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OPINION COMMITTEE



FILE # ML-48192-107
I.D. # 48192

COMMITTEE ON DEFENSE & VETERANS' AFFAIRS
TEXAS HOUSE OF REPRESENTATIVES

ROLAND GUTIERREZ
CHAIR

CÉSAR JOSÉ BLANCO
VICE-CHAIR

Via electronic mail
Opinion.committee@oag.texas.gov

August 22, 2017

Honorable Attorney General Ken Paxton
Office of the Texas Attorney General
Attention: Opinion Committee
P.O. ox 12548
Austin, TX 78711-2548

RQ-0176-KP

Re: Request for an Opinion

Dear General Paxton:

I am writing to request an Attorney General Opinion regarding whether Texas veterans with VA home loans may execute a cash-out refinance loan on their homestead property.

For background purposes, I have included a letter from the Department of Savings & Mortgage Lending. The correspondence states that due to several limitations set forth in the Texas Constitution, veterans having VA loans are not able to obtain a cash-out refinance (equity loan) loan in Texas.

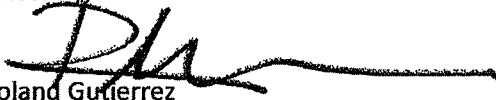
Texas Constitution, Section 50(a) (6) allows borrower to take equity out of a homestead property under certain conditions. The requirements which must be followed in order to originate a valid Texas "cash out" or "equity loan" are set forth in the section and a lender must satisfy each condition in order to have a valid home equity lien on a homestead. Section 50(g) states, "an extension of credit described by Subsection (a) (6) of this section maybe be secured by a valid lien against homestead property if ...the lender provides the owner with the following written notice on a separate instrument." The notice describes the several limitations to the extension of credit in a cash-out loan. The limitations include (but not limited to): (i) limitation of equity loan; (ii) three percent fee limitation; (iii) non-recourse for personal liability; (iv) security of the equity loan; and (v) foreclosed by court order.

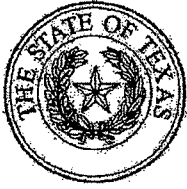
On a VA Refinance with cash-out the home would be the same collateral used as for an initial purchase. Veterans that have 50% equity in their home and want to do 30% cash out on a VA Refinance and leaving the 20% requirement would meet the above requirements.

In summary, I am seeking clarification as to whether Texas Veterans may execute a cash-out refinance loan on their homestead property.

Thank you in advance for your timely consideration of this matter.

Sincerely,


Roland Gutierrez
Chairman



DEPARTMENT of
SAVINGS & MORTGAGE LENDING
Caroline C. Jones, Commissioner

January 30, 2017

Brad Barrett, Government Relations Liaison
Texas Veterans Commission
bradley.barrett@tvc.texas.gov

Re: Texas Veteran Cash-Out Loan

Dear Mr. Barrett:

We acknowledge receipt of your email requesting clarification as to *why veterans with VA home loans in Texas are allegedly not able to execute a cash-out refinance loan on their homestead property*. The legal division of the Texas Department of Savings and Mortgage Lending is the legal advisor to the Department and to the Commissioner. Therefore, this opinion presents general information and is not intended as legal advice nor should you consider it such. Additionally, this information is not intended to create, and receipt of it does not constitute, an attorney-client relationship. You should consult a qualified attorney regarding any specific legal problem or matter.

Due to several limitations set forth in the Texas Constitution, veterans having VA loans are not able to obtain a cash-out refinance (equity loan) loan in Texas.

ARTICLE XVI SECTION 50(A) OF THE TEXAS CONSTITUTION

Article XVI, section 50(a) of the Texas Constitution provides that your homestead is protected from a forced sale for the payment of debts except for eight types of debt.

- 50(a)(1) purchase money mortgages
- 50(a)(2) taxes due on the homestead
- 50(a)(3) an owelty partition imposed against the entirety of the property by a court order or a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or award of a family homestead in a divorce proceeding
- 50(a)(4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner
- 50(a)(5) home improvement loan or new construction of homestead property
- 50(a)(6) *Texas cash-out loan*
- 50(a)(7) a reverse mortgage
- 50(a)(8) conversion and refinance of personal property lien secured by a manufactured home to a real property lien

SECTION 50(A)(6) – TEXAS CASH-OUT LOAN

VA's Cash-Out Refinance Loan is for homeowners who want to take cash out of their home equity. However, even though the VA allows for a cash-out refinance, that does not imply that VA lenders will do so.

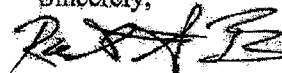
Section 50(a)(6) allows a borrower to take equity out of a homestead property under certain conditions. The requirements which must be followed in order to originate a valid Texas "Cash Out" or "Equity Loan" are set forth in the section and a lender must satisfy each condition in order to have a valid home equity lien on a homestead. Section 50(g) states, "an extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if . . . the lender provides the owner with the following written notice on a separate instrument." The notice describes the several limitations to the extension of credit in a cash-out loan. The limitations include (but are not limited to): (i) limitation of equity loan amount; (ii) three percent fee limitation; (iii) non-recourse for personal liability; (iv) security of the equity loan; and (v) foreclosed by court order.

First, the VA cash-out program follows the same maximum lending limits as the VA loan to purchase a home and will guaranty loans up to 100% of the value of your home. Thus, the VA equity loan amount, when added to the aggregate total of the outstanding balances of all other liens against the property, can represent 100 percent of the property's value. However, this is not the case in Texas. The principal loan amount, when added to the aggregate total of the outstanding balances of all other liens against the property, may not exceed 80% of the fair market value. Section 50(a)(6)(B). Second, generally all Veterans using the VA Home Loan Guaranty benefit must pay a funding fee. The funding fee is a percentage of the loan amount which varies based on the type of loan and your military category, if you are a first-time or subsequent loan user, and whether you make a down payment. This fee goes directly to the government to help fund the loan guarantee program. Funding fees vary from 0.5% to 3.3%. However, the Texas Constitution limits fees and charges to three percent of the loan amount. Section 50(a)(6)(E). Third, the Constitution provides that the loan must be without recourse for personal liability. Section 50(a)(6)(C). Thus, a Texas lender must look only to the homestead collateral to satisfy the debt. Fourth, no additional collateral may be security for the loan. Section 50(a)(6)(H). Lastly, the lien may be foreclosed only with a court order. Section 50(a)(6)(D).

VA CASH-OUT REFINANCE

In sum, due to the many limitations set forth in the Texas Constitution, veterans having VA loans are not able to obtain a cash-out refinance (equity loan) loan in Texas. However, veterans in Texas may still refinance an existing VA Loan with a VA Streamline Refinance (IRRRL) Loan, refinance a conventional, FHA or USDA loan into a new VA loan refinance, or refinance a VA loan to a conventional.

Sincerely,



Roberto A. Ramirez
Associate General Counsel