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To: Clients and Friends

From: David F. Dulock

Subject: Supreme Court of Texas Answers 5th Circuit Home Equity Loan Equitable Subrogation Certified Question—*Zepeda v. Federal Home Loan Mortgage Corporation*, 935 F.3d 296 (5th Cir. Aug. 2019)

This memorandum updates the firm's [August 19, 2019 memorandum](#) on the United States Court of Appeals for the Fifth Circuit certified question to the Supreme Court of Texas regarding a lender's right to equitable subrogation in connection with an invalid Texas home equity loan. The case of *Zepeda v. Federal Home Loan Mortgage Corporation*, 935 F.3d 296 (5th Cir. Aug. 2019) involved the application of Texas' long-standing doctrine of equitable subrogation to an invalid home equity loan under Tex. Const. art. XVI, § 50(a)(6). In that case, the 5th Circuit certified the following question to the Texas Supreme Court to answer:

Is a lender entitled to equitable subrogation, where it failed to correct a curable constitutional defect in the loan documents under § 50 of the Texas Constitution?

In *Federal Home Loan Mortgage Corporation v. Zepeda*, 2020 WL 1975169 (Tex. Apr. 24, 2020), the Texas Supreme Court answered "Yes" to the 5th Circuit's certified question, stating: "Under Texas law, a lender who discharges a prior, valid lien on the borrower's homestead property is entitled to subrogation, even if the lender failed to correct a curable defect in the loan documents under § 50 of the Texas Constitution. We answer the certified question "yes"." Thus, the Court upheld its landmark home equity loan subrogation decision in *LaSalle Bank National Association v. White*, 246 S.W.3d 616 (Tex. 2007).

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