



Attorneys At Law

8584 Katy Freeway, Suite 420

Houston, TX 77024

Phone: 713-871-0005

Fax: 713-871-1358

Partners

Gregory S. Graham ¹

Shawn P. Black ²

Ryan Black ³

Senior Lawyers

David F. Dulock

Diane M. Gleason

Daniel S. Engle ⁴

Margaret A. Noles

Associates

Nick Stevens ⁵

Sydney Davis

Mehreen Nadeem

Ambria Wilmore

Of Counsel

David M. Tritter

Calvin C. Mann, Jr.

Thomas E. Black, Jr. ⁶

Retired Partner(s)

Calvin C. Mann, Jr.

Thomas E. Black, Jr. ⁶

¹ Also Licensed in Georgia

² Also Licensed in Kentucky and New York

³ Also Licensed in District of Columbia

⁴ Also Licensed in New York

⁵ Also Licensed in Oklahoma

⁶ Also Licensed in New York and Washington

December 31, 2021 **REV.** January 3, 2022

(Revised to correct Heading: §153.3 to §153.5 Two Percent Fee Limitation)

To: Clients and Friends

From: David F. Dulock

Subject: Home Equity Lending Interpretation Amendments to §§153.1, 153.5, 153.12, 153.13, 153.17, 153.22, 153.26, 153.45, 153.51 Adopted by the Joint Financial Regulatory Agencies Effective January 6, 2022

In the December 31, 2021, issue of the *Texas Register*, [click here](#), the Joint Financial Regulatory Agencies adopted final amendments to §§153.5, 153.12, 153.13, 153.17, 153.22, 153.26, 153.45, and 153.51 without changes to the proposed text published in the September 10, 2021, issue of the *Texas Register*. These final amendments are not republished in the December 31st issue of the *Texas Register*; you must go to the proposed text published in the September 10, 2021, issue of the *Texas Register*, [click here](#), to view or download these amendments. The Joint Financial Regulatory Agencies adopted the amendments to §153.1 with changes to the proposed text published in the September 10, 2021, issue of the *Texas Register*, and amended §153.1 is republished in the December 31st issue of *Texas Register*. These final amendments are effective on January 6, 2022.

§153.1 Definitions. The amendments add definitions and statutory citations for the terms “E-Sign Act” (referring to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006) and “UETA” (referring to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322). The terms “E-Sign Act” and “UETA” are used throughout this adoption in connection with electronic disclosures. The amendments to §153.1 also renumber other definitions accordingly.

§153.5 Two Percent Fee Limitation: Section 50(a)(6)(E). The amendments update citations to the definition of “interest” to reflect the renumbering of the definitions in §153.1.

§153.12 Closing Date: Section 50(a)(6)(M)(i). The amendments relate to oral and electronic loan applications. New §153.12(3) explains that a loan application may be submitted electronically in accordance with state and federal law governing electronic disclosures, with references to the UETA and the E-Sign Act. An amendment to §153.12(2) also replaces the word “given” with “submitted” to be consistent with Section 50(a)(6)(M)(i).

§153.13 Preclosing Disclosures: Section 50(a)(6)(M)(ii). The amendment describes requirements for providing an electronic copy of the preclosing disclosure (*i.e.*, the loan application and final itemized disclosure of amounts to be charged at closing). New §153.13(4) explains that the lender may provide the preclosing disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, with references to the UETA and the E-Sign Act.

§153.17 Authorized Lenders: Section 50(a)(6)(P). The amendment describes Section 50’s applicability to out-of-state financial institutions. New §153.17(2) specifies that for purposes of Section 50(a)(6)(P), a “bank, savings and loan association, savings bank, or

(2 pages)

credit union doing business under the laws of this state or the United States” includes a state-chartered financial institution described by Texas Finance Code, §201.101(1)(A) - (D) that is chartered under the laws of another state and does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102. The financial institutions described by Texas Finance Code, §201.101(1)(A) - (D) are banks (including savings banks), savings and loan associations, and credit unions.

§153.22 Copies of Documents: Section 50(a)(6)(Q)(v). The amendment revises references to the UETA and the E-Sign Act, to refer to these statutes consistently with other sections in the adopted amendments.

§153.26 Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix). The amendment describes requirements for electronically signing the acknowledgment of fair market value. New §153.26(4) explains that the owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, with references to the UETA and the E-Sign Act.

§153.45 Refinance of an Equity Loan: Section 50(f). The amendment describes requirements for providing an electronic copy of the refinance disclosure described in Section 50(f)(2)(D) of the Texas Constitution for a refinance of a home equity loan to a non-home-equity loan. New §153.45(4)(E) explains that the lender may provide the refinance disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, with references to the UETA and the E-Sign Act.

§153.51 Consumer Disclosure: Section 50(g). The amendment describes requirements for providing an electronic copy of the 12-day consumer disclosure required by Section 50(g) of the Texas Constitution. New §153.51(2) explains that the lender may provide the consumer disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, with references to the UETA and the E-Sign Act.

This Memorandum is provided as general information in regard to the subject matter covered, but no representations or warranty of the accuracy or reliability of the content of this information are made or implied. Opinions expressed in this memorandum are those of the author alone. In publishing this information, neither the author nor the law firm of Black, Mann & Graham L.L.P. is engaged in rendering legal services. While this information concerns legal and regulatory matters, it is not legal advice and its use creates no attorney-client relationship or any other basis for reliance on the information. Readers should not place reliance on this information alone but should seek independent legal advice regarding the law applicable to matters of interest or concern to them. The law firm of Black, Mann & Graham L.L.P. expressly disclaims any obligation to keep the content of this information current or free of errors.