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Texas Home Equity and SJR 60 (Prop 2)

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Welcome and Housekeeping

- This Webinar is hosted by the Texas Bankers Association in association with Compliance Alliance.
- This only serves as a broad overview– Remember to always refer back to the actual text of the legislation.
- Not Legal Advice– Consult with bank counsel for more detailed inquiries.
- Live questions will not be addressed, but please feel free to send in any follow-up questions you may have to Compliance Alliance’s hotline: hotline@compliancealliance.com or 888-353-3933.



Texas Home Equity Webinar Overview

“To be prepared is half the
victory.”

Miguel De Cervantes
Spanish Novelist

- Brief History of Home Equity Lending in Texas
- Current Requirements of Texas Home Equity and HELOC Lending
- Common Home Equity Questions
- Proposition 2: Amendments
- Proposition 2: Current Status of Home Equity Lending in Texas

History of Home Equity Lending in Texas

“The notion of the homestead as property protected from the reach of creditors first developed on the Texas Frontier.”

Joe McKnight

Professor of Law

Southern Methodist University

- Home Equity— borrowers are borrowing against equity established in their homes
- Equity—difference between fair market value and the total balance of all debts secured by the home

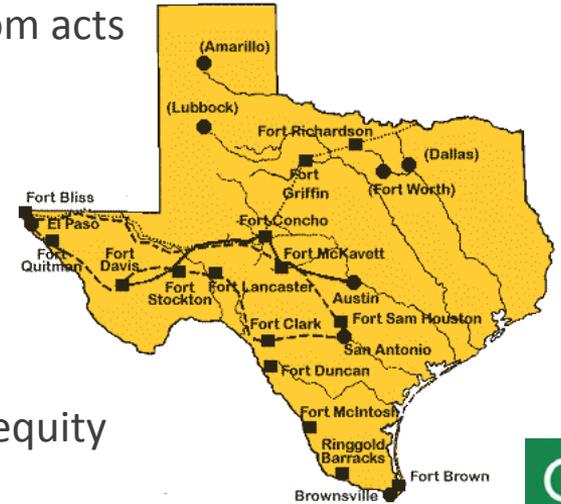


Jim’s House is worth \$400,000.
He currently owes \$100,000
on his mortgage.

That would mean he holds
\$300,000 in equity in his home.

History of Texas Home Equity Lending

- Texas views homestead as property to be protected from creditors.
- This notion started with Castilian law, evolving then from acts by the Republic of Texas and finally being codified in the Texas Constitution.
- Only a limited number of reasons a creditor could attach a debt to a debtor's homestead.
- Up until 1876, homeowners could not borrow against equity in their homes.



History of Texas Home Equity Lending Continued



*10 Acres Urban Homestead

*100 to 200 Acres Rural Homestead



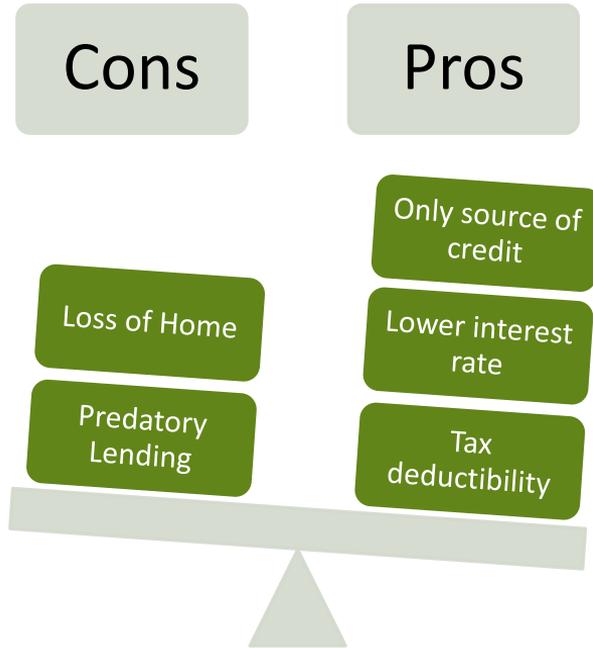
1997 Legislative Amendment

- In 1997, Texas Legislature and voters passed the approval of constitutional amendments to permit home equity lending.
- Birth of the 50(a)(6) Loan—To see a copy of the full text, please refer to the following link: [The Texas Constitution, Article 16](#)

“Sec. 50. Homestead; Protection from Forced Sale; Mortgages, Trust Deeds, and Liens. (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for: (6) an extension of credit that: ...”



