

Section 2.01c – Texas Cash-Out Refinance First Mortgages [Texas Section 50(a)(6) Mortgages]

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Overview

Product Summary

A Texas Section 50(a)(6) mortgage is a loan originated under the provisions of Article XVI, Section 50(a)(6), of the Texas Constitution, which allow a borrower to take equity out of a homestead property under certain conditions.

The lender must meet the eligibility criteria specified in the Texas Constitution Section 50(a)(6).

All Texas Section 50(a)(6) Cash-Out Refinance first mortgage transactions must comply with the more restrictive of [Section 2.01: Agency Loan Programs](#) guidelines or the Texas Section 50(a)(6) Cash-Out Refinance guidelines, as outlined in this product description. [Section 2.01: Agency Loan Programs](#) guidelines apply for any topic not addressed in this product description.

Related Bulletins

General

Related bulletins are provided below in PDF format. To view the list of published bulletins, select the applicable year below.

- [2018](#)
 - [2017](#)
 - [2016](#)
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Loan Origination and Compliance

General

By sale of a Texas Section 50(a)(6) mortgage loan to SunTrust, lenders represent and warrant that the mortgage loan complies with the Article XVI, Section 50(a)(6), of the Texas Constitution and all applicable requirements of this document.

- The borrower's first payment must be due no later than two months after closing.
 - The lender must provide the title company with a detailed closing instruction letter, and require an acknowledgment of its receipt.
 - The closing instructions must require the title company to conduct the closing in a way that ensures compliance with all applicable provisions of Section 50(a)(6) of the Texas Constitution. For purposes of the compliance with the acknowledgment of the "fair market" value of the homestead property requirement, the "fair market value" must be based on an appraisal and the appraisal must be attached to the written acknowledgment.
 - The proceeds from a Texas Section 50(a)(6) loan must not be used to acquire or improve the homestead if a loan for that purpose could have been made under a different provision of the Texas Constitution. SunTrust has no other restrictions on the use of the loan proceeds.
 - If the new loan is a Texas Section 50(a) (6) refinance transaction originated to cure a failure in the original loan to comply with Texas Constitution Section 50(a)(6), then the new loan is eligible for sale to SunTrust provided that it complies in all respects with SunTrust's requirements.
 - DU does not contain the specific eligibility rules needed to determine eligibility of Texas Section 50(a)(6) loans under Texas Constitution Section 50(a)(6) or this document. Lenders must determine whether refinance loans secured by properties in Texas are eligible for sale to SunTrust, and should be aware that even though a loan may receive an "Eligible" recommendation, the loan may not comply with Texas Constitution Section 50(a)(6) or be eligible for delivery according to Texas Constitution Section 50(a)(6) or this document.
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Lender Certification

General

By sale of a Texas Section 50(a)(6) mortgage loan to SunTrust, the lender certifies that with respect to all of the Texas Section 50(a)(6) loans delivered to SunTrust:

- All Texas Section 50(a)(6) loans were (or will be) originated pursuant to written processes and procedures that comply with the provisions of the Texas Constitution applicable to mortgage loans authorized by Section 50(a)(6), Article XVI of the Texas Constitution, as amended from time to time.
 - The lender has in place a specific process for the receipt, handling, and monitoring of notices from borrowers that lender (or mortgage originator, if lender is the servicer but not the mortgage originator) failed to comply with the provisions of the law applicable to Texas Section 50(a)(6) loans. Such process must be adequate to ensure that the lender will correct the failure to comply by one of the authorized means no later than the 60th day after the date the lender is notified of the failure to comply by the borrower.
 - An attorney familiar with the provisions of Section 50(a)(6), Article XVI of the Texas Constitution was consulted (or will be consulted prior to origination of the Texas Section 50(a)(6) loans) in connection with the development and implementation of the processes and procedures used for the origination of the Texas Section 50(a)(6) loans.
 - To ensure ongoing compliance with the law applicable to mortgage loans authorized by Section 50(a)(6), Article XVI of the Texas Constitution, the processes and procedures used for the origination of the Texas Section 50(a)(6) loans will be reviewed by the lender regularly and will be updated and revised, as appropriate pursuant to clarifications of the law, on a regular and continual basis.
 - The matters certified herein are representations and warranties of the lender given to SunTrust in connection with each Texas Section 50(a)(6) mortgage loan.
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Loan Terms

Eligible First Mortgage Products

Fannie Mae Loan Programs

- Fully Amortizing Fixed Rate, and
 - Fully Amortizing 7/1 & 10/1 LIBOR ARMs
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Maximum LTV/TLTV/HTLTV, Credit Score and Loan Amount

PRIMARY RESIDENCE – AGENCY FULLY AMORTIZING FIXED RATE

(Terms 10-30 Years; No Minimum Loan)

Max LTV/TLTV/HTLTV	Max Loan	Minimum Credit Score	# of Units	Maximum Cash-Out
80%/80%/NA ¹	\$484,350	640	1	\$484,350
¹ Home Equity Lines of Credit (HELOCs) are not permitted.				

