calling or business, of the homestead claimant, whether a single adult person, or the head of a family; provided also, that any temporary renting of the homestead shall not change the character of the same, when no other homestead has been acquired; provided further that a release or refinance of an existing lien against a homestead as to a part of the homestead does not create an additional burden on the part of the homestead property that is unreleased or subject to the refinance, and a new lien is not invalid only for that reason.

# **HOMESTEAD PROTECTIONS UNDER TEXAS CONSTITUTION ART. XVI, SEC. 50(a)**

“Homestead” is further defined in Texas Property Code, Section 41.002:

Sec. 41.002. DEFINITION OF HOMESTEAD.

*(a) If used for the purposes of an urban home or as both an urban home and a place to exercise a calling or business, the homestead of a family or a single, adult person, not otherwise entitled to a homestead, shall consist of not more than 10 acres of land which may be in one or more contiguous lots, together with any improvements thereon.*

# **HOMESTEAD PROTECTIONS UNDER TEXAS CONSTITUTION ART. XVI, SEC. 50(a)**

“Homestead” is further defined in Texas Property Code, Section 41.002:

Sec. 41.002. DEFINITION OF HOMESTEAD.

*(b) If used for the purposes of a rural home, the homestead shall consist of:*

*(1) for a family, not more than 200 acres, which may be in one or more parcels, with the improvements thereon; or*

*(2) for a single, adult person, not otherwise entitled to a homestead, not more than 100 acres, which may be in one or more parcels, with the improvements thereon.*

# HOMESTEAD PROTECTIONS UNDER TEXAS CONSTITUTION ART. XVI, SEC. 50(a)

“Homestead” is further defined in Texas Property Code, Section 41.002:

Sec. 41.002. DEFINITION OF HOMESTEAD.

*(c) A homestead is considered to be urban if, at the time the designation is made, the property is:*

*(1) located within the limits of a municipality or its extraterritorial jurisdiction or a platted subdivision; and*

*(2) served by police protection, paid or volunteer fire protection, and at least three of the following services provided by a municipality or under contract to a municipality:*

*(A) electric;*

*(B) natural gas;*

*(C) sewer;*

*(D) storm sewer; and*

*(E) water.*

# HOMESTEAD PROTECTIONS UNDER TEXAS CONSTITUTION ART. XVI, SEC. 50(a)

Accordingly, Texas law recognizes “urban” homesteads (*not more than 10 acres in one or more contiguous lots*), and “rural” homesteads (*not more than 200 acres of land for a family, or 100 acres for a single person, in one or more parcels that do not necessarily have to be contiguous*).

# **HOMESTEAD PROTECTIONS UNDER TEXAS CONSTITUTION ART. XVI, SEC. 50(a)**

Both urban and rural homesteads are exempt from the claims of creditors, except for the eight lien types specifically set forth in Article XVI, Section 50(a) of the Constitution:

- 50(a)(1) – purchase money lien.
- 50(a)(2) – taxes due on the homestead.
- 50(a)(3) – an owelty of partition imposed by court order or a written agreement of the parties to the partition, including.
- 50(a)(4) – the refinance of a lien against the homestead, including a federal tax lien resulting from the tax debt of the owner or the owner’s spouse.
- 50(a)(5) – a mechanics lien created by written agreement for new construction or repair & renovation of existing improvements.
- 50(a)(6) – a home equity loan.
- 50(a)(7) – a reverse mortgage.
- 50(a)(8) – conversion and refinance of a personal property lien secured by a manufactured home to a real property lien.



# HOMESTEAD PROTECTIONS UNDER TEXAS CONSTITUTION ART. XVI, SEC. 50(c)

Section 50(c) also provides that any “pretended sale” of the homestead (ie. a secured transaction that is structured as a “sale” of the homestead but is in reality an attempt to circumvent the Constitutional requirements for taking equity from the homestead) is void.

## Texas Constitution, Article XVI, Section 50(c)

*(c) No mortgage, trust deed, or other lien on the homestead shall ever be valid unless it secures a debt described by this section, whether such mortgage, trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.*

## REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)

- Article XVI, Section 50(a)(6) of the Constitution establishes the **only** method by which a lender may have a valid lien against the homestead for a cash out/equity out loan.
- Any cash out/equity loan against a Texas homestead that does not comply with **all** the requirements of Section 50(a)(6) cannot be secured by a valid lien against the homestead.
- Because of the constitutional citation, home equity loans in Texas are commonly referred to in the mortgage industry as “50(a)(6) loans”, “A6 loans”, or “home equity loans”.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)**

- Regulatory interpretations of the requirements of Section 50(a)(6) made by the Texas Finance Commission and Texas Credit Union Commission (the “Agencies”), are found at 7 Texas Admin. Code 153.1, *et seq.* Pursuant to Section 50(u) of the Constitution, the Agencies’ interpretations provide a “safe harbor” for home equity lenders if an act or omission conforms to the interpretations. The interpretations complement and clarify, but do not supersede, the requirements of Section 50(a)(6).
- This presentation will set forth the requirements for a valid **closed-end** 50(a)(6) lien against the homestead, as set forth in Texas Constitution, Sections 50(a)(6)(A)-(Q).

