



**TIB MORTGAGE ANNUAL CONFERENCE**

**PROPOSED TEXAS HOME EQUITY  
AMENDMENTS**

**BY:**

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## **BACKGROUND**

- Legislature passed Senate Joint Resolution 60 (S.J.R. 60) on May 9, 2017. Proposed amendments to Texas Constitution, Article XVI, Section 50(a)(6).
- Will be voted on in the November 7, 2017 election.
- If approved by the voters, amendments will take effect on January 1, 2018.
- If not approved by the voters, the amendments will not be enacted.

# **HE LOANS ON AG-EXEMPT PROPERTY**

- Texas Const., Article XVI, Section 50(a)(6)(I) currently prohibits a home equity loan from being secured by property with an agricultural tax exemption (except dairy).

*(6) an extension of credit that:*

- (I) is not secured by homestead property that on the date of closing is designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk;*
- S.J.R. 60, if approved, will repeal Article XVI, Section 50(a)(6)(I), which prohibits home equity loan on property with an agricultural tax exemption (unless for milk production).
- Due to Texas “open space” tax exemptions, this should also permit wildlife exempt, and timber exempt property to serve as collateral for a home equity loan.
- Eliminates a major risk of home equity lending that has been the cause of litigation in the past.

## **HOME EQUITY FEE CAP**

- Current fee cap under Article XVI, Section 50(a)(6)(E) is 3% of the loan amount, excluding interest. This includes most fees paid in connection with a loan.
- S.J.R. 60, if approved, will amend Section 50(a)(6)(E) to reduce the home equity fee cap to 2% of the loan amount . . . BUT . . .
  - The following fees would be excluded from the cap:
    - An appraisal performed by a third-party appraiser;
    - A property survey performed by a state registered or licensed surveyor;
    - The state base premium for a mortgagee title policy with endorsements; or
    - If no mortgagee title policy is issued, the price for a title examination report if that price is less than the state base premium for a mortgagee title policy without endorsements.

## **“Once a Home Equity, Always a Home Equity”**

- **Texas Const, Article XVI, Section 50(f) currently requires the refinance of a home equity lien to be either another home equity lien or a reverse mortgage.**

*“(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 the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section.”*

- **This is the “once a home equity, always a home equity rule” that currently prohibits a refinance of a Texas home equity lien unless the new loan is also a Texas home equity or a reverse mortgage.**
- **S.J.R. 60, if approved, will amend Section 50(f) to allow a home equity loan to be refinanced as a non-home equity rate/term refinance under Tex. Const., Art. XVI, Section 50(a)(4).**

## **Conditions For a Rate/Term Refinance of a Home Equity**

- In order to refinance a home equity loan into a non-home equity loan under S.J.R. 60, the following conditions must be met:
  - The refinance may not be closed before the first anniversary of the date the home equity loan was closed;
  - No additional funds may be advanced, other than funds advanced to refinance a debt under Sections 50(a)(1) through (a)(7) or actual costs and reserves required by the lender to refinance the debt;
  - The principal amount of the refinance, when added to the aggregate total of the outstanding principal balances of all other valid liens against the homestead does not exceed 80% of the homestead's fair market value on the date of the refinance;
  - The lender provide the owner a "12-day notice" (a different form than the 12-day notice for home equity) within three business days of application and at least 12 days before the refinance is closed.
- A rate/term refinance of a Texas home equity lien that meets these conditions is deemed to be a valid refinance lien under Section 50(a)(4) of the Constitution.
- An affidavit executed by the homestead owner or the owner's spouse acknowledging that the above conditions were met "conclusively establishes" that the loan is a valid 50(a)(4) refinance under the Constitution.

