

A JOINT RESOLUTION

1 proposing a constitutional amendment to clarify certain provisions
2 relating to the making of a home equity loan and use of home equity
3 loan proceeds.

4 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Sections 50(a), (g), and (t), Article XVI, Texas
6 Constitution, are amended to read as follows:

7 (a) The homestead of a family, or of a single adult person,
8 shall be, and is hereby protected from forced sale, for the payment
9 of all debts except for:

10 (1) the purchase money thereof, or a part of such
11 purchase money;

12 (2) the taxes due thereon;

13 (3) an owelty of partition imposed against the
14 entirety of the property by a court order or by a written agreement
15 of the parties to the partition, including a debt of one spouse in
16 favor of the other spouse resulting from a division or an award of a
17 family homestead in a divorce proceeding;

18 (4) the refinance of a lien against a homestead,
19 including a federal tax lien resulting from the tax debt of both
20 spouses, if the homestead is a family homestead, or from the tax
21 debt of the owner;

22 (5) work and material used in constructing new
23 improvements thereon, if contracted for in writing, or work and
24 material used to repair or renovate existing improvements thereon

1 if:

2 (A) the work and material are contracted for in
3 writing, with the consent of both spouses, in the case of a family
4 homestead, given in the same manner as is required in making a sale
5 and conveyance of the homestead;

6 (B) the contract for the work and material is not
7 executed by the owner or the owner's spouse before the fifth day
8 after the owner makes written application for any extension of
9 credit for the work and material, unless the work and material are
10 necessary to complete immediate repairs to conditions on the
11 homestead property that materially affect the health or safety of
12 the owner or person residing in the homestead and the owner of the
13 homestead acknowledges such in writing;

14 (C) the contract for the work and material
15 expressly provides that the owner may rescind the contract without
16 penalty or charge within three days after the execution of the
17 contract by all parties, unless the work and material are necessary
18 to complete immediate repairs to conditions on the homestead
19 property that materially affect the health or safety of the owner or
20 person residing in the homestead and the owner of the homestead
21 acknowledges such in writing; and

22 (D) the contract for the work and material is
23 executed by the owner and the owner's spouse only at the office of a
24 third-party lender making an extension of credit for the work and
25 material, an attorney at law, or a title company;

26 (6) an extension of credit that:

27 (A) is secured by a voluntary lien on the

1 homestead created under a written agreement with the consent of
2 each owner and each owner's spouse;

3 (B) is of a principal amount that when added to
4 the aggregate total of the outstanding principal balances of all
5 other indebtedness secured by valid encumbrances of record against
6 the homestead does not exceed 80 percent of the fair market value of
7 the homestead on the date the extension of credit is made;

8 (C) is without recourse for personal liability
9 against each owner and the spouse of each owner, unless the owner or
10 spouse obtained the extension of credit by actual fraud;

11 (D) is secured by a lien that may be foreclosed
12 upon only by a court order;

13 (E) does not require the owner or the owner's
14 spouse to pay, in addition to any interest, fees to any person that
15 are necessary to originate, evaluate, maintain, record, insure, or
16 service the extension of credit that exceed, in the aggregate,
17 three percent of the original principal amount of the extension of
18 credit;

19 (F) is not a form of open-end account that may be
20 debited from time to time or under which credit may be extended from
21 time to time unless the open-end account is a home equity line of
22 credit;

23 (G) is payable in advance without penalty or
24 other charge;

25 (H) is not secured by any additional real or
26 personal property other than the homestead;

27 (I) is not secured by homestead property that on

1 the date of closing is designated for agricultural use as provided
2 by statutes governing property tax, unless such homestead property
3 is used primarily for the production of milk;

4 (J) may not be accelerated because of a decrease
5 in the market value of the homestead or because of the owner's
6 default under other indebtedness not secured by a prior valid
7 encumbrance against the homestead;

8 (K) is the only debt secured by the homestead at
9 the time the extension of credit is made unless the other debt was
10 made for a purpose described by Subsections (a)(1)-(a)(5) or
11 Subsection (a)(8) of this section;

12 (L) is scheduled to be repaid:

13 (i) in substantially equal successive
14 periodic installments, not more often than every 14 days and not
15 less often than monthly, beginning no later than two months from the
16 date the extension of credit is made, each of which equals or
17 exceeds the amount of accrued interest as of the date of the
18 scheduled installment; or

