

Frequently Asked Questions Regarding Texas Home Equity Closed End Loans

1) **Question:** Can I do a Texas home equity loan in a trust's name?

Answer: Yes, if a "qualified trust" – only certain qualified trusts as defined under Sec. 41.0021 of the Texas Property Code are permitted to own a homestead.

2) **Question:** Do I need to wait 12 days from date of conveyance (deed)?

Answer: NO

3) **Question:** Can I make a Texas home equity loan to pay off a 1st lien rate term loan and a 2nd lien Texas home equity loan?

Answer: Yes, after January 1, 2018 you have the option of refinancing these liens with a new home equity loan, a reverse mortgage, or a rate/term refinance that complies with the requirements of Texas Constitution, Article XVI, Section 50(f)(2) – but, one year must have expired from the date of the 2nd lien Texas home equity loan. If the refinance is done via a new home equity loan, both liens must be paid off. Only one Texas home equity loan at a time is allowed.

4) **Question:** If our borrower is obtaining the property thru a divorce decree and the decree provides that the property will be conveyed by owelty deed to our borrower, can I do a Texas home equity loan instead of a rate term refinance?

Answer: Yes – however, an owelty deed is not needed. Only a cash deed is required.

5) **Question:** Do I need to provide the 12 day home equity disclosure if the loan is considered to be a Fannie Mae "cash out" transaction even though I am making a "rate term" refi loan, not a Texas home equity loan?

Answer: No – Although Fannie views a refi which includes the payoff of a home improvement loan as not being a limited cash out, that does not make it a Texas home equity loan that requires the Texas home equity notice or other Texas home equity requirements. If your rate/term refinance loan is a refinance of an existing home equity loan under Texas Const., Art. XVI, Section 50(f)(2), however, then you must provide the 50(f)(2) 12-day notice, which is a different notice than the home equity 12-day notice.

6) **Question:** What are the official names of the 12-day home equity disclosure, and the 12-day disclosure for a 50(f)(2) rate/term refinance of a home equity loan?

Answer: The 12-day notice for a home equity loan is called the "Notice Concerning Extensions of Credit."

The 12-day notice for a 50(f)(2) refinance of an existing home equity loan is called the "Notice Concerning Refinance of Existing Home Equity Loan to Non-Home Equity Loan under Section 50(f)(2), Article XVI, Texas Constitution."

7) **Question:** If my applicant does not speak English, must I provide the 12 day disclosure "Notice Concerning Extensions of Credit", or, if applicable, the 50(f)(2) 12-day disclosure for a rate/term refinance in their language?

Answer: Yes – their language and in English at time of closing. P&P currently has the English and Spanish versions, however if the loan applicants speak a different language you must obtain this disclosure in their language before closing.

8) **Question:** Can a borrower assume a Texas home equity loan, if the lender approves the new borrower and releases the previous borrower of liability?

Answer: Not per the Fannie/Freddie docs, but not prohibited by law if no longer that borrower's homestead. See 153.10.

9) **Question:** Can you modify a Texas home equity loan? And if yes, what is the criterion?

Answer: Yes – However, you can only modify certain terms. You cannot increase the loan balance. A new application is not required. The one year waiting period is not required. Must use P & P Home Equity Modification Agreement and TIL disclosure. See 153.14.

10) **Question:** Can a lender make a home improvement 2nd lien if there is an existing 1st lien Texas home equity loan and the two loans combined would exceed 80% LTV?

Answer: Yes – you can do a home improvement loan after (later in time) to a home equity loan and you do not have to consider the aggregate debt, even if there is an existing 1st or 2nd lien home equity loan, even if the LTV exceeds 100%. However, if a 2nd lien home improvement loan exists, and you are creating a new 3rd lien Texas home equity loan, then you must consider the 80% LTV. If you are making a 1st lien rate term refi, and a 2nd lien home improvement loan exists, then it has to be underwritten as a cash out transaction for pricing purposes, but the documentation is still drawn as a rate term refi.

DO NOT CONFUSE “TEXAS HOME EQUITY LOANS” AND CASH OUT TRANSACTIONS.

TEXAS HOME EQUITY LOAN – only on Texas Homestead – Primary Residence

CASH OUT – on investment or second homes. Please do not call them “Texas Cash Outs” because most title companies will think you are talking about Texas home equity loans. Simply call them “Cash Out Investment” or “Cash Out Second Home” or “Texas Home Equity Cash Out.”

11) **Question:** If my borrower is financing the payoff of his existing lien, interest and closing on the property and is not getting any additional cash out, is this a Texas home equity cash out transaction?

Answer: Maybe – After January 1, 2018, an existing home equity loan may be refinanced with: (a) another home equity loan; (b) a reverse mortgage; or (c) a rate/term refinance that meets the requirements of Texas Const., Art. XVI, Section 50(f)(2). If the borrower has applied for a Texas home equity loan, you must provide documentation for a Texas home equity loan, even though the borrower does not receive cash back.

12) **Question:** If any of the liens on the title commitment on Schedule C are being paid off and one of them is a Texas home equity loan can I refinance with a rate term refi loan?

Answer: Yes – after January 1, 2018, a rate/term refinance of an existing home equity loan is allowed AS LONG AS THE REFINANCE MEETS ALL THE REQUIREMENTS OF TEXAS CONSTITUTION, ARTICLE XVI, SECTION 50(f)(2).

13) **Question:** If a lender requires a fee that is not listed on the P & P Texas Home Equity allowed fees and charges list, can I charge the fee?