# **CHANGES TO HELOC REQUIREMENTS**

- A HELOC is 50(a)(6) home equity lien, and is defined in Section 50(t) of the Constitution.
- Under Section 50(t)(5) & (6), there are two different LTV requirements for HELOCs:

**A Maximum 80% CLTV at the time the HELOC is established:**

*(5) the maximum principal amount that may be extended under the account, when added to the aggregate total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, does not exceed an amount described under Subsection (a)(6)(B) of this section;*

**A Maximum 50% LTV at the time any additional advances are made under the HELOC:**

*(6) no additional debits or advances are made if the total principal amount outstanding exceeds an amount equal to 50 percent of the fair market value of the homestead as determined on the date the account is established;*

- S.J.R. 60, if approved, will eliminate subsection 50(t)(6) that prevents additional advances under a HELOC if the principal amount outstanding on the HELOC exceeds 50% of the fair market value of the homestead on the date the HELOC was established.
- The 80% CLTV cap as of the date the HELOC is established under Section 50(a)(6)(K) remains in place.

# **WHO MAY VALIDLY ORIGINATE A HOME EQUITY LOAN**

- **S.J.R. 60, if approved, clarifies the persons authorized to make home equity loans by amending Tex. Const., Art. XVI, Section 50(a)(6)(P)(i) & (vi):**
- **Amends Section 50(a)(6)(P)(i) to add that subsidiaries of enumerated banks, savings and loan associations, savings banks, and credit unions are authorized to originate home equity loans.**
- **Amends Section 50(a)(6)(P)(vi) to remove the word “broker” and add “banker or mortgage company”, which clarifies that licensed mortgage companies and registered mortgage bankers may originate home equity loans.**



## **12-Day Notice and Other Changes**

- Amends Tex. Const., Art. XVI, Section 50(g) to modify the Texas home equity “12-day notice” text to incorporate the Constitutional changes made by S.J.R. 60.
- Amends Section 50(f) to create a new “12-day notice” that must be provided in connection with a rate/terms refinance of an existing home equity lien.
- Codification of the Texas Supreme Court opinion in *Finance Commission of Texas v. Norwood* that bona fide discount points used to buy down the interest rate are not fees for purposes of the 2% fee cap.

## **Implementation Issues**

- **Questions about fee exemptions:**
  - What is a “third party appraisal” that can be exempted from the 2% fee calculation?
    - Are affiliates of lender exempt?
    - Is only the appraisal fee itself exempt, or other fees charged by an appraiser (e.g. appraisal management fee)?
- **Title fees**
  - Only the premium for the mortgagee title policy and endorsements (or title search) can be exempt; other title fees are not (e.g. settlement fee, notary fee, etc.)
  - Is the exemption for endorsements limited solely to the T-42 and T-42.1, or are other lender-required endorsements also exempt?

# **Implementation Issues**

- New 12-day notice for home equity loans (modified to conform to constitutional changes), and the new 12-day notice for a rate/term refinance of a home equity loan, both take effect on January 1, 2018 if S.J.R. 60 is passed.
- Since the old 12-day notice will not be effective after December 31, 2017, the old notice cannot be used in connection with a home equity loan closed on or after January 1, 2018.
- Since the new 12-day notice does not become effective until January 1, 2018, the new form cannot be used before that date.
- Accordingly, the current 12-day notice will not be effective if given in 2017 for a home equity loan closed in 2018, and the amended 12-day notice will not be effective if given before January 1, 2018.
- Support for this position is found in Attorney General Letter DM-452, which was issued in 1997 right after passage of the constitutional amendment that first allowed home equity lending in Texas:
  - *“Before the amendment becomes effective . . . the provisions of the amendment referred to in the notice have no legal effect. Notice given before the effective date of the amendment is not notice “prescribed by” the amendment. Therefore, the amendment’s notice requirement is not satisfied if notice is given before the effective date of the amendment, and thus the twelve-day waiting period is not triggered by such a notice. . . . The notice to borrowers prescribed by the amendment is not effective if given before the amendment’s effective date.*
- Bottom line. . . 12 day window between January 1, 2018 and January 12, 2018 where a home equity loan, or a rate/term refinance of a home equity loan, cannot close.

# November 7, 2017 Election

- Texas Proposition 2

*“The constitutional amendment to establish a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads.”*

- DON'T FORGET TO VOTE!!!!!!

THANK YOU!!!

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