19 (ii) if the extension of credit is a home
20 equity line of credit, in periodic payments described under
21 Subsection (t)(8) of this section;

22 (M) is closed not before:

23 (i) the 12th day after the later of the date
24 that the owner of the homestead submits a loan ~~an~~ application to
25 the lender for the extension of credit or the date that the lender
26 provides the owner a copy of the notice prescribed by Subsection (g)
27 of this section;

1 (ii) one business day after the date that
2 the owner of the homestead receives a copy of the loan application
3 if not previously provided and a final itemized disclosure of the
4 actual fees, points, interest, costs, and charges that will be
5 charged at closing. If a bona fide emergency or another good cause
6 exists and the lender obtains the written consent of the owner, the
7 lender may provide the documentation to the owner or the lender may
8 modify previously provided documentation on the date of closing;
9 and

10 (iii) the first anniversary of the closing
11 date of any other extension of credit described by Subsection
12 (a)(6) of this section secured by the same homestead property,
13 except a refinance described by Paragraph (Q)(x)(f) of this
14 subdivision, unless the owner on oath requests an earlier closing
15 due to a state of emergency that:

16 (a) has been declared by the president
17 of the United States or the governor as provided by law; and

18 (b) applies to the area where the
19 homestead is located;

20 (N) is closed only at the office of the lender, an
21 attorney at law, or a title company;

22 (O) permits a lender to contract for and receive
23 any fixed or variable rate of interest authorized under statute;

24 (P) is made by one of the following that has not
25 been found by a federal regulatory agency to have engaged in the
26 practice of refusing to make loans because the applicants for the
27 loans reside or the property proposed to secure the loans is located

1 in a certain area:

2 (i) a bank, savings and loan association,
3 savings bank, or credit union doing business under the laws of this
4 state or the United States;

5 (ii) a federally chartered lending
6 instrumentality or a person approved as a mortgagee by the United
7 States government to make federally insured loans;

8 (iii) a person licensed to make regulated
9 loans, as provided by statute of this state;

10 (iv) a person who sold the homestead
11 property to the current owner and who provided all or part of the
12 financing for the purchase;

13 (v) a person who is related to the homestead
14 property owner within the second degree of affinity or
15 consanguinity; or

16 (vi) a person regulated by this state as a
17 mortgage broker; and

18 (Q) is made on the condition that:

19 (i) the owner of the homestead is not
20 required to apply the proceeds of the extension of credit to repay
21 another debt except debt secured by the homestead or debt to another
22 lender;

23 (ii) the owner of the homestead not assign
24 wages as security for the extension of credit;

25 (iii) the owner of the homestead not sign
26 any instrument in which blanks relating to substantive terms of
27 agreement are left to be filled in;

1 (iv) the owner of the homestead not sign a
2 confession of judgment or power of attorney to the lender or to a
3 third person to confess judgment or to appear for the owner in a
4 judicial proceeding;

5 (v) [~~the lender,~~] at the time the extension
6 of credit is made, [~~provide~~] the owner of the homestead shall
7 receive a copy of the final loan application and all executed
8 documents signed by the owner at closing related to the extension of
9 credit;

10 (vi) the security instruments securing the
11 extension of credit contain a disclosure that the extension of
12 credit is the type of credit defined by Section 50(a)(6), Article
13 XVI, Texas Constitution;

14 (vii) within a reasonable time after
15 termination and full payment of the extension of credit, the lender
16 cancel and return the promissory note to the owner of the homestead
17 and give the owner, in recordable form, a release of the lien
18 securing the extension of credit or a copy of an endorsement and
19 assignment of the lien to a lender that is refinancing the extension
20 of credit;

21 (viii) the owner of the homestead and any
22 spouse of the owner may, within three days after the extension of
23 credit is made, rescind the extension of credit without penalty or
24 charge;

25 (ix) the owner of the homestead and the
26 lender sign a written acknowledgment as to the fair market value of
27 the homestead property on the date the extension of credit is made;

1 (x) except as provided by Subparagraph (xi)
2 of this paragraph, the lender or any holder of the note for the
3 extension of credit shall forfeit all principal and interest of the
4 extension of credit if the lender or holder fails to comply with the
5 lender's or holder's obligations under the extension of credit and
6 fails to correct the failure to comply not later than the 60th day
7 after the date the lender or holder is notified by the borrower of
8 the lender's failure to comply by:

