



October 3, 2023

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To: Clients and Friends

From: Daniel S. Engle

Subject: Texas Constitutional Amendment Vote on HJR 2 and Property Tax Refresher

HJR 2

On November 7, 2023, Texas voters will vote on proposed amendments to the Texas Constitution. Among the proposed amendments is HJR 2, which among other things, will increase the homestead exemption for school property taxes from \$40,000 to \$100,000. This proposed amendment is expected to pass. If passed, HJR will be retroactive for 2023 property taxes, meaning that Texans with a residence homestead exemption will obtain this benefit for this year's taxes.

Property taxes in Texas become finalized after October 1 and become due and payable once finalized. Some taxing authorities are more expedient in handling this process so some Texans will obtain their tax statements shortly while for others it may be delayed later into the year. For tax statements sent before November 7, it will not be absolutely clear how much in property taxes that property owners with a homestead exemption will owe for 2023. The Texas legislature addressed this uncertainty in an accompanying bill to HJR 2 (SB 2) and clarified that a tax statement sent before November will list the amount due as if the amendment passed along with a statement clarifying that this is a provisional tax bill conditioned on approval of HJR 2. The statement will also state what the tax bill would be if HJR 2 does not pass.

This potential uncertainty of the exact amount of property taxes due for 2023 has led to different interpretations among title insurers and lenders. BMG's understanding is that most title insurers are taking the position that the provisional tax bill can be relied upon as passage of HJR 2 is practically certain, but other insurers are taking a more conservative position and will require using the value if HJR 2 does not pass. This difference of opinion could lead to complexities for lenders closing loans in October and early November. Lenders should defer to the title company's interpretation for 2023 taxes that have become due and payable. For escrow and ability to repay estimates, BMG's view is that a lender may make estimates assuming that HJR 2 will pass.

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Property Tax Refresher

Lenders are reminded that practically all mortgage loan investors, including Fannie Mae and Freddie Mac, will require that there is not an exception for taxes for the current year—that is, 2023—or prior years on the loan policy (see B7-2-04 of Fannie Mae Selling Guide and 4702.4 of Freddie Mac Selling Guide). This means that if 2023 taxes are due and payable that they must be paid at closing. If they are not yet due and payable because the applicable authorities have not yet finalized them, then the loan policy must show them as not yet due and payable for 2023. Having an exception for 2023 taxes on the loan policy could result in an unmarketable loan.

Complicating matters is that while property taxes become due and payable beginning in October of a given year, they do not become past due until after January 31 of the next year. So, a property owner generally has until January 31, 2024 to pay 2023 property taxes without penalty (some individuals, such as elderly owners, have the option of paying in installments). This can cause tension with borrowers who qualify for escrow waivers. These borrowers will often prefer to wait until January to pay their property taxes and can have difficulties understanding why a lender would require them to pay property taxes at closing (since the same lender is trusting them with an escrow waiver). In these situations, however, a lender must insist that these borrowers pay taxes at closing or risk having an unmarketable loan.

Finally, lenders are reminded that property taxes on Texas homestead that have become due and payable are secured by a valid lien against the homestead (see Texas Constitution, Article XVI, Section 50(a)(2)) and loan proceeds in a rate/term refinance loan may be used to pay these property taxes. For property taxes that are not yet due and payable, the Texas Constitution and Texas Administrative Code allow for loan proceeds to include reasonable costs of the loan, which includes escrows for taxes and insurance (see Texas Constitution, Article XVI, Section 50(e)(2) and Texas Administrative Code, 7 TAC Section 153.41(3) for general rate/term refinances and Texas Constitution, Article XVI, Section 50(f)(2)(B)(ii) for A6 to A4 conversion loans).

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