



## HSOA New York CEMA Refinance Overlay

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### CEMA: Consolidation, Extension and Modification Agreement

#### Introduction/Overview

The state of New York charges a mortgage recording tax whenever a new mortgage or refinance is recorded. To reduce tax liabilities to borrowers, refinances can be transacted by consolidating, extending, and modifying the existing loan. Using this method, the borrower pays the recording tax only on any “New Money” added to the existing loan. In order to accomplish this, instead of the existing liens being paid off, they are effectively assigned/transferred to the new lender who consolidates, extends and modifies the term and structure of the existing loan(s) (hence, the name), into new documents.

Such CEMA activity could encompass multiple loans concurrently, as well as historically. It could be rolling a first and second lien together into a CEMA; it could also be a string of repeat refinances, such that the CEMA is actually modifying numerous liens. This string will continue until such time as there is a new transaction that doesn’t utilize the CEMA process.

#### Eligible Transactions

Refinance transactions only. Other lenders may allow CEMAs on purchase transactions (HSOA does not allow); therefore it is possible that the borrower names also changed throughout this string of financings.



## Eligible Loan Programs/Product Codes

- Conforming
- FHA
- Available only on loans with 15yr or 30 year terms.

Separate CEMA product codes are required, in order to get DocMagic to print CEMA docs. Example: FF30CEMA

## Locking

Standard HSOA policy; however plan for most CEMAs to take at least 60 days to process.

## Refinance Underwriting Guidelines

CEMA loans are treated the same as any other refinance and must comply with the applicable loan program guidelines.

## Closing and Closing Attorneys

HSOA does not maintain an approved closing attorney's list. Rather, the CEMA Closing Requirements memo (available on HSOA's website and repeated at the end of this publication) is to be forwarded to each attorney upon being identified as the attorney closing the transaction.

HSOA will prepare the CEMA closing docs. The closing attorney is responsible for assuring all docs are prepared correctly; the collection of the existing Notes and Mortgages, and their respective Endorsements/Assignments, Allonges, Riders, etc.

## Fees and Charges

Fees and taxes are different from the standard refinance as follows:

- Mortgage registration tax is paid only on the 'New Money' extended
- Present servicers and their attorneys may have fees the borrower must pay as part of their process; and there may be additional charges due at closing. All must be included and disclosed on the HUD-1.
- The closing attorney fees are typically higher due to the CEMA doc and requirements

## CEMA Agreements

For all loans, use the Fannie Mae/Freddie Mac-approved agreement - Form 3172, 1/01 (rev. 5/01). For FHA loans, DocMagic's form includes the comment 'Modified for Federal Housing Administration.'

## Refinances with "New Money"

New money is defined as any amount of money above the customer's existing/current principal balance (not original loan amount). The term "new money" as it applies to the mortgage recording tax must not be confused with the underwriting criteria of a cash out or R/T refinance. It is common to have a R/T refinance with "new money."



**Note:** Most second lien holders do not allow their liens to be assigned into a CEMA transaction; therefore, if the second lien is not being subordinated, it must be paid off, with its balance included in the ‘new money’ Gap loan.

For refinances with “New Money”, a new Note (Gap Note) and Mortgage (Gap Mortgage) in the amount of the new money must be completed and provided along with the Consolidation, Extension, and Modification Agreement.

