



# Texas Home Equity Section 50(a)(6)

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Plaza's Underwriting Guidelines are designed to provide guidance as a standard to underwriting loans. There are cases where specific loan programs have more restrictive or inclusive guidelines, in these cases the Program Guidelines should be followed.

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## Section 1 Overview / General

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Article XVI Section 50(a)(6) of the Texas Constitution permits homeowners to borrow against the equity in their primary residences. The Texas Constitution, however, imposes substantial restrictions under which (a)(6) loans may be originated and closed. If any of the requirements or guidelines are not followed, then the lien may be invalid.

Article XVI, Section 50(e) of the Texas Constitution provides that if a refinance loan secured by homestead property includes the advance of more money than is necessary to pay off the existing debt, the lien is not valid unless (i) the loan is treated as a Texas Equity Loan (ii) the additional funds are for "reasonable costs necessary to refinance" the debt being paid off, or (iii) the additional funds are for another purpose authorized by the Constitution.

A first mortgage rate & term refinance originated to pay off an existing Texas Equity Loan regardless of whether the borrower receives any cash-out of the refinance proceeds, is the "Once Texas Equity Loan always a Texas Equity Loan" rule. Once a borrower obtains a first or second lien Texas Equity Loan, subsequent refinancing of the homestead property is considered a Texas Equity Loan subject to all the requirements of Section 50(a)(6) of the Texas Constitution if any of the proceeds are used to pay off the existing Texas Equity Loan even if the borrower does not receive any cash from the transaction.

Exception: Subsection 50(a)(4) allows the refinance of a home equity loan to a non-home equity loan provided; 1) the refinance is not closed before the first anniversary of the date the home equity loan was closed; 2) No additional funds are advanced other than funds to refinance the existing home equity lien and actual closing costs; 3) the LTV does not exceed 80%; and the required (f)(2) Notice is provided within 3 days of the application and at least 12 days has passed before the refinance is closed. See section 18 below.

Plaza Home Mortgage, Inc., (Plaza) will only approve Texas Section 50(a)(6) first lien cash-out refinance loans that are made in accordance with Texas law and the Interpretive Authority adopted by the Texas Finance Commission and Credit Union Commission.

Loans originated and closed as Texas Section 50(a)(6) loans must strictly adhere to all requirements outlined in this underwriting guideline to be eligible.

**Note:** *Texas Section 50(a)(6) does not apply to reverse mortgages.*

## Section 2 Description / Summary

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The following are considered Texas Section 50(a)(6) loans:

- Loans using proceeds to pay off an existing (a)(6) loan unless 50 (a)(4) restrictions are followed see section 18 below.
- Loans using proceeds to pay off federal tax debt liens.
- Loans using proceeds to pay property tax liens on the property securing the new loan.
- Loans with any cash back to the borrowers.

The following are **NOT** considered Texas Section 50(a)(6) loans:

- Loans using proceeds to pay current taxes due on the property securing the loan.
- Loans using proceeds to buy out equity pursuant to a court order or agreement of the parties (usually applies to a divorce settlement).
- Loan proceeds used to pay a prepayment penalty assessed on an existing non-(a)(6) loan, and the prepayment is included in the payoff amount. The new loan must have a new title policy issued without exception to the financing of the prepayment fee.
  - If the title company requires them to be paid, loans that include the payment of HOA dues.

**Note:** Loan proceeds to pay off legitimate purchase money (a)(6) home improvement loans are acceptable to originate as a rate & term refinance.

### **Section 3      Texas (a)(6) Restrictions**

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Texas (a)(6) loans are subject to the following restrictions:

- An (a)(6) loan may not be closed sooner than 12 months after the closing of the previous (a)(6) loan.
- There can be only one (a)(6) loan secured by the property at one time.
- The (a)(6) loan may not be identified as a rate & term refinance.
- The (a)(6) loan may not be used to acquire the property or to finance construction.

### **Section 4      Refinances of (a)(6) Loans /(a)(6) Requirements**

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Even if no cash is taken from the transaction, a refinance of an (a)(6) loan may not be identified as a rate & term refinance. Any refinance of an (a)(6) loan must be classified as a distinct and new origination of an (a)(6) loan.

