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To: Clients and Friends

From: David F. Dulock

Subject: 2013 Texas Legislative Update - Reverse Mortgage for Purchase of Homestead Constitutional Amendment (SJR 18) Effective November 22, 2013

This fourth, and last, legislative update prepared by this firm for the 2013 legislative session advises you that constitutional amendment Senate Joint Resolution 18 (SJR 18), which amends Section 50(k), Article XVI, Texas Constitution, to authorize advances under a reverse mortgage for the purchase of a residential homestead property, is now effective. SJR 18 was approved by the voters on November 5, 2013, and became effective on November 22, 2013, when the vote was canvassed, the results were certified by the Texas Secretary of State, and a proclamation was issued by the Governor.

For your convenience we have reprinted below the summary of SJR 18 from our October 4, 2013, legislative update.

SJR18: REVERSE MORTGAGE AMENDMENTS TO SECTION 50(k), ARTICLE XVI, TEXAS CONSTITUTION

SJR 18 amends Section 50(k) to: (i) authorize advances under a reverse mortgage for the purchase of homestead property that the borrower will occupy as a principal residence; (ii) expand the conditions under which a lender may require repayment of a reverse mortgage to include the borrower's failure to timely occupy the homestead property purchased with reverse mortgage advances within the period specified in the reverse mortgage agreement; (iii) prohibit the making of a reverse mortgage unless both the prospective borrower and the prospective borrower's spouse receive counseling regarding the advisability and availability of reverse mortgages and other financial alternatives that is completed within a prescribed period before the closing date of the reverse mortgage; (iv) replace the written notice requirement with a promulgated written notice; and (v) prohibit closing of a reverse mortgage before the 12th day after the date the lender provides to the prospective borrower the promulgated written notice signed by the lender or originator and the borrower.

Subsection 50(k)(4)(B) is added to allow advances to the borrower "for the purchase of homestead property that the borrower will occupy as a principal residence [.]"

Subsection 50(k)(6)(C-1) is added to include the following as an event that will trigger repayment of the reverse mortgage: "if the extension of credit is used for the purchase of homestead property, the borrower fails to timely occupy the homestead property as the borrower's principal residence within a specified period after the date the extension of credit is made that is stipulated in the written agreement creating the lien on the property[.]"

Subsection 50(k)(8), which requires the owner to receive counseling before making the reverse mortgage, is amended to read as follows: "that is not made unless the prospective borrower and the spouse of the prospective borrower attest in writing that the prospective borrower and the prospective borrower's spouse received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives that was completed not earlier than the 180th day nor later than the 5th day before the date the extension of credit is closed[.]"

Subsection 50(k)(9) is amended to replace the requirement that the lender provide the borrower with a written notice specifying the specific provisions in Subsection 50(k)(6) under which the borrower is required to repay the loan with the requirement that the reverse mortgage “is not closed before the 12th day after the date the lender provides to the prospective borrower the following written notice on a separate instrument, which the lender or originator and the borrower must sign for the notice to take effect[.]” For a copy of the new promulgated notice under amended Subsection 50(k)(9), see Exhibit A to this memorandum.

Previously, on August 21 2013, we issued our first legislative update for the 2013 legislative session, which summarized those bills effective immediately that we considered are of interest to our clients. On October 1, 2013, we issued our second legislative update for the 2013 legislative session, which summarized those bills effective on and after September 1, 2013, that we considered are of interest to our clients. On October 4, 2013, we issued our third legislative update for the 2013 legislative session, which summarized SJR 18 and Section 17.001 of Senate Bill 1093 (SB 1093), which amends Section 51.002(i) of the Texas Property Code. If you have not received any of these legislative updates, you may request a copy from us or print the update from our Internet website: <http://www.bmandg.com>.

Attachment: Exhibit A - Important Notice to Borrowers Related to Your Reverse Mortgage

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.

Exhibit A

IMPORTANT NOTICE TO BORROWERS RELATED TO YOUR REVERSE MORTGAGE

UNDER THE TEXAS TAX CODE, CERTAIN ELDERLY PERSONS MAY DEFER THE COLLECTION OF PROPERTY TAXES ON THEIR RESIDENCE HOMESTEAD. BY RECEIVING THIS REVERSE MORTGAGE YOU MAY BE REQUIRED TO FORGO ANY PREVIOUSLY APPROVED DEFERRAL OF PROPERTY TAX COLLECTION AND YOU MAY BE REQUIRED TO PAY PROPERTY TAXES ON AN ANNUAL BASIS ON THIS PROPERTY.