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)**

- Open-end home equity loans (HELOCS) are 50(a)(6) loans under Texas law but have their own separate set of requirements under Texas Constitution, Article XVI, Section 50(t).
- The requirements of Section 50(t) for a Texas HELOC are **not** addressed in this presentation.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(A)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS  
FOR MORTGAGE LOANS AND OTHER OBLIGATIONS  
SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall  
be, and is hereby protected from forced sale, for the payment of  
all debts except for: . . .*

*. . . (6) an extension of credit that:*

*(A) is secured by a voluntary lien on the homestead created under  
a written agreement with the consent of each owner and each  
owner's spouse; . . .*

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(A)**

- Section 50(a)(6)(A) requires that the security instrument for a home equity loan must be signed by each owner of the homestead **and** each owner's spouse.
- There are no exceptions to this rule for a Texas home equity loan. The owner's spouse **must** sign the home equity security instrument regardless of community property vs. separate property, regardless of whether the spouse is vested in title on the deed, regardless of whether the spouses are separated or in a pending divorce proceeding, and regardless of any pre-nuptial agreements that may exist.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(B)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR  
MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY  
HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made; . . .*

## **REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(B)**

- Section 50(a)(6)(B) limits the **combined** loan to value of **all** liens against the homestead (the “CLTV”) on the date a home equity loan is closed to 80% of the fair market value of the property.

For example, when there is an existing purchase money lien against the homestead and a lender wants to make a subordinate lien home equity loan, then the CLTV of both debts may not exceed 80% of the fair market value of the homestead on the date the home equity loan is closed.

- 50(a)(6)(Q)(ix) requires the owner of the homestead and the lender to sign a written acknowledgement as to the fair market value of the homestead on the date the extension of credit is made.



**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(C)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS  
FOR MORTGAGE LOANS AND OTHER OBLIGATIONS  
SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall  
be, and is hereby protected from forced sale, for the payment of  
all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (C) is without recourse for personal liability against each  
owner and the spouse of each owner, unless the owner or spouse  
obtained the extension of credit by actual fraud; . . .*

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(C)**

- Section 50(a)(6)(C) limits the allowable collateral for a home equity loan to the homestead itself. Unless the borrower obtains the home equity loan through actual fraud, there is no personal liability against the borrowers.
- A lender is prohibited from pursuing a deficiency against the homestead owner or spouse in the event of foreclosure, unless the owner or spouse committed actual fraud.
- “Actual fraud” is a distinct legal term under Texas law, distinguishable from “constructive fraud.”

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(D)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS  
FOR MORTGAGE LOANS AND OTHER OBLIGATIONS  
SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall  
be, and is hereby protected from forced sale, for the payment of  
all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (D) is secured by a lien that may be foreclosed upon only by a  
court order; . . .*

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(D)**

- Section 50(a)(6)(D) provides that a court order must be obtained before a Texas home equity lien may be foreclosed.
- Rule 736 of the Texas Rules of Civil Procedure sets forth the required process to obtain a court order allowing a Texas home equity lien to be foreclosed.
- Accordingly, a Texas home equity security instrument operates more like a quasi-mortgage than a deed of trust, even though it is in the form of a DOT.

# **REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(E)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (E) does not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two percent of the original principal amount of the extension of credit, excluding fees for:*

*(i) an appraisal performed by a third party appraiser;*

*(ii) a property survey performed by a state registered or licensed surveyor;*

*(iii) a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law; or*

*(iv) a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law; . . .*

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(E)**

Excluding bona fide discount points and the fees specifically set forth in subsection (E)(i)-(iv), Section 50(a)(6)(E) limits the fees that may be charged to the homestead owner to originate a home equity loan to 2% of the principal amount of the home equity loan.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(F)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR  
MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY  
HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time unless the open-end account is a home equity line of credit; . . .*

# REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(F)

- Section 50(a)(6)(F) permits a home equity loan to be structured as an open-ended home equity loan with draws (HELOC).
- To have a valid HELOC lien, however, the loan must be “a home equity line of credit” as defined in Texas Constitution, Article XVI, Section 50(t) and must meet **all** the requirements of that section.
- This presentation focuses on the requirements for a closed-end home equity loan under Texas law. Open-end HELOC loans are the subject of another presentation.



