

BLACK, MANN & GRAHAM, L.L.P.
ATTORNEYS AT LAW

THOMAS E. BLACK, JR., P. C.*
CALVIN C. MANN, JR., P. C.
GREGORY S. GRAHAM, P. C.
*ALSO LICENSED IN NEW YORK

DAVID F. DULOCK
DIANE GLEASON
BENJAMIN R. IDZIAK *
SHAWN P. BLACK *
SUZANNE C. COLLIE
THOMAS L. KAPIOLTAS
MARGARET A. NOLES
ROBERT J. BREWER
MARC E. SANDERS**
**LICENSED IN NEW MEXICO

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To: Clients and Friends

From: David F. Dulock

Subject: Constitutional Amendments SJR 7 (Reverse Mortgage Lines of Credit)
And SJR 21 (Interest Rates for Commercial Loans) and Sections 2.09,
2.10 and 2.11 of HB 955 (SJR 21 Implementing Legislation)

This legislative update covers constitutional amendments SJR 7 and SJR 21, submitted for voter approval on November 8, 2005, and Sections 2.09, 2.10 and 2.11 of HB 955, and revises our November 4, 2005 legislative update on these issues. **SJR 7 was approved** and becomes effective when the secretary of state canvasses [*authenticates*] the votes for that amendment. **SJR 21 was not approved and neither SJR 21 nor its implementing legislation in Sections 2.09, 2.10 and 2.11 of HB 955 will become law.** This update summaries SJR 7 and SJR 21 with redactions from the Bill Analysis. This update also quotes the full text of SJR 7 with its additions underlined and its deletions in brackets with strikethroughs.

1. Reverse Mortgage Line-of-Credit Advances (SJR 7): Currently, Section 50, Article XVI, of the Texas Constitution permits advances under a reverse mortgage to be made only in a lump sum after settlement or in regular periodic, predetermined equal amounts over a term of years or the lifetimes of homeowners. SJR 7 amends Section 50 by amending subsection (p) and adding subsection (v) to allow senior homeowners to draw advances under a reverse mortgage at unscheduled intervals if and when needed, and only in amounts needed, during the loan term. The legislation includes other safeguards regarding how advances are obtained, fees, and amendment of the credit terms.

Subsection (p), Section 50, Article XVI, Texas Constitution

Subsection (p), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

(p) The advances made on a reverse mortgage loan under which more than one advance is made must be made according to the terms established by the loan documents by one or more of the following methods:

- (1) an initial advance at any time and future advances at regular intervals;
- (2) an initial advance at any time and future advances at regular intervals in which the amounts advanced may be reduced, for one or more advances, at the request of the borrower; [Ø]
- (3) an initial advance at any time and future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached;
- (4) an initial advance at any time, future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached, and subsequent advances at times and in amounts requested by the borrower according to the terms established by the loan documents to the extent that the outstanding balance is repaid; or
- (5) at any time by the lender, on behalf of the borrower, if the borrower fails to timely pay any of the following that the borrower is obligated to pay under the loan documents to the extent necessary to protect the lender's interest in or the value of the homestead property:
 - (A) taxes;
 - (B) insurance;
 - (C) costs of repairs or maintenance performed by a person or company that is not an employee of the lender or a person or company that directly or indirectly controls, is controlled by, or is under common control with the lender;
 - (D) assessments levied against the homestead property; and
 - (E) any lien that has, or may obtain, priority over the lender's lien as it is established in the loan documents.

Subsection (v), Section 50, Article XVI, Texas Constitution

Section 50, Article XVI, Texas Constitution, is amended by adding Subsection (v) to read as follows:

- (v) A reverse mortgage must provide that:
- (1) the owner does not use a credit card, debit card, preprinted solicitation check, or similar device to obtain an advance;
 - (2) after the time the extension of credit is established, no transaction fee is charged or collected solely in connection with any debit or advance; and
 - (3) the lender or holder may not unilaterally amend the extension of credit.

Note: *Subsection 50(u), Article XVI, Texas Constitution, authorizes the Texas Finance Commission and the Credit Union Commission to interpret subsections 50(a)(7), 50(e)-50(p) [which subsections authorize and include reverse mortgage provisions], and subsection 50(t) [which authorizes home equity lines of credit]. However, Subsection 50(u) does not authorize agency interpretations of new subsection 50(v), even though subsection 50(v) contains line of credit provisions identical to those in subsection 50(t).*

2. Interest Rates for Commercial Loans (SJR 21): Texas law limits the interest rate on all loans, including commercial loans. Most states do not regulate interest rates for commercial loans among sophisticated parties. Because federal law allows banks to import interest rates from the state in which they are headquartered, banks with headquarters outside the state of Texas are not subject to our interest rate ceilings. If SJR 21 had been approved in the November 8, 2005 election, it would have allowed the legislature to create exemptions to the maximum rates of interest provision in Section 11, Article XVI, of the Texas Constitution.

3. Interest Rates for Commercial Loans (HB 955): If SJR 21 had been approved in the November 8, 2005 election, Sections 2.09, 2.10 and 2.11 of HB 955 would have implemented SJR 21's exemptions to the maximum rates of interest provision in Section 11, Article XVI, of the Texas Constitution by amending Chapter 306 of the Texas Finance Code as follows: (1) Section 2.09 would have amended Section 306.001 by adding Subdivision (5-a) and amending Subdivision (9); (2) Section 2.10 would have amended Section 306.002 by amending Subsection (a) and adding Subsection (c); and Section 2.11 would have added Section 306.1015. **Since SJR 21 was not approved in the November 8, 2005 election, neither it nor Sections 2.09, 2.10, and 2.11 of HB 955 will become law.**

This legislative update is only to advise our clients as to constitutional amendments SJR 7 and SJR 21 and Sections 2.09, 2.10 and 2.11 of HB 955. No attempt was made by this legislative update to discuss any other constitutional amendments or bills.

This Memorandum is provided for the general information of the clients and friends of our firm only and is not intended as specific legal advice. You should not place reliance on this general information alone but should consult counsel regarding the application of the laws discussed in this Memorandum to your specific case or circumstances.