- The severe restrictions imposed by Section 50(a)(6) Article XVI of the Texas Constitution require that the loan be originated and closed subject to all the requirements outlined within this section.
- Full/Alternative documentation is required.
- Exception: A refinance meeting all 50 (a)(4) restrictions may refinance a seasoned 50(a)(6) loan.

### **Section 5      Use of Proceeds and Payoff of Debts**

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The Texas Constitution prohibits a lender from requiring that the proceeds from an (a)(6) loan be used to pay off any debts to that lender that are not secured by the homestead.

- If the payoff of debts to other lenders/creditors is required to qualify the borrower, then those payoffs must be disbursed directly to the creditor by the title company.
- Debts that are elected to be paid off by the borrower but are not required to be paid off in order to qualify the borrower, may be disbursed directly to the borrower.
- A loan used for consolidating debt must be originated as an (a)(6) loan even if the proceeds at closing are paid directly to the creditors and the borrower personally receives no cash from the transaction.
- The payoff of purchase money loan or a previous no cash-out refinance.
- Payment of non-delinquent liens for property taxes on the subject property securing the new loan.

### **Section 6      Property Type/Occupancy**

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- 1-unit SFR, condo or PUD (2-4 unit properties are ineligible)
- Owner-occupied primary residence
- Must be borrower's Texas homestead
- Manufactured Homes Note: Max 65% LTV and for FHLMC loans, the loan term is limited to 20-years.

## Section 7 Documentation Requirements

(a)(6) Urban and Rural Homestead Guidelines Full / Alternative documentation is required.

Acreage	Urban Homestead	Rural Homestead
	The acreage securing the loan may not exceed 10 acres.	The acreage may exceed 10 acres. However, the lot size must be typical and common with highest and best use as residential. In no case may the lot size exceed 20 acres.
Property Location and Services	<p>The property must be located:</p> <ul style="list-style-type: none"><li>• Within municipal boundaries, <b>OR</b></li><li>• Its extraterritorial jurisdiction, <b>OR</b></li><li>• A platted subdivision <b>AND</b> be served by police protection, paid or volunteer fire protection and at least three (3) of the following services provided by a municipality or under contract to a municipality:<ul style="list-style-type: none"><li>○ Electric</li><li>○ Natural gas</li><li>○ Sewer</li><li>○ Storm sewer <b>AND</b></li><li>○ Water</li></ul></li></ul>	<p>The property is not located within municipal boundaries or its extraterritorial jurisdiction, or if the property is located in one of those types of areas:</p> <ul style="list-style-type: none"><li>• It is not served by police protection or paid or volunteer fire protection provided by the municipality or under contract to a municipality, <b>AND</b></li><li>• The municipality provides directly or under contract less than three (3) of the following services:<ul style="list-style-type: none"><li>○ Electric</li><li>○ Natural gas</li><li>○ Sewer</li><li>○ Storm sewer <b>AND</b></li><li>○ Water</li></ul></li></ul>

## Section 8 Texas (a)(6) Eligible Borrowers

Eligible Borrowers	Borrower Type	Requirement
Individuals	US Citizens	Allowed with a valid Social Security number
Individuals	Permanent Resident Alien	Allowed under the same conditions as a US Citizen
Individuals	Non-Permanent Resident Alien	Allowed under the same conditions as a US Citizen
Trustee's & Individual	InterVivos Revocable Trusts	<p>Allowed under same conditions as US Citizen and subject to specific program and trust guidelines.</p> <p>Trust must meet "qualifying trust" under Texas law for purposes of owning residential property that qualifies for the homestead exemption.</p>

For additional information on borrower requirements refer to the residency requirements in Plaza's Conventional Underwriting Guidelines.