Pros and Cons of Home Equity Lending



PRIMARY REQUIREMENTS FOR VALID LIENS ON HOME EQUITY LOANS

- Home equity loans cannot exceed 80% of fair market value of homestead on date extension is made
- Must be the only home equity loan issued against a homestead at one time
- Only one home equity loan on homestead per year
- Specific foreclosure requirements for lenders
- Limiting fee caps
- Must be fully amortizing and repayable without penalty—prohibits balloon and prepayment premiums, open-ended accounts (See Texas Finance Code Ann. 301.002) and home equity secured credit cards
- 12-day Disclosure and Closing Requirements
- Right of rescission

Current Requirements of Texas Home Equity and HELOC Lending

Requirements and Amendments, Consumer Protections & Home Equity Restrictions as the Savior to Texas' Mortgage Lending

Later Amendments

- 1999 introduced reverse mortgages and were implemented in 2000
 - allow older homeowners to convert a portion of home equity into cash without selling home outright
- 2003 permitted open end home equity loans– Home Equity Lines of Credit (HELOC)
 - total debt still cannot exceed 80% of home's value
 - funds from line could not exceed 50% of value of home at time HELOC was initiated
 - advances were to be made in increments of \$4,000 and not via debit/credit card or preprinted check
- 2007 modified procedures and changed the deadline for designating property as agricultural



Consumer Protections



- Deceptive and coercive practices are not permitted
- Lenders must follow Constitutional requirements or risk forfeiting valid lien
- Lenders cannot require a borrower to sign documents with fields left blank– See Sec. 50(a)(6)(Q)(x)
- Lenders cannot require borrower to apply home equity proceeds to other debts held by that Lender– See Sec. 50(a)(6)(Q)(i)
- Non-severable Constitutional requirements



The Great Recession and Texas Home Equity Lending

- With the Great Recession of 2007, positive ramifications of stringent Texas Home Equity lending practices aided the Texas economy
- Relatively stable housing prices in Texas brought fewer incidences of “underwater mortgages” as compared to the national average

-Federal Housing Finance Agency index fell 20% nationally, Texas less than 1%

-Texas’ 80% cap on a home’s market value restrained mortgage debt growth and consumer spending during the boom time which allowed borrower’s during the recession to avoid negative equity and default



Common Home Equity Questions

Top Compliance Alliance
Hotline Questions and
Answers on Home Equity
Lending

Q: The bank currently has a borrower wanting a first lien home equity loan. The property shows to be only in her name; however, she is married but currently separated. Since Texas is a community property state, would her spouse have to sign the Deed of Trust as a non-purchasing spouse?

A: If she is still legally married, then yes, the spouse would have to sign the Deed of Trust and receive disclosures as well. There is no distinction for being separated. (See 7 Texas Admin. Code 153.2)

Q: Could a Bank take a homestead as collateral in addition to commercial real estate (not a homestead) for a business purpose loan? The bank is closing a loan to an entity whereby a principal of the entity is using their home as collateral.

A: No, that would violate the constitutional homestead protections, even for business purpose loans. If the home is titled under their name personally, it would not be exempt from Texas Home Equity laws. (See Texas Admin. Code 153.8)

Common Home Equity Questions Continued

Q: When the bank gets a request for a cash out refinance, can the bank limit the amount of “cash out” on the first lien refinance of a purchase money mortgage to be in compliance with Texas Home Equity laws?

A: If the bank is doing a cash out refinance, then the entire loan is considered a home equity loan. The bank would have to follow all home equity rules, including limiting the total loan to 80% of the fair market value of the home. Additionally, the bank could not do a balloon loan for a Texas cash out refinance.

Q: What is the timing requirement of the Acknowledgement of Fair Market Value?

A: The interpretation is that the timing requirement for the execution of the Acknowledgement as to the fair market value of the homestead property should be at or before closing per the decision in *Sims v. Carrington Mortgage Services, LLC* and Section 50(a)(6)(Q)(ix). The home equity lien would not comply with the Texas Constitution if the Acknowledgement was signed after the closing date of the loan.



Common Home Equity Questions Continued

Q: Can a Texas homeowner allow someone else, like an adult child, to use his homestead as collateral for that child's loan?

A: No, a home equity loan in Texas may only include the homestead as collateral and a homestead can only be held by a homeowner. That being said, a loan secured by someone else's house would not be a home equity loan as it would not be the borrower's homestead.