**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(G)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS  
FOR MORTGAGE LOANS AND OTHER OBLIGATIONS  
SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall  
be, and is hereby protected from forced sale, for the payment of  
all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (G) is payable in advance without penalty or other charge; ...*

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(G)**

- Section 50(a)(6)(G) prohibits any prepayment penalties on home equity loans.
- A home equity borrower may pay all or a portion of the home equity loan at any time without penalty.
- In addition, “lockout provisions” that prohibit a borrower from paying a home equity loan early are likewise prohibited.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(H)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS  
FOR MORTGAGE LOANS AND OTHER OBLIGATIONS  
SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall  
be, and is hereby protected from forced sale, for the payment of  
all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (H) is not secured by any additional real or personal property  
other than the homestead;. . .*

# **REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(H)**

- Section 50(a)(6)(H) provides that the only allowable collateral for a home equity loan is the homestead itself.
- When a home equity loan is secured by more acreage than in the definition of homestead under Texas law (e.g. 10 acres for an urban homestead in one or more contiguous lots) then the lien against the additional acreage over and above the 10 acre limit is invalid.
- Guaranty agreements, non-vested co-signors, cross-collateralization clauses, and contractual rights of offset are considered impermissible additional collateral and are prohibited in connection with home equity loans.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(I) & (J)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR  
MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY  
HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (I)(repealed);*

*(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;. . .*

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(I) & (J)**

- Section 50(a)(6)(I) formerly prohibited home equity loans on properties with an agricultural tax exemption under the Texas Tax Code, but this section was repealed effective January 1, 2018. There is no longer any prohibition against home equity lending against homestead properties with an agricultural tax exemption.
- Section 50(a)(6)(J) prohibits a lender from accelerating a home equity loan because the market value of the homestead decreases after closing. Section 50(a)(6)(J) additionally prohibits a lender from accelerating a home equity loan because of the borrower's default on another debt that is inferior to the home equity lien.
- Cross-collateralization or acceleration of a home equity loan based on the borrower's default under a non-homestead secured debt or a subordinate homestead secured debt is prohibited.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(K)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR  
MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY  
HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is  
hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (K) is the only debt secured by the homestead at the time the extension of  
credit is made unless the other debt was made for a purpose described by  
Subsections (a)(1)-(a)(5) or Subsection (a)(8) of this section; . . .*

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(K)**

- Section 50(a)(6)(K) permits only one home equity lien against the homestead at any given time.
- A home equity lien may be placed on a homestead that already has a lien under subsections (a)(1)-(a)(5) or (a)(8) of the Constitution against it. But when the homestead already has a home equity lien under 50(a)(6) or a reverse mortgage lien under 50(a)(7) against it, then it is ineligible for another home equity lien unless the new loan satisfies and releases the existing 50(a)(6) or 50(a)(7) lien.



**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(L)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR  
MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY  
HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is  
hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (L) is scheduled to be repaid:*

*(i) in substantially equal successive periodic installments, not more often than  
every 14 days and not less often than monthly, beginning no later than two  
months from the date the extension of credit is made, each of which equals or  
exceeds the amount of accrued interest as of the date of the scheduled  
installment; or . . .*

# **REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(L)**

Section 50(a)(6)(L)(i) governs allowable payment terms for a home equity loan and requires “substantially equal successive periodic installments.”

- The payments for a home equity loan may only be scheduled to be made **monthly or bi-weekly**. Quarterly or other non-standard payment arrangements are prohibited.
- The first payment date for a home equity loan must be **no later than two months** from the date of closing.
- Each payment under a home equity loan must pay down some amount of principal. **Interest-only payments and balloon payments are prohibited.**
- Adjustable rate (ARM) loan plans are permissible for a home equity loan so long as some amount of principal is paid down with each payment.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(M)(i)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR  
MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY  
HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (M) is closed not before:*

*(i) the 12th day after the later of the date that the owner of the homestead submits a loan application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section;. . .*

# **REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(M)(i)**

- Section 50(a)(6)(M)(i) requires the lender to provide the homestead owner with a “12-day notice” at or around application that informs the owner of their rights and responsibilities under a home equity loan.
- The home equity loan may not close until at least the 12<sup>th</sup> calendar day after the loan application is submitted or the 12-day notice is provided, **whichever is later**.
- The 12-day notice is a prescribed form under Section 50(g) of the Constitution and must be provided in that exact form to the homestead owner.
- When discussions with the owner are conducted in a language other than English, then an additional copy of the 12-day notice must be provided in the language that the discussions are conducted in.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(M)(ii)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (M) is closed not before:*

*. . . (ii) one business day after the date that the owner of the homestead receives a copy of the loan application if not previously provided and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing; . . .*

# **REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(M)(ii)**

- Section 50(a)(6)(M)(ii) requires the lender to provide a copy of the loan application and a final, itemized disclosure of fees and charges that will be charged at closing at least one business day prior to the closing of the home equity loan.
- Although there is a “bona fide emergency” exception to the requirements of Section 50(a)(6)(M)(ii), exercising the exception is subject to numerous requirements under 7 Texas Admin. Code §153.13 and should not be exercised without the advice of lender’s counsel.
- The requirement for a “final itemized disclosure” under Section 50(a)(6)(M)(ii) generally is satisfied by timely delivering a Closing Disclosure under Regulation Z, Section 1026.19(f) to the homestead owner.

# REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION RECENT RULE CHANGE

Please note that, as of July 14, 2022, [§153.1\(2\)](#) now contains three definitions of business day—

- a definition for §153.13 that is the precise business day definition & adds the new Juneteenth federal holiday;
- a definition for §153.45 that clarifies that the 3-business days to provide the 12-day notice on a Section 50(f)(2) rate/term refinance of a home equity loan may be provided with Reg. Z early disclosures); and
- a definition for 153.25 that clarifies that the three business days for the right of rescission under Texas home equity lending is the same as the three business days for a right of rescission under Reg. Z.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(M)(iii)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (M) is closed not before:*

*. . . (iii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a refinance described by Paragraph (Q)(x)(f) of this subdivision, unless the owner on oath requests an earlier closing due to a state of emergency that:*

*(a) has been declared by the president of the United States or the governor as provided by law; and*

*(b) applies to the area where the homestead is located;. . .*



**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(M)(iii)**

- Section 50(a)(6)(M)(iii) requires at least a one year waiting period between the closing of a home equity loan and the closing of any subsequent home equity loan secured by the same homestead property.
- If the President of the United States or the Governor of Texas has declared a state of emergency or a state of disaster in the area where the homestead is located, and the homestead owner submits a sworn affidavit requesting an earlier closing date due to the state of emergency, then a subsequent home equity loan may be closed within the one-year period.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(N)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS  
FOR MORTGAGE LOANS AND OTHER OBLIGATIONS  
SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall  
be, and is hereby protected from forced sale, for the payment of  
all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (N) is closed only at the office of the lender, an attorney at  
law, or a title company;. . .*

## **REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(N)**

- Section 50(a)(6)(N) requires at a home equity loan be closed at the office of the lender, a title company, or an attorney at law.
- “Kitchen table” or mobile notary closings are prohibited.
- “Mail outs” are only permitted if the signing of the loan documents takes place at an office of the lender, a title company, or an attorney at law.
- If the loan documents are being signed via a Power of Attorney, then the POA must have been executed at an office of the lender, a title company, or an attorney at law, pursuant to the Texas Supreme Court’s opinion in *Finance Commission of Texas v. Norwood*.
- Title companies and investors often have additional overlays and requirements relating to the use of a POA in closing a home equity loan and/or the location of closing.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(O)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS  
FOR MORTGAGE LOANS AND OTHER OBLIGATIONS  
SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall  
be, and is hereby protected from forced sale, for the payment of  
all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (O) permits a lender to contract for and receive any fixed or  
variable rate of interest authorized under statute;. . .*

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(O)**

- Section 50(a)(6)(O) permits either fixed rate or adjustable rate (ARM) home equity loans, so long as the fixed rate or ARM program is authorized under the law.
- As stated before, interest-only and balloon loan programs are prohibited on home equity loans.

# REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(P)

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:*

- (i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this subparagraph;*
- (ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;*
- (iii) a person licensed to make regulated loans, as provided by statute of this state;*
- (iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase;*
- (v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; or*
- (vi) a person regulated by this state as a mortgage banker or mortgage company; . . .*

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(P)**

Section 50(a)(6)(P) establishes who may make a home equity loan in Texas. Persons who do not fall into one of these categories are prohibited from originating home equity loans.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(Q)(i) & (ii)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR  
MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY  
HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (Q) is made on the condition that:*

*(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;*

*(ii) the owner of the homestead not assign wages as security for the extension of credit; . . .*



**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(Q)(i) & (ii)**

- Section 50(a)(6)(Q)(i) states that a lender may only require the following payoffs with home equity loan proceeds: (a) another **homestead-secured** debt owed by the homestead owner to the home equity lender; or (b) a debt that is owed to another lender.
- A lender may require that the home equity proceeds be used to pay off unsecured debts owed to another lender, but not unsecured debts owed to the home equity lender.
- Section 50(a)(6)(Q)(ii) prohibits any assignment of wages as security for a home equity loan. This is consistent with the prohibitions against personal liability and additional collateral beyond the homestead.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(Q)(iii) & (iv)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR  
MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY  
HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (Q) is made on the condition that:*

*. . . (iii) the owner of the homestead not sign any instrument in which blanks relating to substantive terms of agreement are left to be filled in;*

*(iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;. . .*

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(Q)(iii) & (iv)**

- Section 50(a)(6)(Q)(iii) prohibits any “instrument” that the homestead owner signs in connection with the home equity loan from having any blanks are “left to be filled in”. It is intended to prohibit a person other than the owner from completing one or more blanks in an instrument after the owner has signed the instrument and delivered it to the lender, thereby altering the obligations created in the instrument.
- Pursuant to 7 Texas Admin. Code §153.20, an “*instrument*” for purposes of Section 50(a)(6)(Q)(iii) means “*a document or record that creates or alters a legal obligation of a party.*”
- Section 50(a)(6)(Q)(iv) prohibits a confession of judgement in connection with a home equity loan.