## Section 9 Ineligible Borrowers

The following borrower types are not allowed:

- Non-occupant co-borrowers

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- Co-signors and guarantors
- Foreign nationals
- Corporations and partnerships, including family partnerships
- Non-titled borrowers

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## **Section 10 (a)(6) Fee Restrictions**

Under Texas law, there is a 2% fee restriction on closing costs that can be charged to a borrower in order to obtain a Texas Section 50(a)(6) loan. Included in this calculation are all closing costs, paid directly or indirectly by the borrower:

- Fees must be reasonable and not paid to an employee of the Client.
- All fees paid for by the borrowers which include: fees paid outside of closing (credit, etc.), fees related to the maintenance of the loans (i.e., tax service fee, etc.), and fees paid to third parties (, and fees paid to lender. Lender credits to the borrower for the interest rate chosen may be applied towards the closing costs included in the 2% calculation. Closing Costs paid with Lender Credit must be reflected in "Paid By Others" column of the Closing Disclosure.

Exclude from 2% limitation:

- Bona fide discount points, per diem interest and prepaid interest
  - If discount points were used to buy down the interest rate, a fully executed Texas Home Equity Discount Point Acknowledgement Disclosure must be in the loan file.
- Fees for an appraisal performed by a third party appraiser;
- Fees for a property survey by a state registered or licensed surveyor;
- Title insurance premiums;
- Fees for a title examination report if the cost is less than the title insurance premium.

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## **Section 11 (a)(6) Appraisal Requirements**

A new full appraisal is required, including both interior and exterior inspections, to determine current value on Form 1004, Uniform Residential Appraisal Report, or Form 1073, Individual Condominium Unit Appraisal Report, regardless of AUS recommendation.

Certain loan programs may require more than one appraisal or additional appraisal reviews. Refer to the underlying loan program. The more restrictive of these, or the loan program requirements, apply.

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## **Section 12 (a)(6) Title Insurance**

The title insurance coverage and policy must adhere to the following requirements:

- Title insurance coverage must be the T-2 Mortgagee Policy of Title Insurance and include both of the following endorsements, which must also expressly show on the Closing Disclosure.
  - T-42 Equity Loan Mortgage Endorsement
  - T-42.1 Supplemental Coverage Equity Loan Mortgage Endorsement
- There may be no exceptions to, or deletions from the coverage.
- Paragraph 1(a) of the Supplemental Coverage Equity Loan Mortgage Endorsement must be part of the coverage, which means that the loan must be closed at an office of the title company issuing the policy.

- If the prior T-2 was issued within the last 7 years, verify that the title company charges the lower reissue rate for the T-2.

Underwriters may rely on the federal Notice of Right to Cancel form to meet this requirement. However, to be eligible for purchase, loans must comply with Section 50(a)(6)(Q)(viii) of the Texas Constitution and Chapter 153, Home Equity Lending, Section 153.25 of the Texas Home Equity Interpretive Authority.

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## Section 13 (a)(6) Closing Date Requirements

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A Texas (a)(6) loan may not close until:

- 12 days after the borrower submits the loan application or all borrowers sign the 12-day notice, whichever is later.
- 1 day after the borrowers receives a copy of the Initial Closing Disclosure.
- After the 1-year anniversary of the closing of an existing Texas (a)(6) loan.

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## Section 14 Eligible Loan Programs

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A Texas 50(a)(6) may only close as a Conventional loan. Refer to additional program guidelines for eligibility.

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## Section 15 Ineligible Loan Programs

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- Affordable Housing Programs
- ARM loans with LP as the AUS (AUS must be DU for all ARM loans)
- FHA loans are considered recourse loans which are prohibited. Additionally, the FHA MIP would be subject to the **2% fee cap**, which would most likely exceed the total fees allowed.
- Interest-Only
- Loans with land contracts
- VA loans are considered recourse loans which are prohibited. Additionally, the VA Guaranty is considered "additional collateral" which is also prohibited.

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## Section 16 Additional (a)(6) Guidelines

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**ARM Loans:** Arm loans are only eligible for DU, LP is ineligible.

**Assumability:** Not assumable.

**Conveyed Property:** Any consumer initiated conveyances of the property adding new owners must be completed at least 12 days before closing and the new owners must receive the "Notice Concerning Extensions of Credit" at least 12 days before closing.

**DU Loans Cash-out / Limited Cash out:** Special Feature Code 003 should only be used if this transaction results in actual "cash out" to consumer. Special Feature Code 007 should be used to identify this transaction is a "limited cash-out refinance".

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**DU Loans TX 50(a)(6):** Special Feature Code 304 always applies to identify TX 50(a)(6) loans. ARM loans are only eligible for DU not LP.