9 (a) paying to the owner an amount
10 equal to any overcharge paid by the owner under or related to the
11 extension of credit if the owner has paid an amount that exceeds an
12 amount stated in the applicable Paragraph (E), (G), or (O) of this
13 subdivision;

14 (b) sending the owner a written
15 acknowledgement that the lien is valid only in the amount that the
16 extension of credit does not exceed the percentage described by
17 Paragraph (B) of this subdivision, if applicable, or is not secured
18 by property described under Paragraph (H) or (I) of this
19 subdivision, if applicable;

20 (c) sending the owner a written notice
21 modifying any other amount, percentage, term, or other provision
22 prohibited by this section to a permitted amount, percentage, term,
23 or other provision and adjusting the account of the borrower to
24 ensure that the borrower is not required to pay more than an amount
25 permitted by this section and is not subject to any other term or
26 provision prohibited by this section;

27 (d) delivering the required documents

1 to the borrower if the lender fails to comply with Subparagraph (v)
2 of this paragraph or obtaining the appropriate signatures if the
3 lender fails to comply with Subparagraph (ix) of this paragraph;

4 (e) sending the owner a written
5 acknowledgement, if the failure to comply is prohibited by
6 Paragraph (K) of this subdivision, that the accrual of interest and
7 all of the owner's obligations under the extension of credit are
8 abated while any prior lien prohibited under Paragraph (K) remains
9 secured by the homestead; or

10 (f) if the failure to comply cannot be
11 cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the
12 failure to comply by a refund or credit to the owner of \$1,000 and
13 offering the owner the right to refinance the extension of credit
14 with the lender or holder for the remaining term of the loan at no
15 cost to the owner on the same terms, including interest, as the
16 original extension of credit with any modifications necessary to
17 comply with this section or on terms on which the owner and the
18 lender or holder otherwise agree that comply with this section; and

19 (xi) the lender or any holder of the note
20 for the extension of credit shall forfeit all principal and
21 interest of the extension of credit if the extension of credit is
22 made by a person other than a person described under Paragraph (P)
23 of this subdivision or if the lien was not created under a written
24 agreement with the consent of each owner and each owner's spouse,
25 unless each owner and each owner's spouse who did not initially
26 consent subsequently consents;

27 (7) a reverse mortgage; or

1 (8) the conversion and refinance of a personal
2 property lien secured by a manufactured home to a lien on real
3 property, including the refinance of the purchase price of the
4 manufactured home, the cost of installing the manufactured home on
5 the real property, and the refinance of the purchase price of the
6 real property.

7 (g) An extension of credit described by Subsection (a)(6) of
8 this section may be secured by a valid lien against homestead
9 property if the extension of credit is not closed before the 12th
10 day after the lender provides the owner with the following written
11 notice on a separate instrument:

12 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
13 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

14 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION
15 ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME.
16 SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY
17 THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY
18 FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

19 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT
20 OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

21 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
22 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES
23 OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE
24 FAIR MARKET VALUE OF YOUR HOME;

25 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL
26 LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE
27 OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

1 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
2 WITH A COURT ORDER;

3 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3
4 PERCENT OF THE LOAN AMOUNT;

5 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE
6 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM
7 TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

8 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

9 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

10 "(I) THE LOAN MAY NOT BE SECURED BY [~~AGRICULTURAL~~] HOMESTEAD
11 PROPERTY THAT IS DESIGNATED FOR AGRICULTURAL USE AS OF THE DATE OF
12 CLOSING, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED
13 PRIMARILY FOR THE PRODUCTION OF MILK;

14 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
15 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
16 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
17 HOME;

18 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE
19 XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
20 GIVEN TIME;

21 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS
22 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT
23 PERIOD;

24 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
25 LOAN [~~WRITTEN~~] APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
26 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND MAY NOT WITHOUT
27 YOUR CONSENT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH

1 YOU RECEIVE A COPY OF YOUR LOAN APPLICATION IF NOT PREVIOUSLY
2 PROVIDED AND A FINAL ITEMIZED DISCLOSURE OF THE ACTUAL FEES,
3 POINTS, INTEREST, COSTS, AND CHARGES THAT WILL BE CHARGED AT
4 CLOSING; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN
5 WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY
6 NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE
7 OTHER LOAN, UNLESS ON OATH YOU REQUEST AN EARLIER CLOSING DUE TO A
8 DECLARED STATE OF EMERGENCY;