PRIMARY RESIDENCE – AGENCY FULLY AMORTIZING 7/1 & 10/1 LIBOR ARMs

(7/1 LIBOR ARM: Terms 10-30 Years; No Minimum Loan)

(10/1 LIBOR ARM: Terms 15-30 Years; No Minimum Loan)

Max LTV/TLTV/HTLTV	Max Loan	Minimum Credit Score	# of Units	Maximum Cash-Out
80%/80%/NA ¹	\$484,350	640	1	\$484,350
¹ Home Equity Lines of Credit (HELOCs) are not permitted.				

Assumptions

Texas Section 50(a)(6) cash-out refinance first mortgages are not assumable at any time over its full term..

Security Property

General

A Texas Section 50(a) (6) mortgage loan must be secured by a single-unit principal residence constituting the borrower's homestead under Texas law. Loans secured by two- to four-unit properties, investment properties, or second homes are not eligible.

The security property may be:

- a detached dwelling,
- an attached dwelling,
- a unit in a PUD project,
- a unit in a condo project,

The borrower's property may not exceed the applicable acreage limit as determined by Texas law when the Texas Section 50(a)(6) loan is originated.

A borrower that owns adjacent land must submit appropriate evidence, such as a survey, that the mortgaged homestead property is a separate parcel that does not exceed the permissible acreage.

Note: An *inter vivos* revocable trust that meets SunTrust's borrower eligibility criteria may be a borrower under a Texas Section 50(a)(6) mortgage, provided that the trust meets the requirements for a "qualifying trust" under Texas law for purposes of owning residential property that qualifies for the homestead exemption.

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Ability to Repay and Qualified Mortgage

General

Reference: See the “Ability-to-Repay and Qualified Mortgage” topic in [Section 1.05: Underwriting](#) for guidance.

Eligible Transactions

Temporary Buydowns

Temporary interest rate buydowns are not eligible.

Refinances

General

Lenders should be aware that SunTrust's classification of mortgage transactions as "cash-out refinance" or "limited cash-out refinance" may differ from the way mortgage loans are classified under Texas law for purposes of compliance with the Amendment. Texas law determines whether or not a mortgage is a Texas Section 50(a)(6) mortgage. SunTrust requires all loans that meet the definition of a Texas Section 50(a)(6) mortgage be treated as a cash-out transaction.

The lender is responsible for determining the applicability of Section 50(a)(6) of the Texas Constitution, regardless of SunTrust's definitions of cash-out and limited cash-out refinance transactions, including the applicable special feature codes.

All mortgages that constitute Texas Section 50(a)(6) mortgages under Texas law must comply with these provisions.

Accordingly, lenders should not rely on SunTrust's categorization of refinance mortgages for purposes of determining whether compliance with the provisions of Section 50(a)(6) is required. Rather, such lenders should consult with their counsel to determine the applicability of Section 50(a)(6) to a particular loan transaction.

Note: For any refinance of a Texas Section 50(a)(6) loan that results in a loan originated in accordance with and secured by a **non-50(a)(6)** lien permitted by Article XVI, Section (a)(4) of the Texas Constitution, an affidavit referenced in Section 50(f-1) Article XVI of the Texas Constitution must be prepared and recorded in connection with such transaction.

Secondary Financing

Home Equity Lines of Credit (HELOCs)

Home Equity Lines of Credit (HELOCs) are not permitted.

Underwriting and Loan Documentation

General

Texas Section 50(a)(6) mortgage loans are eligible for the reduced documentation requirements recommended by Desktop Underwriter (DU), provided that all other terms and conditions described herein for Texas Section 50(a)(6) loans shall apply.

This includes, but is not limited to, the additional representations and warranties, and requirements related to mortgage documentation, property valuation and title insurance.

Traditionally underwritten and Freddie Mac's Loan Prospector (LP) are not eligible.