Answer: Yes – if the fee is not prohibited by law, is required by lender and is within the 2% cap. (2nd lien loans – escrow fee and courier fees are allowed if interest rate is not 10% or more.) The amendment defines the equity loan as a loan that “does not require the owner...to pay...fees...that exceed...2%”. The use of the word “require” is determinative in evaluating fee that are subject to the two percent limitation. Charges that are not imposed by the lender, but that are optional, are not fees subject to the two percent fee limit. i.e. a borrower who chooses to pay premiums for certain insurance coverage’s, but is not required to acquire the insurance coverage as a condition to the extension of credit, does not subject those premiums to the limitation. Credit life and credit accident and health insurance coverages, if elected by the owner, are not included within the 2% limitation. However, if the credit life and credit accident and health insurance were required by the lender then these charges would be included in the 2% limitation.

The following fees are exempt from the 2% calculation: (a) an appraisal performed by a third-party appraiser; (b) a property survey performed by a state-licensed or registered surveyor; (c) the state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law; or (d) a title examination report if it’s cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

14) **Question:** Does the borrower have to be in title (by deed) 12 days before he can close on a Texas Home Equity Loan?

Answer: Depends on reason for deed, i.e. contract for Deed, Trust, ex – spouse, etc.

15) **Question:** If a borrower does not live in the homestead and leases it out, and does not own any other property in Texas, can they obtain a Texas home equity loan?

Answer: Yes – They must do a Texas home equity, but, it is not saleable to Fannie/Freddie.

16) **Question:** If the lender is making a 1st lien Texas home equity loan and a 2nd lien exists, do we need a subordination agreement?

Answer: Probably – Must review 2nd lien deed of trust to find out if it remains subordinate in the event of renewal and extension or modification of 1st lien. If it doesn’t, a subordination agreement will be needed. P & P will prepare the form if needed.

17) **Question:** Why should I review Schedule C on a rate term refinance or Texas home equity loan?

Answer: To make certain that the existing lien is not a lot less than the new lien in order to avoid cash out if your loan is a rate/term refinance. If you are making a first lien home equity loan and Schedule C reflects a 1st lien rate term and a 2nd lien home equity, both loans must be paid off. One home equity loan at a time.

18) **Question:** Can you use a POA on a home equity loan if the title company is willing to insure?

Answer: Yes, if the title company is willing to insure and the investor is willing to take the loan if a POA is used. POA must be executed at the office of the lender, title company or an attorney. Most Texas home equity loans closed via POA WILL NOT be saleable on the secondary market. See 153.15.

19) **Question:** Where must a Texas home equity loan close?

Answer: The law provides that a Texas home equity loan “is closed only at the office of the lender, an attorney at law, or a title company.” Some title companies have different company

policies regarding this i.e. if this is a mail out to another title company. Some title companies require it to be their affiliate. See 153.15.

20) **Question:** Can we close a Texas home equity loan if the property is a duplex?

Answer: Fannie only buys Texas home equity loans for single family properties. Other investors may purchase if the title company insures without exception.

21) **Question:** May you have a non-borrowing spouse in a Texas home equity loan?

Answer: Yes.

22) **Question:** When does the lender request the form “Acknowledgment of Voluntary Repayment of Existing Debt”?

Answer: This form is used when requested by lender when the borrower is paying off (of his own free will) unsecured debt to the lender making the home equity loan. See 153.18.

23) **Question:** If the lender charges a discount fee, do I need to provide the Discount Point Acknowledgement form?

Answer: Yes, if true discount points are charged. See 153.5.

24) **Question:** If a lender is making a 1st lien rate term refinance and is adding in closing costs, but a 2nd lien Texas home equity exists (which is getting subordinated or it is staying subordinated), will a title company insure this transaction?

Answer: Most title companies will not insure this type of transaction, because the combined debt might exceed 80% LTV. Always check with your title company if you see a 2nd lien Texas home equity loan that is not going to be paid off at closing.

25) **Question:** Can you make a Texas home equity loan on a leasehold estate instead of fee simple title?

Answer: Yes- but P&P must review the lease for Fannie or Freddie requirements.

26) **Question:** Can you make a Texas home equity loan if the property has an agriculture tax exemption?

Answer: Yes – After January 1, 2018 the previous prohibition on a home equity loan secured by homestead property with an agricultural tax exemption is repealed.

27) **Question:** Can you have a balloon feature in a Texas home equity loan?

Answer: No, payments must be in substantially equal periodic payments. The periodic payment can be monthly, semimonthly or bi-weekly. Other types of loan not allowed are – No buydowns, no teasers, no interest only. YOU CAN CLOSE FIXED OR VARIABLE RATE LOANS. See 153.11.

28) **Question:** Can you do a Home equity loan if the property is subject to a contract for deed?

Answer: Yes – Title must be conveyed by a deed to the owners. 12 day waiting period cannot start until borrower(s) sign notice and deed is delivered.

29) **Question:** Do all parties in title have to sign the 12 day disclosure?

Answer: Yes. See 153.51

30) **Question:** What is the home equity rule regarding number of acres allowed for a home equity loan?

Answer: Maximum 100 acres if single and 200 acres if married for rural homestead, 10 acre

maximum in one or more contiguous parcels for an urban homestead.

31) **Question:** Can you take a loan application for a home equity loan, if they already have a home equity loan and 1 year has not passed?

Answer: Yes – Must be one year between closings. See 153.14

32) **Question:** Can there be a co-signer?

Answer: Must be owner and/or spouse of owner. Co-signers/guarantors not allowed

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