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(Q)(v) & (vi)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR  
MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY  
HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (Q) is made on the condition that:*

*. . . (v) at the time the extension of credit is made, the owner of the homestead shall receive a copy of the final loan application and all executed documents signed by the owner at closing related to the extension of credit;*

*(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Subsection (a)(6) of this section; . . .*

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(Q)(v) & (vi)**

- Section 50(a)(6)(Q)(v) requires that the lender and/or settlement agent provide to the homestead owner a copy of the final loan application and all executed documents signed by the owner at closing related to the home equity loan. These copies must be provided to the owner at the time the home equity loan is closed.
- Section 50(a)(6)(Q)(vi) requires that the security instrument used in connection with a home equity loan contain a disclosure identifying that the loan is a home equity loan as defined in Texas Constitution, Article XVI, Section 50(a)(6).

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(Q)(vii) & (viii)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (Q) is made on the condition that:*

*. . . (vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;*

*(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;*

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(Q)(vii) & (viii)**

- Section 50(a)(6)(Q)(vii) requires a home equity lender to timely provide a release of the home equity lien, or endorsement or assignment, to the homestead owner when the home equity loan is fully satisfied by payoff or refinance.
- Section 50(a)(6)(Q)(viii) grants a **three day right of rescission** without penalty to the homestead owner following the closing of the home equity loan.
- Since most home equity loans are subject to federal rescission under Regulation Z, Section 1026.23, 7 Texas Admin. Code §153.25 provides that compliance with the rescission requirements of Regulation Z satisfies the rescission requirements of Section 50(a)(6)(Q)(viii).

**REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY  
LIEN AGAINST THE HOMESTEAD UNDER TEXAS  
CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(Q)(ix)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR  
UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS  
FOR MORTGAGE LOANS AND OTHER OBLIGATIONS  
SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall  
be, and is hereby protected from forced sale, for the payment of  
all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (Q) is made on the condition that:*

*. . . (ix) the owner of the homestead and the lender sign a written  
acknowledgment as to the fair market value of the homestead  
property on the date the extension of credit is made; . . .*



# **REQUIREMENTS FOR A VALID CLOSED-END HOME EQUITY LIEN AGAINST THE HOMESTEAD UNDER TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(a)(6)(Q)(ix)**

- Section 50(a)(6)(Q)(ix) requires that both the homestead owner and the lender sign a written acknowledgment as to the fair market value of the homestead property that will secure the home equity loan.
- This written acknowledgment of fair market value forms the basis for determining the fair market value of the homestead and determining whether the home equity loan complies with the 80% CLTV limitation contained in Section 50(a)(6)(B).
- The acknowledgment of fair market value must be signed by both the homestead owner and the lender. 7 Texas Admin. Code §153.26 provides that the lender must sign the acknowledgement of fair market value at or before (but not after) closing. An authorized agent may sign the acknowledgment on the lender's behalf.

## HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (Q) is made on the condition that:*

*. . . (x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by: . . .*

## **HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)**

- Section 50(a)(6)(Q)(x) states that when a home equity lender fails to comply with each of the requirements for a valid lien under Section 50(a)(6), then the lender shall “forfeit all principal and interest” if the lender is notified of such error by the homestead owner and fails to cure within 60 days of notification.
- Essentially, this means that when the homestead owner gives notice to the lender of a violation of one or more requirements of Section 50(a)(6), and if the lender then fails to cure the error within 60 days of such notification, the home equity lien is invalid and cannot be foreclosed.
- The methods of curing home equity errors are likewise set forth in Section 50(a)(6)(Q)(x)(a)-(f). In order to validly cure a home equity error described in Section 50(a)(6)(Q)(x), the lender must take the steps set forth in the applicable subsection (a)-(f). If the lender attempts to cure in some other way, then the cure is invalid and the lien is forfeit.

## HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)(a)

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (Q) is made on the condition that:*

*. . . (x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by: . . .*

*(a) paying to the owner an amount equal to any overcharge paid by the owner under or related to the extension of credit if the owner has paid an amount that exceeds an amount stated in the applicable Paragraph (E), (G), or (O) of this subdivision; . . .*

## **HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)(a)**

Section 50(a)(6)(Q)(x)(a) provides that when a home equity loan violates the 2% fee limitation in Section 50(a)(6)(E), when the lender charges a prepayment penalty in violation of Section 50(a)(6)(G), or when the lender charges an impermissible rate of interest under Section 50(a)(6)(O), then the lender must cure the violation within 60 days of receiving notice from the owner by refunding any charge, or overcharge made under one of those sections to the owner.

## HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)(b)

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (Q) is made on the condition that:*

*. . . (x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by: . . .*

*. . . (b) sending the owner a written acknowledgement that the lien is valid only in the amount that the extension of credit does not exceed the percentage described by Paragraph (B) of this subdivision, if applicable, or is not secured by property described under Paragraph (H) of this subdivision, if applicable; . . .*

## **HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)(b)**

Section 50(a)(6)(Q)(x)(b) provides that when the home equity loan exceeds the 80% CLTV limitation in Section 50(a)(6)(B), or is secured by collateral other than the homestead, including additional acreage beyond the homestead limitations in violation of Section 50(a)(6)(H), then the lender must cure the violation within 60 days of receiving notice from the homestead owner by sending the owner a written acknowledgment that the home equity lien is only valid up to the 80% CLTV limitation, or only valid to the extent the collateral for the loan is homestead property.

## HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)(c)

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (Q) is made on the condition that:*

*. . . (x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by: . . .*

*. . . (c) sending the owner a written notice modifying any other amount, percentage, term, or other provision prohibited by this section to a permitted amount, percentage, term, or other provision and adjusting the account of the borrower to ensure that the borrower is not required to pay more than an amount permitted by this section and is not subject to any other term or provision prohibited by this section; . . .*



## **HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)(c)**

Section 50(a)(6)(Q)(x)(c) provides that when the home equity loan includes terms or provisions that violate the requirements of Section 50(a)(6)(A)-(Q) (e.g. impermissible rate of interest, an assignment of wages, confession of judgment, payments that violate Section 50(a)(6)(L)(i), etc.), then the lender must cure the error within 60 days of receiving notice from the homestead owner by sending the owner a written notice that modifies the offending loan terms, and/or by adjusting the owner's account to ensure the borrower is not paying more than an amount permitted under Section 50(a)(6).

## **HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)(d)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (Q) is made on the condition that:*

*. . . (x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by: . . .*

*. . . (d) delivering the required documents to the borrower if the lender fails to comply with Subparagraph (v) of this paragraph or obtaining the appropriate signatures if the lender fails to comply with Subparagraph (ix) of this paragraph; . . .*

## **HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)(d)**

Section 50(a)(6)(Q)(x)(d) provides that when the homestead owner does not receive a copy of the final loan application and all executed documents signed at closing in violation of 50(a)(6)(Q)(v), or when the lender fails to deliver to the owner a written acknowledgment of fair market value containing the signatures of both the owner and the lender at closing in violation of Section 50(a)(6)(Q)(ix), then the lender must cure the error within 60 days of receiving notice from the homestead owner by delivering the required documents to the owner and/or obtaining the required signatures on the acknowledgment of fair market value.

## HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)(e)

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (Q) is made on the condition that:*

*. . . (x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by: . . .*

*. . . (e) sending the owner a written acknowledgement, if the failure to comply is prohibited by Paragraph (K) of this subdivision, that the accrual of interest and all of the owner's obligations under the extension of credit are abated while any prior lien prohibited under Paragraph (K) remains secured by the homestead; . . .*

## **HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)(e)**

Section 50(a)(6)(Q)(x)(e) provides that when the home equity lien is not the only home equity lien on title as of the date of closing (ie. if there is a existing home equity lien that is not satisfied and released at the time the subsequent home equity loan is closed), then the subsequent home equity lender must cure within 60 days of receiving notice from the owner by abating the home equity loan, including abatement of any interest accrual, for as long as the prior home equity lien is in existence and is secured by the homestead.

# HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)(f)

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: . . .*

*. . . (6) an extension of credit that: . . .*

*. . . (Q) is made on the condition that:*

*. . . (x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by: . . .*

*. . . (f) if the failure to comply cannot be cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the failure to comply by a refund or credit to the owner of \$1,000 and offering the owner the right to refinance the extension of credit with the lender or holder for the remaining term of the loan at no cost to the owner on the same terms, including interest, as the original extension of credit with any modifications necessary to comply with this section or on terms on which the owner and the lender or holder otherwise agree that comply with this section; . . .*

## **HOME EQUITY ERRORS AND CURES, Section 50(a)(6)(Q)(x)(f)**

- Section 50(a)(6)(Q)(x)(f) is the “catch all” cure provision. When a violation of Sections 50(a)(6)(A)-(Q) is identified that cannot be cured by any of the specific cures set forth in subsections (x)(a)-(e), then Section 50(a)(6)(Q)(x)(f) provides that the lender must cure the error within 60 days of receiving notice from the owner by refunding or crediting the owner \$1,000.00 and offering to refinance the home equity loan into another 50(a)(6) home equity loan at no cost on exactly the same terms as the original home equity loan.
- 7 Texas Admin. Code 153.96 permits a lender to offer either a refinance or a modification of the existing loan to satisfy the cure requirements of Section 50(a)(6)(Q)(x)(f).

## **REFINANCING A HOME EQUITY LIEN, Section 50(f)(2)**

- Prior to January 1, 2018, the refinancing of a home equity lien in Texas operated under the “once a home equity, always a home equity” rule.
- Prior to that date, Section 50(f)(1) required that any refinance of a home equity lien had to be originated as a new 50(a)(6) home equity loan or as a 50(a)(7) reverse mortgage. A 50(a)(4) rate/term refinance of a home equity lien was not permitted.
- Effective January 1, 2018, however, the Texas Constitution was amended to add Sections 50(f)(2) and 50(f-1) to Article XVI. These sections authorize a rate/term refinance of a home equity lien and set forth the requirements for a valid lien when refinancing a home equity lien.
- Section 50(f)(2) sets forth four requirements, all of which must be met, in order to have a valid rate/term refinance of a home equity lien.