9 " (N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
10 TITLE COMPANY, OR AN ATTORNEY AT LAW;

11 " (O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF
12 INTEREST AUTHORIZED BY STATUTE;

13 " (P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
14 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
15 CONSTITUTION;

16 " (Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF
17 THE TEXAS CONSTITUTION MUST:

18 " (1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT
19 EXCEPT A DEBT THAT IS SECURED BY YOUR HOME OR OWED TO ANOTHER
20 LENDER;

21 " (2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

22 " (3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE
23 BLANKS FOR SUBSTANTIVE TERMS OF AGREEMENT LEFT TO BE FILLED IN;

24 " (4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR
25 POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN
26 A LEGAL PROCEEDING ON YOUR BEHALF;

27 " (5) PROVIDE THAT YOU RECEIVE A COPY OF YOUR FINAL LOAN

1 APPLICATION AND ALL EXECUTED DOCUMENTS YOU SIGN AT CLOSING;

2 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
3 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
4 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

5 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER
6 WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE
7 LIEN, WHICHEVER IS APPROPRIATE;

8 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING,
9 RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

10 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR
11 MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

12 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND
13 INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S
14 OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS
15 PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS
16 CONSTITUTION; AND

17 "(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

18 "(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW
19 MONEY UNDER THE LINE OF CREDIT;

20 "(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN
21 AMOUNT OF AT LEAST \$4,000;

22 "(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD,
23 [~~SOLICITATION CHECK,~~] OR SIMILAR DEVICE, OR PREPRINTED CHECK THAT
24 YOU DID NOT SOLICIT, TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

25 "(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND
26 COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE
27 LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

1 "(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN
2 ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80
3 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF
4 CREDIT IS ESTABLISHED;

5 "(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT
6 ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME,
7 AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY
8 NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE
9 BALANCE IS LESS THAN 50 PERCENT OF THE FAIR MARKET VALUE; AND

10 "(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE
11 LINE OF CREDIT.

12 "THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS
13 CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI,
14 OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

15 If the discussions with the borrower are conducted primarily
16 in a language other than English, the lender shall, before closing,
17 provide an additional copy of the notice translated into the
18 written language in which the discussions were conducted.

19 (t) A home equity line of credit is a form of an open-end
20 account that may be debited from time to time, under which credit
21 may be extended from time to time and under which:

22 (1) the owner requests advances, repays money, and
23 reborrows money;

24 (2) any single debit or advance is not less than
25 \$4,000;

26 (3) the owner does not use a credit card, debit card,
27 [~~preprinted solicitation check,~~] or similar device, or preprinted

1 check unsolicited by the borrower, to obtain an advance;

2 (4) any fees described by Subsection (a)(6)(E) of this
3 section are charged and collected only at the time the extension of
4 credit is established and no fee is charged or collected in
5 connection with any debit or advance;

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

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

16 (7) the lender or holder may not unilaterally amend
17 the extension of credit; and

18 (8) repayment is to be made in regular periodic
19 installments, not more often than every 14 days and not less often
20 than monthly, beginning not later than two months from the date the
21 extension of credit is established, and:

22 (A) during the period during which the owner may
23 request advances, each installment equals or exceeds the amount of
24 accrued interest; and

25 (B) after the period during which the owner may
26 request advances, installments are substantially equal.

27 SECTION 2. This proposed constitutional amendment shall be

H.J.R. No. 72

1 submitted to the voters at an election to be held November 6, 2007.
2 The ballot shall be printed to permit voting for or against the
3 proposition: "The constitutional amendment to clarify certain
4 provisions relating to the making of a home equity loan and use of
5 home equity loan proceeds."

H.J.R. No. 72

President of the Senate

Speaker of the House

I certify that H.J.R. No. 72 was passed by the House on April 25, 2007, by the following vote: Yeas 143, Nays 1, 1 present, not voting; and that the House concurred in Senate amendments to H.J.R. No. 72 on May 24, 2007, by the following vote: Yeas 138, Nays 1, 3 present, not voting.

Chief Clerk of the House

H.J.R. No. 72

I certify that H.J.R. No. 72 was passed by the Senate, with amendments, on May 22, 2007, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

RECEIVED: _____

Date

Secretary of State