

January 3, 2018

THE NEW RULES FOR THE REFINANCE OF AN EXISTING TEXAS HOME EQUITY LOAN TO A NON-HOME EQUITY LOAN EFFECTIVE JANUARY 1, 2018

Dear Clients and Friends:

This is a friendly reminder about the new amendments to Texas Constitution, Article XVI, Section 50, effective January 1, 2018, wherein authority is established under Section 50(f)(2) to refinance an existing home equity loan (an “Existing Section 50(a)(6) Loan”), with a new non-home equity loan. We will refer to such a refinance as a “Section 50(f)(2) Loan”.

The conditions which must be met in order to close a “Section 50(f)(2) Loan” are as follows:

(A) the “Section 50(f)(2) Loan” is not being closed before the first anniversary of the date of the closing of the Existing Section 50(a)(6) Loan;

(B) the “Section 50(f)(2) Loan” does not include the advance of any additional funds other than:

(i) funds advanced to refinance a debt otherwise permitted to be secured by the homestead under the Texas Constitution; or,

(ii) actual costs and reserves required by the lender to close the Section 50(f)(2);

(C) the “Section 50(f)(2) 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 “Section 50(f)(2) Loan” is made/closed; and

(D) The disclosure below must be actually received from the Lender (i) no **later than the third business day after** the date the borrower(s) submitted their loan application to the Lender **and** (ii) at least **12 days before** the date the “Section 50(f)(2) Loan” **is closed (signed by the Borrowers)**. **The special timing rules for this notice differs from the upfront disclosures required by TRID in two material respects. First, the new Texas disclosure contemplates the disclosure will be actually delivered so that it is received by the Borrower(s) no later than the third business day after application and**

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therefore the Lender cannot rely on the document simply being placed in the mail within 3 business days of application, as lenders currently do for the TRID related disclosures. Secondly, “business day” is defined in the Texas Administrative Code to only exclude Sundays and federal legal holidays. Accordingly, Saturdays will need to be counted in the 3 business days for the new Texas notice, which may be referred to as the “Section (f)(2) Notice. The Section (f)(2) Notice reads as follows:

“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.”

Finally, the new amendment provides that an affidavit (see attached suggested form) executed by the owner or the owner’s spouse acknowledging that the requirements of Texas Constitution, Article XVI, Section 50(f)(2) have been met conclusively establishes that the

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requirements of Texas Constitution, Article XVI, Section 50(a)(4) have been met. Please note that the form of the Affidavit is not promulgated, so lenders may see different versions of the affidavit from different sources and those variations are permissible if the affidavit establishes the base requirements.

If we can answer questions regarding the new rules or assist you with your implementation efforts, please do not hesitate to reach out to us.

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