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**To:** Clients and Friends

**From:** David F. Dulock

**Subject:** Texas Home Equity Lending Interpretations Amendments

In the November 18, 2016, issue of the *Texas Register* (41 TexReg 9106), the Finance Commission of Texas and the Texas Credit Union Commission (the "Commissions") jointly adopted amendments to §§153.5, 153.8, 153.13, 153.14 and 153.17 of the Home Equity Lending Interpretations. These amendments are effective as of November 24, 2016. The Commissions adopted the amendments without change to the proposed text published in the July 22, 2016, issue of the *Texas Register*.

The text of the amended provisions of the above Home Equity Lending Interpretations are reprinted below with the amended additions identified by underlines and the amended deletions identified by strikethroughs in brackets.

*§153.5.Three percent fee limitation: Section 50(a)(6)(E).*

(3)(B) Legitimate discount points are interest and are not subject to the three percent limitation. Discount points are legitimate if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the equity loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are legitimate. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(7) Charges Paid to Third Parties. Charges an owner or an owner's spouse is required to pay to third parties for separate and additional consideration for activities relating to originating an equity [a] loan are fees subject to the three percent limitation. Charges those third parties absorb, and do not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the three percent limitation. Examples of these charges include attorneys' fees for document preparation and mortgage brokers' fees to the extent authorized by applicable law.

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

(5) Any equity loan on an urban homestead that is secured by more than ten acres is secured by additional real property in violation of Section 50(a)(6)(H) [~~50(a)(H)~~].

*§153.13.Preclosing Disclosures: Section 50(a)(6)(M)(ii).*

(3) The lender must deliver to the owner a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.

(A) For a closed-end equity loan, the lender may satisfy this requirement by delivering a properly completed closing disclosure under Regulation Z, 12 C.F.R. §1026.19(f) and §1026.38.

(B) For a home equity line of credit, the lender may satisfy this requirement by delivering properly completed account-opening disclosures under Regulation Z, 12 C.F.R. §1026.6(a).

~~{(3) A lender may satisfy the disclosure requirement of providing a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing by delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.}~~

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

(2)(A) A modification of an equity loan must be agreed to in writing by the borrower and lender, unless otherwise required by law. An example of a modification that is not required to be in writing is the modification required under the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501-597b [~~Soldiers' and Sailors' Civil Relief Act~~].

*§153.17. Authorized Lenders: Section 50(a)(6)(P).*

(1) An authorized lender under Texas Finance Code, Chapter 341 [~~Texas Finance Code~~] must meet both constitutional and statutory qualifications to make an equity loan.

(2) A HUD-approved mortgagee is a person approved as a mortgagee by the United States government to make federally insured loans for purposes of Section 50(a)(6)(P)(ii). Loan-Approved correspondents to a HUD-approved mortgagee are not authorized lenders of equity loans unless qualifying under another provision of Section 50(a)(6)(P) [~~section of (a)(6)(P)~~].

(3) A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage broker for purposes of Section 50(a)(6)(P)(vi).

(4) A person who is licensed under Texas Finance Code, Chapter 342 is a person licensed to make regulated loans for purposes of Section 50(a)(6)(P)(iii). If a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), then the person must obtain a license under Texas Finance Code, Chapter 342 in order to be authorized to make an equity loan under Section 50(a)(6)(P)(iii).

~~{(3) A non-depository lender or broker that makes, negotiates, arranges, or transacts a secondary mortgage loan that is governed by Chapter 342, Texas Finance Code, must comply with the licensing provisions of Chapter 342, Texas Finance Code.}~~

~~{(4) A lender who does not meet the definition of Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), must obtain a regulated loan license under Chapter 342 of the Texas Finance Code to meet the provisions of subsection (iii).}~~

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