



The Finance Commission of Texas, and The Texas Credit Union Commission

Final Rules



Changes to Home Equity Lending in Texas – (S.J.R. 60)

1. **Eliminating the ban on home equity loans on homesteads with agricultural exemptions.**

- ▶ S.J.R. 60 repeals Article XVI, Section 50(a)(6)(I) of the Texas Constitution, the provision prohibiting home equity loans on property with an agricultural exemption other than dairy farms.
- ▶ As of January 1, 2018, lenders may close 50(a)(6) loans on properties with agricultural exemptions in place at the time of closing.

2. Reducing the 3% fee cap to a 2% fee cap with certain fees excluded from this 2% fee cap.

The following fees are excluded from the 2% fee cap:

- i. an appraisal performed by a third party appraiser,
- ii. a property survey 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. if a mortgagee title policy is not issued, a title examination report if its cost is less than the state base premium for a mortgagee title policy without endorsements.

3. Permitting, under certain conditions, a home equity to be refinanced as a non-home equity.

- Currently, a home equity loan made by the owner on the owner's current homestead may only be refinanced as another home equity loan or as a reverse mortgage (the "once an (a)(6), always an (a)(6)" rule).
- Provided that the following conditions are met, S.J.R. 60 allows the owner to refinance the owner's home equity loan as a non-home equity refinance loan under Article XVI, subsection 50(a)(4):
 - i. The refinance is not closed before the first anniversary of the date the home equity loan was closed;
 - ii. No additional funds are advanced other than funds advanced to refinance a debt under subsections 50(a)(1) through (a)(7) or actual costs and reserves required by the lender to refinance the debt;
 - iii. The principal amount of the refinance when added to the aggregate total of the outstanding principal balances of all valid encumbrances of record against the homestead does not exceed 80% of the homestead's fair market value on the date of the refinance; and
 - iv. The lender provides the owner the written notice prescribed by proposed subsection (f)(2)(D) of S.J.R. 60 on a separate document within three business days of application and at least twelve days before the refinance is closed.

(f) (2) Notice for Loan Converting from A6 to A4

"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."

4. Repealing the 50% ceiling on additional advances under Home Equity Lines of Credit (HELOCs).

- S.J.R. 60 eliminates subsection 50(t)(6) that prevents additional advances on a HELOC if the principal amount outstanding on the HELOC exceeds 50% of the fair market value of the homestead on the date the HELOC was established.
- The 80% fair market value cap under subsection (a)(6)(B) is not affected by the repeal of subsection 50(t)(6).

5. Updating who is authorized to make home equity loans.

- Subsection (a)(6)(P)(i) states that subsidiaries of the banks, savings and loan associations, savings banks, and credit unions doing business under the laws of Texas or of the United States also may make home equity loans.
- Subsection (a)(6)(P)(vi) replaces the term “broker” with “banker or mortgage company”, clarifying that licensed mortgage companies and registered mortgage bankers may make home equity loans.



**6. Amending The 12-day Notice Disclosure
Prescribed For 50(a)(6) Loans**

New 12-Day Notice for A6 Loans

"NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

"SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

- "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER 'S SPOUSE;
- "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;
- "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;
- "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;
- "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 2 PERCENT OF THE LOAN AMOUNT, EXCEPT FOR A FEE OR CHARGE FOR AN APPRAISAL PERFORMED BY A THIRD PARTY APPRAISER, A PROPERTY SURVEY PERFORMED BY A STATE REGISTERED OR LICENSED SURVEYOR, A STATE BASE PREMIUM FOR A MORTGAGEE POLICY OF TITLE INSURANCE WITH ENDORSEMENTS, OR A TITLE EXAMINATION REPORT;

Ten Things You Will Want to Know About The Final Rules

1. Additional Funds Language
2. (f)(2) notice must be “received” by borrower
3. Definition of “Submits the loan application”
4. No (f)(2) cure
5. Lenders required to provide (f)(2) and 50(g) notice
6. Estimated Value be used as fair market value
7. HELOCS Refinanced as non-home equity loans
8. Married Owners
9. Discussion conducted primarily in Spanish
10. Texas Tax Code Issue

1. Additional Funds Language

Proposed Rule

Advance of Additional Funds. To meet the condition in Section 50(f)(2)(B), the refinanced extension of credit may not include the advance of any additional funds other than funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of Section 50, or actual costs and reserves required by the lender to refinance the debt.

- (A) Actual costs must be identifiable, must be actually incurred by the lender, and must comply with any applicable limitations on costs.
- (B) Reserves (e.g., an escrow account for taxes and insurance) must be actually required by the lender to refinance the debt, and must comply with applicable law.

Final Rule

Advance of Additional Funds. To meet the condition in Section 50(f)(2)(B), the refinance may not include the advance of any additional funds other than funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of Section 50, or actual costs and reserves required by the lender to refinance the debt.

- (A) In order to be included in the funds advanced for the refinance, actual costs must be identifiable, must be actually required by the lender to refinance the debt, and must comply with any applicable limitations on costs.
- (B) In order to be included in the funds advanced for the refinance, reserves (e.g., an escrow account for taxes and insurance) must be actually required by the lender to refinance the debt, and must comply with applicable law.
- (C) Amounts that the owner pays before or at closing (e.g., through cash, check, or electronic funds transfer) are not advanced by the lender, and are not subject to the limitation on the advance of additional funds.



2. (f)(2) notice must be “received” by borrower
Proposed Rule

(f)(2) notice must be received by the borrower within 3 business days

Final Rule

- (D) The lender must deliver the refinance disclosure or place it in the mail no later than the third business day after the owner submits the loan application. The refinance disclosure must be delivered to the owner at least 12 days before the refinance is closed. If a lender mails the refinance disclosure to the owner, the lender must allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

3. Definition of “Submits the loan application” Proposed Rule

"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"

Final Rule

As adopted, §153.45(4)(B) explains that the application is submitted on the date the owner submits a loan application specifically for a refinance of a home equity loan to a non-home-equity loan. If the owner initially applies for another type of loan, then the application is considered submitted on the earliest of: (1) the date the owner modifies the application to specify that it is for a refinance of a home equity loan to a non-home-equity loan, or (2) the date the owner submits a new application specifically for a refinance of a home equity loan to a non-home-equity loan.



4. (f)(2) Cure Proposed Rule

No cure for (f)(2) violation

Final Rule

“Unlike Section 50(a)(6), section 50(f)(2) does not include any provision authorizing a cure of a violation”



5. Lenders to Provide (f)(2) and 50(g) notices



6. Use of Estimated Value



7. HELOCS Refinanced as non-home equity loans



8. Married Owners



9. Discussions Conducted primarily in Spanish



10. Texas Tax Code