**DU/LP/Scorecard Data Entry:** Only enter loan as cash-out if the borrower is truly getting cash-out on the subject transaction.

**Escrow Holdbacks:** Not allowed.

**Energy Efficient Mortgages:** Not allowed.

**Existing Second Lien:** New secondary financing on first-lien Texas (a)(6) loans is not allowed. Existing non-(a)(6) secondary financing (for example, an existing (a)(5) home improvement loan) is allowed if subordinated to the new (a)(6) mortgage. Additionally, the loan must meet the 80% CLTV requirement. (Subordination agreement not required).

**Identification of Spouses:** It is the responsibility of the Underwriter to ascertain all the owners of the property, and the owners' spouses, including common-law spouses.

**Individuals on Note:** Only individuals/trusts on the title may be on the Note. Non-titled spouses may not be on the Note.

**Mortgage Insurance:** Not required.

**Temporary Buydowns:** Not allowed.

**Prepayment Penalty Option:** Not allowed.

**Project Warranty:** Standard Fannie Mae guidelines for project warranty apply.

## Section 17 Required Documents

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- Each owner of the property and each spouse of an owner must sign the Texas Home Equity Affidavit and Agreement.
- Provided at closing
- Notice Concerning Extension of Credit

A Texas Equity Loan may not be closed before the 12th calendar day after the later of (i) the date that the owner submits a loan application to a lender, or (ii) the date that each owner signs the Notice Concerning Extensions of Credit disclosure. Each loan file must contain the Notice Concerning Extensions of Credit disclosure that is signed by each owner within the required time frame. Plaza will not accept an acknowledgment signed by the owners at closing stating that they received the Notice Concerning Extensions of Credit disclosure at least 12 days prior to closing.

- This disclosure is required to be sent to the borrower prior to closing. The 12 days start with either the borrower(s) signature on the disclosure or the borrower(s) electronic acknowledgement.  
**Note:** If the borrowers sign the application (1003) after the Notice Concerning Extension of Credit has been signed, then the 12 days begin based on the date of the 1003.
- Acknowledgment of Fair Market value of Homestead Property

The owners and the lender must sign a written acknowledgment as to the fair market value of the homestead on the date the Texas Equity Loan is made. A Texas Equity Loan is not eligible for sale to Plaza if the lender fails to sign the Acknowledgment of Fair Market value either prior to closing or at closing.

- Provided at closing
- An appraisal must be attached to the written acknowledgment

A Mortgagee Policy of Title Insurance (form T-2) is required. The policy must be supplemented by the following endorsements.

- Equity Loan Mortgage Endorsement (form T-42), which must include the optional coverage provided by Paragraph 2(f).
- Supplemental Coverage Equity Loan Mortgage Endorsement (Form T-42.1) deletions to the endorsements are not permitted.

**Survey:** A survey is required in Texas. Additionally, If the borrower or co-borrower owns any adjacent land, the loan file must contain a survey that shows the homestead property is a separate parcel that does not exceed the acreage permitted under the Texas Constitution.

Each property owner and each owner's spouse are required to certify, at closing, that he or she received the required copies. The certification could be on each document that the borrower signs or on a separate certification.

Power of Attorney Loans closing with the use of a Power of Attorney are not eligible for financing.

## **Section 18    Texas 50 (a)(4)**

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A new provision has been added to allow a home equity loan [Texas 50(a)(6)] to be refinanced by a no-cash out refinance transaction [Texas 50(a)(4)]. The following criteria must be met:

- The loan being refinanced [Texas (a)(6)] must be seasoned at least 12 months
- There is no cash out
- The LTV/CLTV can not exceed 80% at the time of closing and
- The borrower(s) affirmatively states that they are aware that they are refinancing their loan from a home equity loan [Texas (a)(6)] to a no cash-out refinance loan [Texas (a)(4)] and acknowledges such on an affidavit. The affidavit must be provided to the borrower(s) no later than 3 business days after the date the application is received AND at least 12 days before loan closing. Affidavit refers to the "Notice of Refinance of a Texas Home Equity Loan to Non-Home Equity Loan under section (f)(2) of Article XVI, Section 50 of the Texas Constitution."