

WFG Underwriting Bulletin



To: All Texas Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: January 4, 2018
Bulletin No: TX 2018-01
Subject: 2017 Texas Constitutional Amendments and Home Equity Lending

The constitutional amendments passed by voters in November will take effect on January 1, 2018. The amendments include some important changes to the rules governing home equity lending in Texas.

1. From the time home equity lending was legalized in Texas, the constitution has prohibited placing a home equity lien on land under ag valuation. As of January 1st that prohibition will be lifted. On any HEL where the note and deed of trust are signed on or after January 1, 2018, ag value land may serve as collateral for the loan.

NOTE: This does not change P-20D which controls giving rollback coverage to lenders. P-20D prohibits giving rollback coverage to a lender if the property is under ag valuation at closing unless all rollbacks are triggered and paid.

2. The T-42 Endorsement, which has not been revised, provides lender coverage against a claim that the HEL is invalid because:

“(b) The land being homestead property designated for agricultural use as provided by statutes governing property tax, as set forth in Subsection (a)(6)(I) of Section 50, Article XVI, Texas Constitution.”

Since the coverage of T-42(2)(b) will be irrelevant after January 1, 2018, agents may, at their option either leave subsection (2)(b) intact

on the T-42 Endorsement or remove it by lining through it. If you use the checkbox method and do not provide the full endorsement form to the lender you may complete the blank following the checkbox for the T-42 as follows: "The following subparagraph(s) of this endorsement are deleted: (2)(b)." We anticipate that lenders will differ as to which alternative they prefer.

3. Another change in home equity lending effective January 1st is that an existing HEL may now be "refinanced" by use of a conventional rate-term refinance. This will mark the end of the "once home equity - always home equity" rule. Section 50(f) of the constitution has been amended to read as follows:

"Sect. 50(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless either:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section; or

(2) all of the following conditions are met:

(A) the refinance is not closed before the first anniversary of the date the extension of credit was closed;

Note: WFG requires that the date the prior home equity deed of trust was filed of record be used as the "closing date" of the prior loan. This creates certainty and removes ambiguity. You can close a refi one year and one day after the existing deed of trust was filed.

(B) the refinanced extension of credit does not include the advance of any additional funds other than:

(i) funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of this section; or

(ii) actual costs and reserves required by the lender to refinance the debt;

(C) 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; and

(D) 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:" (text of disclosure omitted)

4. WFG will require the attached “Affidavit Regarding Conventional Refinance of a Home Equity Lien” be signed at or before closing. Because the Affidavit establishes compliance with constitutional requirements it should be recorded.
5. If the lender package contains an affidavit in substantially the same form as the one attached, agents can use the lender supplied form instead of our form.
6. A conventional refi of a HEL is not a new HEL. The many rules governing HEL closings do not apply to these refinances. For example,
 - ✓ The HEL restrictions regarding where the closing can occur **do not apply** to these files;
 - ✓ The HEL restrictions regarding use of powers of attorney **do not apply** to these files; and
 - ✓ Neither the T-42 nor the T-42.1 endorsements should be issued on these files.

NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company’s Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.