## **REFINANCING A HOME EQUITY LIEN, Section 50(f)(2)(A)**

### *Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*. . . (f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless either: . . .*

*. . . (2) all of the following conditions are met:*

*(A) the refinance is not closed before the first anniversary of the date the extension of credit was closed; . . .*

## **REFINANCING A HOME EQUITY LIEN, Section 50(f)(2)(A)**

- Section 50(f)(2)(A) provides that any refinance of a home equity lien may not close before the first anniversary of the closing date of the home equity loan that is being refinanced.
- This one-year waiting period mirrors the requirement for a one-year waiting period for the closing of a home equity loan under Section 50(a)(6)(M)(iii).
- Accordingly, whether the home equity lien is being refinanced into a new home equity lien under Section 50(a)(6)(M)(iii), or is being refinanced into a rate/term refinance loan under Section 50(f)(2), the new loan may not close for at least one year following the closing of the home equity loan that is being refinanced.

## **REFINANCING A HOME EQUITY LIEN, Section 50(f)(2)(B)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*. . . (f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless either: . . .*

*. . . (2) all of the following conditions are met:*

*. . . (B) the refinanced extension of credit does not include the advance of any additional funds other than:*

*(i) funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of this section; or*

*(ii) actual costs and reserves required by the lender to refinance the debt; . . .*

## **REFINANCING A HOME EQUITY LIEN, Section 50(f)(2)(B)**

- Section 50(f)(2)(B) provides that a rate/term refinance of a home equity lien may not include the advance of any additional funds other than funds that are advanced to: (a) refinance an existing lien against the homestead (including both the home equity lien and any other valid lien under Sections (a)(1) – (7)); and (b) funds that are advanced to finance actual loan costs and reserves required by the lender as part of the loan.
- In other words, a 50(f)(2) rate/term refinance may **only** pay off existing liens against the homestead, and may finance required closing costs and reserves. Additional equity out is prohibited.

## **REFINANCING A HOME EQUITY LIEN, Section 50(f)(2)(C)**

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*. . . (f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless either: . . .*

*. . . (2) all of the following conditions are met:*

*. . . (C) the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made; . . .*

## **REFINANCING A HOME EQUITY LIEN, Section 50(f)(2)(C)**

- Section 50(f)(2)(C) provides that on the date a 50(f)(2) rate/term refinance is closed, the CLTV of all debts secured by the homestead may not exceed 80% of the fair market value of the homestead as of the date of closing.
- This 80% CLTV requirement mirrors the CLTV requirement for a home equity loan in Section 50(a)(6)(B).
- This CLTV limitation can create challenges when the lender is originating a Section 50(f)(2) rate/term refinance for a purpose beyond simply refinancing an existing home equity lien (eg. a 50(f)(2) refinance with additional funds for improvements to the homestead, or as an owelty of partition).

# REFINANCING A HOME EQUITY LIEN, Section 50(f)(2)(D)

*Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.*

*. . . (f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless either: . . .*

*. . . (2) all of the following conditions are met:*

*. . . (D) the lender provides the owner the following written notice on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed:*

*"YOUR EXISTING LOAN THAT YOU DESIRE TO REFINANCE IS A HOME EQUITY LOAN. YOU MAY HAVE THE OPTION TO REFINANCE YOUR HOME EQUITY LOAN AS EITHER A HOME EQUITY LOAN OR AS A NON-HOME EQUITY LOAN, IF OFFERED BY YOUR LENDER.*

*"HOME EQUITY LOANS HAVE IMPORTANT CONSUMER PROTECTIONS. A LENDER MAY ONLY FORECLOSE A HOME EQUITY LOAN BASED ON A COURT ORDER. A HOME EQUITY LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE.*

*"IF YOU HAVE APPLIED TO REFINANCE YOUR EXISTING HOME EQUITY LOAN AS A NON-HOME EQUITY LOAN, YOU WILL LOSE CERTAIN CONSUMER PROTECTIONS. A NON-HOME EQUITY REFINANCED LOAN:*

*"(1) WILL PERMIT THE LENDER TO FORECLOSE WITHOUT A COURT ORDER;*

*"(2) WILL BE WITH RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE; AND*

*"(3) MAY ALSO CONTAIN OTHER TERMS OR CONDITIONS THAT MAY NOT BE PERMITTED IN A TRADITIONAL HOME EQUITY LOAN.*

*"BEFORE YOU REFINANCE YOUR EXISTING HOME EQUITY LOAN TO MAKE IT A NON-HOME EQUITY LOAN, YOU SHOULD MAKE SURE YOU UNDERSTAND THAT YOU ARE WAIVING IMPORTANT PROTECTIONS THAT HOME EQUITY LOANS PROVIDE UNDER THE LAW AND SHOULD CONSIDER CONSULTING WITH AN ATTORNEY OF YOUR CHOOSING REGARDING THESE PROTECTIONS.*

*"YOU MAY WISH TO ASK YOUR LENDER TO REFINANCE YOUR LOAN AS A HOME EQUITY LOAN. HOWEVER, A HOME EQUITY LOAN MAY HAVE A HIGHER INTEREST RATE AND CLOSING COSTS THAN A NON-HOME EQUITY LOAN."*

