



November 23, 2020

To: Clients and Friends

From: David F. Dulock

Subject: Home Equity Lending Interpretation Amendments Adopted by the Finance Commission of Texas and Texas Credit Union Commission (November 20, 2020, 45 TexReg 8307, [click here](#))

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Effective November 26, 2020, the Finance Commission of Texas and the Texas Credit Union Commission (herein “Commissions”) adopt amendments to the following home equity lending interpretations: §153.8 (relating to Security of the Equity Loan: Section 50(a)(6)(H)), §153.11 (relating to Repayment Schedule: Section 50(a)(6)(L)(i)), §153.14 (relating to One Year Prohibition: Section 50(a)(6)(M)(iii)), §153.15 (relating to Location of Closing: Section 50(a)(6)(N)), §153.22 (relating to Copies of Documents: Section 50(a)(6)(Q)(v)), and §153.41 (relating to Refinance of a Debt Secured by a Homestead: Section 50(e)); and adopt new §153.26 (relating to Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)).

The text of the Commissions’ amendments to the home equity lending interpretations—Texas Administrative Code (7 TAC Chapter 153)—is reprinted in the Addendum attached to this memorandum. These amendments are also summarized below:

- In §153.8(1)(C), an amendment removes the word “or” to correct a list that unnecessarily includes the word “or” twice.

- In §153.11, an amendment to the introductory sentence adds the words “at closing” to explain that the repayment schedule requirements in Section 50(a)(6)(L)(i) apply at closing. New paragraph (1) explains that Section 50(a)(6)(L)(i) does not prohibit a lender from agreeing with the borrower to a modification that includes a deferment of the original obligation and/or includes past due amounts under the equity loan. An amendment to paragraph (2), formerly paragraph (1), explains that the modification does not affect the two month time period in Section 50(a)(6)(L)(i).

Our Comment: (1) These modification amendments to §153.11 should be read in conjunction with the modification provisions in §153.14. (2) In the preamble to these amendments, the Commissions state: “These amendments to §153.11 are based on the Texas Supreme Court’s decision in *Sims v. Carrington Mortg. Servs., LLC*, 440 S.W.3d 10 (Tex. 2014). In *Sims*, the Texas Supreme Court analyzed a modification of a home equity loan where the borrower and lender agreed to capitalize past-due interest, fees, property taxes, and insurance premiums into the principal, and where the modification did not involve the satisfaction or replacement of the original note, an advancement of new funds, or an increase in the obligations created by the original note. The court held that because the modification was not a new extension of credit, it did not trigger reapplication of the constitutional requirements of Section 50.”

- In §153.14, an amendment describes the state of emergency exceptions in Section 50(a)(6)(M)(iii) that allow a home equity loan to close less than one year after the closing of a prior home equity loan on the same property. The amendment adds a new paragraph (3) that explains a state of emergency includes a national emergency declared

(5 pages)

by the president of the United States under the National Emergencies Act, 50 U.S.C. §§1601-1651, and a state of disaster declared by the governor of Texas under Texas Government Code, Chapter 418.

- In §153.15, an amendment to paragraph (1) describes permissible closing locations for the purposes of Section 50(a)(6)(N) to include any area located at the permanent physical address of the lender, attorney, or title company. Amendments to paragraphs (2) and (3) add references to the permanent physical address.

- In §153.22, new paragraph (3) permits the lender to provide the owner copies of the documents required by Section 50(a)(6)(Q)(v) electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, and includes references to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006.

Our Comment: In our comments on the proposed rule, we recommended that the Commissions expand this electronic delivery to all notices, disclosures and documents required to be delivered to the owner by other sections of the home equity lending interpretations – for example, the 12-day consumer disclosure required by §153.12 and §153.51; the preclosing disclosures required by §153.13; and the three business day refinance disclosure required by §153.45. In the preamble to this electronic delivery amendment, the Commissions declined to accept our recommendation, stating: “In general, the agencies do not object to the concept of providing required disclosures electronically in accordance with state and federal law. ... In the future, the agencies and the commissions will consider whether a new consolidated section or amendments to other sections in Chapter 153 might be appropriate to address this issue.”

