

TEXAS 50(a)(6) HOME EQUITY vs. 50(f)(2) REFINANCE Q&A

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Q: What does it mean that a Texas 50(a)(6) home equity loan may only be foreclosed via a “judicial foreclosure”, whereas a 50(f)(2) refinance may be foreclosed via “non-judicial foreclosure”?

A: Many liens against the homestead in Texas, including a 50(f)(2) refinance lien, may be foreclosed without the lender first obtaining a court order. This means the deed of trust signed at closing by each owner of the property and, if applicable, each owner’s spouse includes a “power of sale” provision that allows the lender to commence notice and foreclosure proceedings in the event of default without first having to obtain a court’s permission to foreclose.

Some liens against a Texas homestead, however, including a 50(a)(6) home equity lien, may only be foreclosed if the lender first obtains a court order granting the right to foreclose the lien. This means that prior to commencing foreclosure proceedings, the lender must first petition the appropriate State District Court for an order granting permission to foreclose the home equity lien, using a process set forth in the Texas Rules of Civil Procedure.

Q: What does it mean that a Texas 50(a)(6) home equity loan is a “non-recourse” loan, whereas a 50(f)(2) refinance is a “recourse” loan?

A: This generally means that a Texas home equity loan, unlike most other types of loans, is without recourse for personal liability against each owner of the homestead and each owner’s spouse, unless the owner or spouse obtained the loan by actual fraud.

While the lender on a 50(a)(6) home equity loan may foreclose on the collateral homestead in the event of default after going through the required process, the lender may not sue the homestead owner or owner’s spouse for a deficiency or personal liability if, for example, the proceeds from the foreclosure sale are insufficient to satisfy the loan. If the homestead owner and/or the owner’s spouse committed actual fraud to obtain the home equity loan, however, then the loan is with recourse for personal liability against each of them.

A 50(f)(2) refinance loan, however, like most other loans in Texas, is with recourse for personal liability. In this situation, a lender may sue the homestead owner or owner’s spouse for a deficiency or personal liability if, for example, the proceeds from a foreclosure sale following default are insufficient to satisfy the loan.

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