### Number of Notes and Mortgages in file

Scenario	No “New Money” in proposed refinance	New Money in proposed refinance
<b>Paying off an existing first mortgage</b>	<ul style="list-style-type: none"> <li>Existing Note and Mortgage</li> <li>New Consolidation Note and Mortgage</li> <li>CEMA Agreement</li> </ul>	<ul style="list-style-type: none"> <li>Existing Note and Mortgage</li> <li>New Money “Gap” Note and Mortgage</li> <li>New Consolidation Note and Mortgage</li> <li>CEMA Agreement</li> </ul>
<b>Paying off an existing CEMA loan that DID NOT provide new money</b>	<p>From first CEMA:</p> <ul style="list-style-type: none"> <li>Initial Note and Mortgage</li> <li>Existing consolidated CEMA Note and Mortgage</li> <li>Existing CEMA Agreement</li> </ul> <p>For New CEMA:</p> <ul style="list-style-type: none"> <li>New Consolidation Note and Mortgage</li> <li>New CEMA Agreement</li> </ul>	<p>:From first CEMA:</p> <ul style="list-style-type: none"> <li>Initial Note and Mortgage</li> <li>Existing consolidated CEMA Note and Mortgage</li> <li>Existing CEMA Agreement</li> </ul> <p>For new CEMA:</p> <ul style="list-style-type: none"> <li>New Money “Gap” Note and Mortgage</li> <li>New Consolidation Note and Mortgage</li> <li>New CEMA Agreement</li> </ul>
<b>Paying off an existing CEMA loan that DID NOT provide new money, AND has a second lien being paid off</b>	<p>From first CEMA:</p> <ul style="list-style-type: none"> <li>Initial Note and Mortgage</li> <li>Existing consolidated CEMA Note and Mortgage</li> <li>Existing CEMA Agreement</li> </ul> <p>For new CEMA:</p> <ul style="list-style-type: none"> <li>New Money “Gap” Note and Mortgage (New money is the balance of the second lien being paid off).</li> <li>New Consolidation Note and</li> </ul>	<p>:From first CEMA:</p> <ul style="list-style-type: none"> <li>Initial Note and Mortgage</li> <li>Existing consolidated CEMA Note and Mortgage</li> <li>Existing CEMA Agreement</li> </ul> <p>For new CEMA:</p> <ul style="list-style-type: none"> <li>New Money “Gap” Note and Mortgage (New money is the amount of the second lien balance plus any loan amount above the first lien</li> </ul>



	<ul style="list-style-type: none"> <li>Mortgage</li> <li>New CEMA Agreement</li> <li></li> </ul>	<ul style="list-style-type: none"> <li>balance).</li> <li>New Consolidation Note and Mortgage</li> <li>New CEMA Agreement</li> </ul>
<b>Paying off an existing CEMA loan that DID provide new money</b>	<p>From first CEMA:</p> <ul style="list-style-type: none"> <li>Initial Note and Mortgage</li> <li>First New Money “Gap” Note and Mortgage</li> <li>Existing Consolidation Note and Mortgage</li> <li>Existing CEMA Agreement</li> </ul> <p>For New CEMA:</p> <ul style="list-style-type: none"> <li>New Consolidation Note and Mortgage</li> <li>New CEMA Agreement</li> </ul>	<p>From first CEMA</p> <ul style="list-style-type: none"> <li>Initial Note and Mortgage</li> <li>First New Money “Gap” Note and Mortgage</li> <li>Existing Consolidation Note and Mortgage</li> <li>Existing CEMA Agreement</li> </ul> <p>For new CEMA:</p> <ul style="list-style-type: none"> <li>Another ‘New Money’ “Gap” Note and Mortgage</li> <li>New Consolidation Note and Mortgage</li> <li>New CEMA Agreement</li> </ul>

### Eligible Borrowers

Borrowers may be individuals or a qualified Inter Vivos Revocable Trust.

### Changes in borrower names or title vesting

Allowed according to standard Underwriting guidelines.

### Current Loan Documentation

HSOA does not accept certified copies of Notes or Mortgages or Lost Note Affidavits.

### Steps for a CEMA Loan

Note: Steps 1-6 are all completed and compiled by the closing attorney. HSOA staff to confirm accuracy and completeness. Step 7 is for HSOA to complete.

