

Date: December 14, 2017
To: All Texas Agents
From: FNTI Underwriting Staff
RE: Home Equity Loan Changes

Changes to Home Equity Loans Take Effect January 1, 2018

The voters adopted an amendment to the Texas Constitution, **effective January 1, 2018**, that makes several changes to the home equity lending laws.

The primary change was to eliminate the prohibition against making home equity loans secured by property that is under ag exemption. Previously, only dairymen had the ability to take out a home equity loan on property carrying an ag exemption.

We are left with several anomalies. The Texas Tax Code, Section 23.42(3)(a-1), provides that an individual is not entitled to have land designated for agricultural use if the land secures a home equity loan. It appears that this statute may prevent owners from being eligible for an ag exemption for taxation purposes if they already have a home equity loan in place.

With respect to the T-42 endorsement, paragraph 2(b) can be deleted on request since an ag exemption does not impose a risk to the validity and/or enforceability of a home equity loan created after January 1st.

One of the other changes to the home equity lending laws is that a home equity loan may be refinanced with a rate/term non-home equity loan. However, there are conditions: a refinance of debt secured by the homestead, any portion of which is a home equity extension of credit, may not be secured by a valid lien against the homestead unless either the refinance is another home equity loan or reverse mortgage OR all of the following conditions are met:

- The refinance is not closed before the first anniversary of the date the extension of credit was closed.
- The refinanced extension of credit does not include the advance of any additional funds other than funds advanced to refinance a debt described in subsections (a) (1) – (7) of the Constitution or actual costs and reserves required by the lender.
- The refinance is for a principal amount that, when added to the aggregate total of all outstanding indebtedness balances secured by an encumbrance against the homestead, does not exceed 80 percent of the FMV of the homestead on the date of the refinance.
- The lender provides the 12 day notice. The language for the Notice is set out Subsection (f) in the Constitutional amendment.

Note that the Notice will have to be given by the lender after the January 1st effective date, so a refinance would not be able to close until the 13th of January at the earliest.

If the borrower is getting cash out at the time of the refinance, the new loan will have to be a home equity loan.

This Underwriting Bulletin becomes a part of the principles and practices with which you are to comply under the terms of your Underwriting Agreement with First National Title Insurance Company. Should the content of this bulletin address the closing and escrow function, this information should be considered a directive and part of the principles and practices if non-compliance would result in liability to FNTI under either the insured closing service letter or policy of title insurance notwithstanding that the Underwriting Agreement does not include the closing and escrow functions of your agency.

To verify that all of the conditions have been met on a refinance of a home equity loan with a rate/term, we will require that the borrower(s) execute the **Verification of Non-Home Equity Loan Refinance form** attached hereto. New Subsection (f-1) added to the Texas Constitution provides that a lien securing a refinance of debt under Subsection (f)(2) is deemed to be a lien described by Subsection (a)(4) and an affidavit executed by the owner or the owner's spouse acknowledging that the requirements of the amended law have been met conclusively establishes that the requirements were satisfied for the refinance transaction.

The change in the law also included some new changes for lenders, including redefining what is included in the calculation of the cap on fees associated with a home equity loan. The cap was reduced by 1 percent and three fees will now be excluded in the calculation of the fee cap limit, including the charge for an appraisal performed by a third party appraiser, the charge for a survey, and title insurance cost for a lender policy with endorsements.

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Verification for Non-Home Equity Loan Refinance

STATE OF TEXAS

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared the undersigned Affiant(s), who is/are the owner(s) of the homestead property that is the subject of the refinance transaction pending under GF No. _____, and who being by me duly sworn, on his/her/their oath(s) state the following information to be true, accurate, and complete:

Affiants hereby verify and acknowledge that they have fully and completely met all of the following conditions per the Texas Constitution:

1. The refinance is not closed before the first anniversary of the date the extension of credit was closed.
2. The refinanced extension of credit does not include the advance of any additional funds other than funds advanced to refinance a debt described by Subsections (a)(1) – (a)(7) of Section 50, Article XVI of the Texas Constitution or actual costs and reserves required by the lender to refinance the debt.
3. 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.
4. The lender provided the owner(s) with the written notice prescribed in Subsection (f) of Section 50, Article XVI of the Texas Constitution 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.
5. The Affiants acknowledge that the refinance complies with the requirements of Subsection (f)(2) of Section 50, Article XVI of the Texas Constitution and provide this Affidavit to verify such compliance.

STATE OF TEXAS

COUNTY OF _____

SWORN TO AND SUBSCRIBED before me, the undersigned notary, by _____ on this the ____ day of _____, 201__.

Notary Public – State of Texas