

**Affidavit Regarding Refinance of an Existing Home Equity Loan  
to a Non-Home Equity Loan**

STATE OF TEXAS  
COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, personally appeared \_\_\_\_\_  
\_\_\_\_\_, herein called “Affiants”, who after being duly sworn by  
me, stated upon their oaths as follows:

I/We, the undersigned Affiants, are over eighteen years and have personal knowledge of the facts herein stated.

I/We are the owners (and if married the spouses of the owners) of the property described in Exhibit A, attached hereto and incorporated herein by reference, which property is commonly known as \_\_\_\_\_ and which property is my/our homestead and is herein referred to as the “Homestead Property”.

The Homestead Property is currently subject to an existing loan (herein “My/Our Existing Home Equity Loan”) that was made under the authority of Texas Constitution, Article XVI, Section 50(a)(6) and is secured by a Security Instrument establishing a lien (herein the “My/Our Existing Home Equity Lien”) upon the Homestead Property.

I/We hereby acknowledge and represent to \_\_\_\_\_ (herein “Lender”) that My/Our Existing Home Equity Loan and My/Our Existing Home Equity Lien are valid and subsisting against the Homestead Property.

We are this day obtaining from Lender a new loan to refinance My/Our Existing Home Equity Loan, which new loan is herein called the “Refinance Loan”.

In connection with the Refinance Loan, I/we hereby confirm to Lender that:

(A) the Refinance Loan is not being closed before the first anniversary of the date My/Our Existing Home Equity Loan was closed;

(B) the Refinance Loan does not include the advance of any additional funds other than:

(i) funds advanced to refinance a debt described by Texas Constitution, Article XVI, Section 50(a), Subsections (1) through (7); or,

(ii) actual costs and reserves required by the lender to refinance My/Our Existing Home Equity Loan;

(C) the Refinance Loan 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 Property does not exceed 80 percent of the fair market value of the Homestead Property on the date the Refinance Loan is made/closed; and

(D) not later than the third business day after the date the I/we submitted our loan application to the Lender for this Refinance Loan and at least 12 days before the date this Refinance Loan is closed, the Lender delivered to me/us, the following written notice:

“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.”

This affidavit is being made pursuant to Texas Constitution, Article XVI, Section 50(f-1) and shall conclusively establish that the requirements of Texas Constitution, Article XVI, Section 50(f)(2) have been met.

Affiants hereby further acknowledge that I/we have had the opportunity, to the extent that I/we have chosen to do so, to consult an attorney of my/our own choosing or some other advisor of my/our choosing to explain to me/us the meaning and effect of this affidavit and the various loan documents evidencing and governing the Refinance Loan.

Affiants also acknowledge that Lender is relying upon this affidavit and the truth of the matters herein stated as a condition for making the Refinance Loan and that if the facts and statements contained in this affidavit were not true, Lender would not make the Refinance Loan.

Affiants further state that they are aware that under Federal Law, 18 U.S.C.A. § 1014, whoever knowingly makes any false statement for the purpose of influencing in any way the action of a mortgage lending business, or any person or entity that makes in whole or in part a federally related mortgage loan as defined in Section 3 of the Real Estate Settlement Procedures Act of 1974, shall be fined not more than \$1,000,000 or imprisoned not more than 30 years, or both.

Affiants are also aware that under Section 32.32 of the Texas Penal Code a person commits an offense if he intentionally or knowingly makes a materially false or misleading written statement to obtain property or credit, including a mortgage loan and such offense is punishable by fine and/or imprisonment.

Executed this the \_\_\_\_\_ day of \_\_\_\_\_ 201\_\_.

AFFIANTS:

\_\_\_\_\_  
\_\_\_\_\_

The foregoing Affidavit Regarding the Refinance of an Existing Home Equity Loan to a Non-Home Equity Loan, was Sworn to, Subscribed, and Acknowledged before me, the undersigned authority, on this the \_\_\_\_ day of \_\_\_\_\_ 201\_ by \_\_\_\_\_  
\_\_\_\_\_.

(Notary seal or stamp)

\_\_\_\_\_  
(type or print name)

Notary Public in and for the State of Texas  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**  
Legal description of the Homestead Property