Step	Action
1	Complete the appropriate Consolidation, Extension, and Modification Agreement. If using the Fannie Mae/Freddie Mac agreement, be sure to include the following:
<b>Sections</b>	<b>Should contain:</b>
A, B, and C	Appropriate dates, and names of the parties involved in the refinance



	transaction
D	<p>A description of each mortgage to be modified that is currently a lien on the property being refinanced</p> <p><b>Note:</b> If refinancing with new money:</p> <ul style="list-style-type: none"> <li>Identify the existing notes and mortgages of record pertaining to the old debt</li> <li>Identify the Note for the new money to be advanced at closing</li> </ul> <p>Identify the new Mortgage given to secure the amount of the new indebtedness.</p>
F	Dates of the original Notes securing the unpaid mortgages listed in Section D, including additional information if refinancing with new money.
G	Address of the property being refinanced
Subsection I	<p><b>First Blank</b></p> <p>The total unpaid principal balance of the outstanding Notes in the <b>first</b> blank of this subsection.</p> <p><b>Note:</b> Insert the same amount in Subsection IV-1.</p> <p><b>Second Blank</b></p> <p>“zero” in the <b>second</b> blank of this subsection, if no new money is being advanced. If refinancing with new money, insert the amount of the new indebtedness.</p>
Subsection IV	Exhibit D is to reflect the interest rate and payment information of the new refinance.
2	Obtain the borrowers’ signature on the Consolidation, Extension and Modification Agreement and ensure it is notarized.
3	If the amount of the new loan exceeds the outstanding principal balance because of cash out or financed closing costs, prepare a new (GAP) Note and Mortgage in the amount of the new money.
4	<p><b>FHA loans only:</b> Complete a new Note and Mortgage for the full new loan amount, including applicable riders.</p> <p><b>Note:</b> If there is no new money, complete only a new Note.</p>
5	<p>Obtain the following exhibits and attach them to the Consolidation, Extension, and Modification Agreement:</p> <ul style="list-style-type: none"> <li>If refinancing with new money, the new Note and Mortgage in the amount of the new money.</li> <li>Originals of prior Notes and copies of Mortgages.</li> <li><b>FHA loans:</b> New Note (and Mortgage, if applicable), and applicable riders, for the full loan amount.</li> <li>Legal description of the subject property.</li> </ul>



	<ul style="list-style-type: none"> <li>• Adjustable Rate Rider, if applicable, and any/all other applicable riders.</li> <li>• Original consolidated Note.</li> <li>• Original Assignments.</li> <li>• Original Endorsement Allonges.</li> <li>• Terms of the security instrument that the borrowers must comply with going forward or a blank copy of the standard mortgage, whichever is applicable.</li> </ul>
6	<p>Prepare (or have legal counsel prepare) two duplicate copies of the §255 Affidavit.  <b>Note:</b> The §255 Affidavit must be filed even though no new money is exchanged to claim the mortgage tax exemption on the amount of the outstanding principal indebtedness.</p>
7	<p>Complete a Consolidation, Extension, and Modification Checklist to ensure all required documentation has been obtained and assemble all the documents into the CEMA Package.</p>



## CEMA Closing Attorney Memo

# MEMO

**TO:** NY Closing Attorneys  
**FROM:** Carl Peterson  
**DATE:** March 11, 2010  
**RE:** CEMA Closing Requirements

This memo outlines Home Savings' requirements for closing CEMA loans in New York, and should be considered as part of our closing instructions. **If you are not able or willing to comply with all of these requirements, you must not close the loan.**

1. Your primary contact and address for delivery of documents will be the Home Savings Regional Operations Center that is coordinating the loan with your office. All documents are to be delivered to that address.
2. Provide evidence of your firm's E&O coverage showing Home Savings as insured, Liability Insurance, and wiring instructions
3. You are responsible to compile and review the outstanding loan documents needed to complete the CEMA closing – note, mortgages, assignments, CEMA agreements.



4. HSOA will not accept copies of documents-no certified copies or Lost note affidavits.
5. Your firm is responsible for the accuracy, validity and enforceability of all CEMA documents
6. We will prepare the closing documents and then send electronically, but will overnight CEMA agreement, signed by an HSOA representative and notarized, If corrections or adjustments are needed and a new CEMA agreement is prepared by your office, overnight it to our office for our signature and return.
7. Your office will complete the 255 affidavit
8. All originals of the existing docs must be in your possession at funding, and forwarded to HSOA immediately after closing.