THE LENDER MAY FORECLOSE THE REVERSE MORTGAGE AND YOU MAY LOSE YOUR HOME IF:

(A) YOU DO NOT PAY THE TAXES OR OTHER ASSESSMENTS ON THE HOME EVEN IF YOU ARE ELIGIBLE TO DEFER PAYMENT OF PROPERTY TAXES;

(B) YOU DO NOT MAINTAIN AND PAY FOR PROPERTY INSURANCE ON THE HOME AS REQUIRED BY THE LOAN DOCUMENTS;

(C) YOU FAIL TO MAINTAIN THE HOME IN A STATE OF GOOD CONDITION AND REPAIR;

(D) YOU CEASE OCCUPYING THE HOME FOR A PERIOD LONGER THAN 12 CONSECUTIVE MONTHS WITHOUT THE PRIOR WRITTEN APPROVAL FROM THE LENDER OR, IF THE EXTENSION OF CREDIT IS USED FOR THE PURCHASE OF THE HOME, YOU FAIL TO TIMELY OCCUPY THE HOME AS YOUR PRINCIPAL RESIDENCE WITHIN A PERIOD OF TIME AFTER THE EXTENSION OF CREDIT IS MADE THAT IS STIPULATED IN THE WRITTEN AGREEMENT CREATING THE LIEN ON THE HOME;

(E) YOU SELL THE HOME OR OTHERWISE TRANSFER THE HOME WITHOUT PAYING OFF THE LOAN;

(F) ALL BORROWERS HAVE DIED AND THE LOAN IS NOT REPAID;

(G) YOU COMMIT ACTUAL FRAUD IN CONNECTION WITH THE LOAN; OR

(H) YOU FAIL TO MAINTAIN THE PRIORITY OF THE LENDER 'S LIEN ON THE HOME, AFTER THE LENDER GIVES NOTICE TO YOU, BY PROMPTLY DISCHARGING ANY LIEN THAT HAS PRIORITY OR MAY OBTAIN PRIORITY OVER THE LENDER 'S LIEN WITHIN 10 DAYS AFTER THE DATE YOU RECEIVE THE NOTICE, UNLESS YOU:

(1) AGREE IN WRITING TO THE PAYMENT OF THE OBLIGATION SECURED BY THE LIEN IN A MANNER ACCEPTABLE TO THE LENDER;

(2) CONTEST IN GOOD FAITH THE LIEN BY, OR DEFEND AGAINST ENFORCEMENT OF THE LIEN IN, LEGAL PROCEEDINGS SO AS TO PREVENT THE ENFORCEMENT OF THE LIEN OR FORFEITURE OF ANY PART OF THE HOME; OR

(3) SECURE FROM THE HOLDER OF THE LIEN AN AGREEMENT SATISFACTORY TO THE LENDER SUBORDINATING THE LIEN TO ALL AMOUNTS SECURED BY THE LENDER'S LIEN ON THE HOME.

IF A GROUND FOR FORECLOSURE EXISTS, THE LENDER MAY NOT COMMENCE FORECLOSURE UNTIL THE LENDER GIVES YOU WRITTEN NOTICE BY MAIL THAT A GROUND FOR FORECLOSURE EXISTS AND GIVES YOU AN OPPORTUNITY TO REMEDY THE CONDITION CREATING THE GROUND FOR FORECLOSURE OR TO PAY THE REVERSE MORTGAGE DEBT WITHIN THE TIME PERMITTED BY SECTION 50(k)(10), ARTICLE XVI, OF THE TEXAS CONSTITUTION. THE LENDER MUST OBTAIN A COURT ORDER FOR FORECLOSURE EXCEPT THAT A COURT ORDER IS NOT REQUIRED IF THE FORECLOSURE OCCURS BECAUSE:

(1) ALL BORROWERS HAVE DIED; OR

(2) THE HOMESTEAD PROPERTY SECURING THE LOAN IS SOLD OR OTHERWISE TRANSFERRED.

YOU SHOULD CONSULT WITH YOUR HOME COUNSELOR OR AN ATTORNEY IF YOU HAVE ANY CONCERNS ABOUT THESE OBLIGATIONS BEFORE YOU CLOSE YOUR REVERSE MORTGAGE LOAN. TO LOCATE AN ATTORNEY IN YOUR AREA, YOU MAY WISH TO CONTACT THE STATE BAR OF TEXAS.

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