- New §153.26 interprets the acknowledgment of fair market value requirement in Section 50(a)(6)(Q)(ix). Applying the doctrine of last antecedent, paragraph (1) states that “the phrase ‘on the date the extension of credit is made’ modifies only the immediately preceding phrase ‘the fair market value of the homestead property.’” Paragraph (2) explains that the lender may sign the written acknowledgment before or at closing. Paragraph (3) explains that an authorized agent may sign the written acknowledgment on behalf of the lender.

- In §153.41, an amendment removes the phrase “or (a)(7)” in the introductory paragraph because Section 50(e) does not refer to Section 50(a)(7).

Attachment: Addendum (Home Equity Interpretation Amendments)

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ADDENDUM
(Home Equity Interpretation Amendments)

***Our Comment:** Only the text of those parts of the Interpretations amended by the Commissions is reprinted in this Addendum, except as required for clarity. Any Interpretation or part of an Interpretation not reprinted in this Addendum has not been amended. To view the complete text of any Interpretation, whether or not amended, click on the following hyperlink: [Home Equity Lending](#).*

§153.8. Security of the Equity Loan: Section 50(a)(6)(H).

(1) A lender and an owner or an owner's spouse may enter into an agreement whereby a lender may acquire an interest in items incidental to the homestead. An equity loan secured by the following items is not considered to be secured by additional real or personal property:

(A) escrow reserves for the payment of taxes and insurance;

(B) an undivided interest in a condominium unit, a planned unit development, or the right to the use and enjoyment of certain property owned by an association;

(C) insurance proceeds related to the homestead; [ø]

(D) condemnation proceeds;

(E) fixtures; or

(F) easements necessary or beneficial to the use of the homestead, including access easements for ingress and egress.

§153.11. Repayment Schedule: Section 50(a)(6)(L)(i).

Unless an equity loan is a home equity line of credit under Section 50(t), the loan must be scheduled at closing to be repaid in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment.

(1) Section 50(a)(6)(L)(i) does not prohibit a lender from agreeing with a borrower to modify an equity loan if the modification does not satisfy and replace the original equity loan and does not create a new extension of credit. The modification may include a deferment of the borrower's original obligation, and may include amounts that are past due under the equity loan (e.g., accrued but unpaid interest, taxes and insurance).

(2) [(1)] The two month time period contained in Section 50(a)(6)(L)(i) begins on the date of closing. A modification described by paragraph (1) of this subsection does not affect the two month time period.

§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii).

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property, unless the owner on oath requests an earlier closing due to a state of emergency that has been declared by the president of the United States or the governor as provided by law, and applies to the area where the homestead is located.

(3) For purposes of Section 50(a)(6)(M)(iii), a state of emergency includes:

(A) a national emergency declared by the president of the United States under the National Emergencies Act, 50 U.S.C. §§1601-1651; and

(B) a state of disaster declared by the governor of Texas under Texas Government Code, Chapter 418.

§153.15. Location of Closing: Section 50(a)(6)(N).

(1) An equity loan must be closed at the permanent physical address of the office or branch office of the lender, attorney, or title company. The closing office must be a permanent physical address so that the closing occurs at an authorized physical location other than the homestead. The closing may occur in any area located at the permanent physical address of the lender, attorney, or title company (e.g., indoor office, parking lot).

(2) Any power of attorney allowing an attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at the permanent physical address of an office of the lender, an attorney at law, or a title company.

(3) The consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at the permanent physical address of an office of the lender, an attorney at law, or a title company.

§153.22. Copies of Documents: Section 50(a)(6)(Q)(v).

At closing, the lender must provide the owner with a copy of the final loan application and all executed documents that are signed by the owner at closing in connection with the equity loan.

(3) A lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic signatures and delivery.

153.26. Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix).

The owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made.

(1) For purposes of Section 50(a)(6)(Q)(ix), the phrase "on the date the extension of credit is made" modifies only the immediately preceding phrase "the fair market value of the homestead property," in accordance with the doctrine of last antecedent.

(2) A lender may sign the written acknowledgment before or at closing.

(3) An authorized agent may sign the written acknowledgment on behalf of the lender.

§153.41. Refinance of a Debt Secured by a Homestead: Section 50(e).

A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) of Section 50 of the Texas Constitution that includes the advance of additional funds may not be secured by a valid lien against the homestead unless: ~~(1)~~ the refinance of the debt is an extension of credit described by Subsection (a)(6) [~~or (a)(7)~~] of Section 50 of the Texas Constitution; ~~or~~ ~~(2)~~ the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of Section 50 of the Texas Constitution.