Q: Is there any prohibition on modifying the payment terms on an existing Texas Home Equity loan? For example, the borrower wants to lower a monthly payment so the bank would do a note modification and extend the Deed of Trust.

A: A Texas home equity loan may be modified with some restrictions. Generally, a modification has to comply with requirements that apply at the origination of the home equity loan. Specifically, Texas' Office of Consumer Credit Commissioner (OCCC) has state that modification schedule installments should be: substantially equal in amount, successive and periodic, and scheduled to equal or exceed the amount of accrued interest as of the date of the installment. Additionally, the first payment must not be due more than two months after the modification. The bank would need to also reference 7 Tex. Admin. Code 153.7 for additional requirements.



SJR 60 (Proposition 2)

- SJR 60 was a joint resolution between both Houses of Texas Legislature
- Voted by the populace with changes becoming effective January 1, 2018

Gone is the
“Once a Home Equity Loan,
Always a Home Equity
Loan!” Mentality

6 General Tenets

1. Fee Caps under Section 50(a)(6)(E)
2. Agricultural Exemption under Section 50(a)(6)(I)
3. Authorized Lenders under Sections 50(a)(6)(P)(i) and (vi)
4. Refinancing under Section 50(f)
5. Written Notice Requirement under 50(g)
6. HELOC Advances under Section 50(t)(6)

REMEMBER...

- Prop 2 provisions will **ONLY** apply to Home Equity Loans originated **ON** or **AFTER** January 1, 2018
- Home Equity Loans originated **BEFORE** January 1, 2018 will be governed by the Texas Constitution in existence at time those loans originated



Fee Caps

Section 50(a)(6)(E)

- The current fee cap limitation of 3% will be lowered and replaced with a 2% fee cap limitation
- Texas Admin. Code Sec. 153.5 breaks down what is and is not considered into this new fee cap limitation.
- Currently there are 16 elements to consider when determining fee cap limitations.
- Prop 2 now states that survey, appraisal, mortgage title insurance premium and title report fees will NOT count towards the 2% fee cap limitation.



Fee Cap Limitations Breakdown

SUBJECT TO FEE CAP LIMITATION	NOT SUBJECT TO FEE CAP LIMITATION
• Charges that are not Interest under 153.1(11)	• Optional Charges
• Charges to Originate	• Optional Insurance
• Charges to Evaluate	• Charges that are Interest under 153.1(11)
• Charges to Maintain	• Charges Absorbed by Lender
• Charges to Record	• Escrow Funds
• Charges to Insure an Equity Loan	• Subsequent Events Fees
• Charges to Service	• Property Insurance Premiums
MAY OR MAY NOT BE SUBJECT TO FEE CAP LIMITATION	
• Charges to Third Parties	
• Secondary Mortgage Loans	



Newly Excluded Fee Cap Limitation Fees

REQUIREMENTS FOR RECENTLY ADDED ECLUSIONS TO FEE CAP LIMITATION

EXCLUSION FOR APPRAISAL FEE

Fee for appraisal performed by third party appraiser is NOT subject to fee cap limitation IF:

1. Performed by person who is not employee of Lender
AND
2. Excludable appraisal fee is limited to amount paid to appraiser for completion of appraisal and does not include appraisal management fee per Texas Occ. Code Sec. 1104.158(a)(2)

EXCLUSION FOR PROPERTY SURVEY FEE

Fee for property survey performed by state registered or licensed surveyor is NOT subject IF:

1. Survey must be performed by person who is licensed under Texas Occ. Code, Sec. 1071

Newly Excluded Fee Cap Limitation Fees Continued

REQUIREMENTS FOR RECENTLY ADDED ECLUSIONS TO FEE CAP LIMITATION CONTINUED

EXCLUSION FOR TITLE INSURANCE PREMIUM FEE

State based premium for mortgagee policy of title insurance with endorsements established per state law is NOT subject to limitation.

1. Excludable premium is limited to applicable basic premium rate for title insurance plus authorized premiums for applicable endorsements;
2. Any mortgagee policy for loan must be provided by a company authorized to do business in Texas;
3. If additional premiums for endorsement are charged, endorsements must be applicable to mortgagee policy

EXCLUSION FOR TITLE EXAMINATION REPORT FEE

Fee for title examination report is NOT subject if its cost is less than state base premium for mortgagee policy without endorsements.