Appraisal Requirements

General

Non-AUS

- Lenders must obtain a new full appraisal, including both interior and exterior inspections, to determine current value on either *Uniform Residential Appraisal Report* (Form 1004), or *Individual Condominium Unit Appraisal Report* (Form 1073). The appraisal must be attached to the written acknowledgement of fair value.
- The appraisal for the property and the acknowledgment of fair market value must not include any property other than the homestead.
- The survey (or other acceptable evidence) must demonstrate that:
 - the homestead property and any adjacent land are separate parcels, and
 - the homestead property is a separately platted and subdivided lot for which full ingress and egress is available.
- The lender must not have any interest (such as an option to purchase, a security interest, or an easement) in any parcel adjacent to the homestead property that is owned by the borrower, if such interest could constitute additional security for the Texas Section 50(a)(6) mortgage loan.

Fannie Mae DU

Follow DU requirements, which are the same as non-AUS guidelines, except as follows:

- Lenders must obtain a new full appraisal, including both interior and exterior inspections, to determine current value on either *Uniform Residential Appraisal Report* (Form 1004), or *Individual Condominium Unit Appraisal Report* (Form 1073), even if DU recommends a different property valuation method or an appraisal waiver. The appraisal must be attached to the written acknowledgement of fair value.
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Program Codes

General

The following table shows program codes for Agency Texas Section 50(a)(6) Cash-Out Refinances:

Loan Program	Program Code
Agency Fixed Rate (fully amortizing) – Texas Section 50(a)(6) Cash-Out Refinance 10-15 Years, Full Doc	C15TX
Agency Fixed Rate (fully amortizing) – Texas Section 50(a)(6) Cash-Out Refinance 16-30 Years, Full Doc	C30TX
Agency 7/1 LIBOR ARM (fully amortizing) – Texas Section 50(a)(6) Cash-Out Refinance (all terms), Full Doc	71FNTX
Agency 10/1 LIBOR ARM (fully amortizing) – Texas Section 50(a)(6) Cash-Out Refinance (all terms), Full Doc	10FNTX

Closing and Loan Settlement

Mortgage Documentation

Section 50(a)(6) of Article XVI of the Texas Constitution permits a home equity loan to be secured by the borrower's homestead property under certain conditions. Mortgages originated under this provision are referred to as Section 50(a)(6) mortgages. This provision includes numerous consumer safeguards and significant lender penalties for noncompliance.

A special security instrument, notes and riders must be used in connection with Texas Section 50(a)(6) mortgage loans, and a special affidavit must be prepared and recorded with each Texas Section 50(a)(6) loan transaction. Lenders must use the following documents:

- *Texas Home Equity Security Instrument (First Lien)* (Form 3044.1)
- The specific Texas Section 50(a)(6) notes and riders, and
- *Texas Home Equity Affidavit and Agreement First Lien* (Form 3185)

Because of the complexities involved in closing Texas Section 50(a)(6) loans, lenders must provide the title company with a detailed closing instruction letter and require an acknowledgment of its receipt.

The closing instructions must require the title company to conduct its closings properly to ensure compliance with Texas Constitution Section 50(a)(6). To assist in this endeavor, the *Texas Home Equity Affidavit and Agreement First Lien* (Form 3185) must be prepared and recorded in connection with each Texas Section 50(a)(6) loan transaction. SunTrust suggests that a lender also require each borrower to sign a closing receipt that itemizes the documents that he or she received at closing.

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Closing and Loan Settlement, Continued

Power of Attorney

Powers of attorney for the borrowers are not acceptable.

Title Insurance

In addition to standard SunTrust guidelines, the following requirements apply:

- For all Texas Section 50(a)(6) mortgage loans, a title insurance policy written on Texas Land Title Association forms (standard or short form), supplemented by an Equity Loan Mortgage Endorsement (Form T-42) and a Supplemental Coverage Equity Loan Mortgage Endorsement (Form T-42.1), is required.

Note: There may be no exceptions or deletions to the coverage provided by Paragraphs 2(a) through (e) of the T-42 endorsement and the endorsement must include the optional coverage provided by Paragraph 2(f), as well as the additional coverage provide by Endorsement T-42.1.

- The title insurance policy cannot include language that:
 - excludes coverage for a title defect that arises because financed origination expenses are held not to be “reasonable costs necessary to refinance,” or
 - defines the “reasonable costs necessary to refinance” requirement as a “consumer credit protection” law since the standard title policy excludes coverage when lien validity is questioned due to a failure to comply with consumer credit protection laws.
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