## **REFINANCING A HOME EQUITY LIEN, Section 50(f-1)**

### ***Sec. 50. PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE; EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER OBLIGATIONS SECURED BY HOMESTEAD.***

*(f-1) A lien securing a refinance of debt under Subsection (f)(2) of this section is deemed to be a lien described by Subsection (a)(4) of this section. An affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection (f)(2) of this section have been met conclusively establishes that the requirements of Subsection (a)(4) of this section have been met.*



## **REFINANCING A HOME EQUITY LIEN, Section 50(f-1)**

- Section 50(f-1) provides that a rate/term refinance lien that meets the requirements of Section 50(f)(2) is deemed to be a valid 50(a)(4) refinance lien under Article XVI, Section 50(a) of the Texas Constitution.
- In addition, Section 50(f-1) provides that when the homestead owner **or** the homestead owner's spouse executes an affidavit acknowledging that the requirements of Section 50(f)(2) have been met in connection with a refinance of a home equity lien, then the affidavit **conclusively establishes** that the refinance is a valid lien under Section 50(a)(4) of Article XVI.
- Although the Section 50(f-1) affidavit is not a required form to have a valid 50(f)(2) refinance, it should always be included in every 50(f)(2) refinance document package as a best practice to provide legal protection to the lender.

# OTHER CONSIDERATIONS FOR TEXAS HOME EQUITY LENDING

## TITLE INSURANCE FOR TEXAS HOME EQUITY LOANS

- Because of the complexity and risks of home equity lending in Texas, best practice is to always obtain a mortgagee policy of title insurance issued by a licensed Texas title insurance company for a home equity loan whenever possible and feasible.
- Texas title companies offer two endorsements in connection with Texas home equity loans, the **T-42 Equity Loan Mortgage Endorsement** & the **T-42.1 Supplemental Coverage Equity Loan Mortgage Endorsement**. These endorsements provide important coverages specific to Texas home equity loans. When obtaining title insurance for a home equity loan, a lender should always obtain these endorsements *unaltered & without deletions*.
- When a Texas title company states that they cannot issue a T-42 or T-42.1 endorsement in connection with a home equity mortgagee title insurance policy, or if there will be one or more deletions in the endorsements, then this is a red flag warning that there are problems with the home equity loan that should be addressed before closing.

# OTHER CONSIDERATIONS FOR TEXAS HOME EQUITY LENDING

## SECONDARY MARKET REQUIREMENTS FOR HOME EQUITY LOANS

- Before originating a home equity loan intended for sale in the secondary mortgage market, it is imperative that the lender understand any requirements or overlays the intended investor may have for Texas home equity loans, and that the home equity loan be underwritten to account for all such secondary market requirements.
- The FANNIE MAE SELLING GUIDE, Sections B5-4.1-01 through -04 specifically address FNMA's requirements for the eligibility, underwriting, closing, delivery, and servicing of Texas home equity loans.
- The FREDDIE MAC SELLER SERVICER GUIDE, Section 4301.7 likewise sets forth FHLMC's requirements for Texas home equity loan eligibility.
- Any home equity loan being sold in the secondary mortgage market must be documented using the FNMA/FHLMC Uniform Texas Home Equity Note (Instruments 3244.1, 3442.44, 3522.44, 3523.44, 3528.44 or 3529.44, as applicable), Uniform Security Instrument (Instrument 3044.1), and Affidavit and Agreement (Instrument 3185).

# OTHER CONSIDERATIONS FOR TEXAS HOME EQUITY LENDING

## SECONDARY MARKET REQUIREMENTS FOR HOME EQUITY LOANS

- Note: the instruments used to originate a Texas home equity loan (Note and Security Instrument) are distinct forms that cannot be used interchangeably with non-home equity instruments.
- **Documenting a home equity loan on non-home equity instruments creates a multitude of legal problems for the lender, can render the home equity lien invalid, and will almost certainly render any such home equity loan unsalable in the secondary mortgage market.**
- In addition to the requirements set forth in the FNMA Selling Guide and FHLMC Seller/Service Guide, many other investors have their own requirements and overlays for Texas home equity loans that should be carefully considered and understood by the lender before originating a home equity loan for sale to any such investor.

# OTHER CONSIDERATIONS FOR TEXAS HOME EQUITY LENDING

## SEEK LEGAL COUNSEL

- Texas home equity loans are complex and can have draconian consequences for the lender when errors are made and not timely cured.
- **IT IS NOT POSSIBLE FOR A PRESENTATION SUCH AS THIS TO COVER EVERY POSSIBLE LENDING SCENARIO THAT CAN ARISE IN THE ORIGINATION OF A TEXAS HOME EQUITY LOAN.**
- The golden rule of “If you don’t know, ask!” should always be followed when originating these loans.
- It is important to work with Texas counsel who is versed in the legal requirements of home equity lending, and to consult Texas counsel when scenarios arise that create questions.
- Some lending situations are ambiguous, and there are definitely “gray areas” in the Texas Constitution’s homestead provisions and in Section 50(a)(6). Before venturing into one of these gray areas, be sure to consult Texas counsel.



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