Agricultural Exemption

Section 50(a)(6)(I)

- Prop 2 repealed the prohibition against home equity loans on property with an agricultural exemption
- Rural Texas homesteads that are located on working farms or ranches have the ability to tap into their homes' equity like urban borrowers

~~“(I) (repealed) 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;”~~



Authorized Lenders

Section 50(a)(6)(P)(i) and (vi)

- Previously, authorized lenders included banks, savings and loan associations, savings banks and credit unions.

NEW LIST OF AUTHORIZED LENDER
• Banks
• Savings and Loan Associations
• Savings Banks
• Credit Unions
• Any subsidiary of the above

**This is to include those organizations' persons who are regulated by the State as mortgage bankers or mortgage company.



Refinances

Section 50(f)

- Borrowers are now permitted to refinance a seasoned home equity loan into a non-home equity/conventional loan

REQUIREMENTS

- One year anniversary requirement since home equity loan was closed
- No advance of new money except relevant closing costs to refinance
- New principle balance still cannot exceed 80% property's fair market value
- 12-day refinance disclosure requirement—Section 50(f)(2)(D) includes the text of the required refinance disclosure
- Affidavit executed by owner and/or spouse—Section 50(f)(1)



Disclosure Requirements

Two separate requirements:

- General Section 50(a)(6) Home Equity Loan- Disclosure must be provided per Section 50(a)(6)(M)(i) with the notice prescribed in Subsection (g)
 - 12 days after the date the owner submits a loan application
- Refinance Home Equity Loan- Disclosure must be provided per Section 50(f)(2)(D) with the notice prescribed in that section
 - On a separate document no later than 3rd business day after application submitted;
and
 - 12 days before the date the refinance of the extension of credit is closed
- Applications given to agent acting on behalf of Lender start the clock
- For earliest closing date, next succeeding calendar date after lender provides owner copy of refinance disclosure is the 1st day of the 12-day waiting period
- Mailbox rule applies to mailed refinance disclosures



HELOC Advances

Section 50(t)(6)

- Advances made under HELOCs can occur at any time as long as the principal amount of the debit remains at or below 80% of the fair market value of the house

- **EXAMPLE:**

An owner of a \$250,000 property could take out a HELOC up to \$200,000.

The owner could then draw on that line freely as long as the principal never exceeded \$200,000.



Prop 2: Current Status of Home Equity Lending In Texas

WORD OF THE DAY

Moratorium

mor·a·to·ri·um

/ môrə'tôrēəm /

Noun

A temporary prohibition on an activity

- Transition process between 2017 and 2018 is not going to be seamless.
- Comments on Prop 2 will be accepted up until December 25th, 2017 at 5:00 CST.
- Amendments will then be presented for final adoption at the February and March 2018 meetings of the Finance Commission and Credit Union Commission to be effective late March 2018.
- No action will be taken against lenders who comply with proposed interpretation amendments and provide required disclosures but there is no safe harbor against civil litigation until March 2018.

What Can Banks do in 2017 and 2018?

- Home equity lending practices should halt from December 18th, 2017 through January 1, 2018.
- As guidance, refer to [DM-452 \(1997\)](#) regarding disclosure notice during transitions.
- Loan applications taken in December 2017 should not provide the 2018 disclosures early. The process should start again in 2018 and 2018 disclosures should be provided at that time.
- New Amendments are not official until March 2018—strict compliance to amended sections protect banks from State action but not from civil litigation.



Questions?

Thank you for your participation! We hope you found value in the presentation.

If you have any additional questions, contact Compliance Alliance at hotline@compliancealliance.com or 888-353-3933.



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Referenced Webpages

- The Texas Constitution- <http://www.statutes.legis.state.tx.us/Docs/CN/htm/CN.16.htm>
- Texas Administrative Code- [https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=4&ti=7&pt=8&ch=153&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=4&ti=7&pt=8&ch=153&rl=Y)
- *Sims v. Carrington Mortgage Services, LLC*-https://www.gpo.gov/fdsys/granule/USCOURTS-txnd-4_12-cv-00087/USCOURTS-txnd-4_12-cv-00087-0/content-detail.html
- SJR 60 Text- <http://www.legis.state.tx.us/billlookup/text.aspx?LegSess=85R&Bill=SJR60>
- Texas Occupations Code (relevant sections)- <http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.1104.htm> and <http://www.statutes.legis.state.tx.us/Docs/OC/htm/OC.1071.htm>
- Finance Commission's Proposed Interpretations (beginning on page 48)- <https://www.fc.texas.gov/Package/fc-102017.pdf>
- Comments may be submitted in writing or email to-
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