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**TO:** Clients and Friends

**FROM:** David F. Dulock

**SUBJECT:** Home Equity Lending – Proposed Amendments to Interpretations §§153.22, 153.51, and 153.84

The Finance Commission of Texas and the Texas Credit Union Commission (“Commissions”) jointly propose amendments to Interpretations 7 TAC §§ 153.22, 153.51, and 153.84 relating to interpretations of Sections 50(a)(6), (g), and (t)(3), Article XVI, Texas Constitution, regarding home equity lending on Texas homestead. These proposed amendments are published for comment in the March 14, 2008 issue of the *Texas Register* (Vol. 33, No. 11).

Written comments on the above proposed amendments may be submitted to Betsy Loar, General Counsel, Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or by email to [betsy.loar@tcud.state.tx.us](mailto:betsy.loar@tcud.state.tx.us) or [sealy.hutchings@occc.state.tx.us](mailto:sealy.hutchings@occc.state.tx.us).

Written comments on the proposed amended interpretations must be received on or before April 13, 2008. After that date, no further written comments on the proposed amended interpretations will be considered or accepted by the Commissions.

We urge our clients who make home equity loans secured by Texas homesteads to review the proposed amended interpretations and submit written comments before April 13, 2008. This is your opportunity to influence Texas home equity law to your benefit.

We will be sending our comments to the Commissions in the near future, as we are concerned with several of these proposed amended interpretations.

The text of the proposed amended interpretations as published in the *Texas Register* is attached. Underlined language indicates additions and bracketed language with strikethroughs indicates deletions.

**TITLE 7.BANKING AND SECURITIES**

**Part 8. JOINT FINANCIAL REGULATORY AGENCIES**

**Chapter 153. HOME EQUITY LENDING**

**7 TAC §§153.22, 153.51, 153.84**

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") jointly propose amendments to interpretations 7 TAC §§153.22, 153.51, and 153.84, relating to home equity lending under Texas Constitution, Article XVI, §50(a)(6), (g), and (t)(3).

Texas Constitution, Article XVI, §50 ("Section 50"), sets out the only permissible encumbrances on a homestead. Pursuant to Section 50(u), as implemented by Texas Finance Code, §11.308 and §15.413, the power to interpret Section 50(a)(5) - (7), (e) - (p), and (t) of the Texas Constitution has been separately and independently delegated to the commissions, subject to the statutory admonition that the commissions strive for consistency in the exercise of this independent authority. The commissions have jointly adopted the home equity lending interpretations codified in 7 TAC Chapter 153.

Section 50 was amended effective December 4, 2007, pursuant to voter approval of Proposition 8 (House Joint Resolution Number 72), proposed in the 80th Texas Legislative Session. In general, the purpose of the proposed amendments to §§153.22, 153.51, and 153.84 is to conform with the constitutional changes in Section 50. The individual purposes of the amendments to each section are provided in the following paragraphs.

The proposed amendments to §153.22 outline the lender's obligation to provide copies of certain documents at closing, as required by amended Section 50(a)(6)(Q)(v), including a copy of the final loan application and all documents that are signed by the owner at closing.

The proposed amendments to §153.51 clarify the lender's obligation to provide certain disclosures at least one business day prior to closing, as required by amended Section 50(g). The proposed changes to §153.51 also serve to harmonize the 12-day consumer disclosure requirement with the constitutional amendment requiring that home equity loans not be closed before one business day after the lender has provided the owner with a copy of the most current version of the loan application, if not previously provided.

The proposed amendments to §153.84 implement the prohibition on the owner's use of preprinted checks unsolicited by the borrower to obtain a HELOC advance, as required by amended Section 50(t)(3). New paragraph (2) clarifies that the borrower may not request that the lender periodically send preprinted checks to the borrower. Current paragraphs (3) and (4) of §153.84 are proposed for deletion, as these definitions are unnecessary due to the constitutional changes.

Leslie L. Pettijohn, Consumer Credit Commissioner, on behalf of the Finance Commission of Texas, and Harold Feeney, Credit Union Commissioner, on behalf of the Texas Credit Union Commission, have determined that, for the first five-year period the amended interpretations are in effect, there will be no fiscal implications for state or local government as a result of administering the interpretations.

Commissioner Pettijohn and Commissioner Feeney also have determined that, for each year of the first five years the amended interpretations as proposed are in effect, the anticipated public benefit will be implementation of and consistency with the Texas Constitution. Stability of the credit markets is enhanced through the creation of reliable standards and guidelines for home equity loans. Further, this stability will benefit consumers by ensuring that home equity loans are as widely available to Texas homeowners as possible. Finally, availability, certainty, and the resulting enhancement of competition will contribute to reducing the overall transaction cost to lenders and consumers with respect to home equity loans.

There will be no adverse economic effect on small businesses or micro-businesses. There will be no difference in the cost of compliance for small businesses as compared to large businesses. Any requirements are imposed by the Texas Constitution and are not a result of the proposed amendments to the interpretations. The proposed amendments, therefore, do not impose any additional costs to persons who are required to comply with the interpretations.

Written comments on the proposed amendments may be submitted to Sealy Hutchings, General Counsel, Office of Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207 or to Betsy Loar, General Counsel, Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699, or by email to sealy.hutchings@occc.state.tx.us or to betsy.loar@tcud.state.tx.us. To be considered, a written comment must be received on or before the 30th day after the date the proposed amendments are published in the *Texas Register*. At the conclusion of the 30th day after the proposed amendments are published in the *Texas Register*, no further comments will be considered or accepted by the commissions.

The amended interpretations are proposed pursuant to Texas Finance Code, §11.308 and §15.413, which separately and independently authorize each commission to issue interpretations of the Texas Constitution, Article XVI, §§50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The Texas Constitution, Article XVI, §50(a)(6), (g), and (t)(3) are affected by the proposed amendments.

*§153.22.Copies of Documents: Section 50(a)(6)(Q)(v).*

At closing, the lender must provide the owner with a copy of the final loan application and all documents that are signed by the owner at closing in connection with the equity loan. With the exception of the final loan application, the [ The-] lender is not required to give the owner copies of documents that were signed by the owner prior to closing, such as those signed during the application process. Because of their nature some documents, for example, a notification of the election of an owner or an owner's spouse not to rescind under the right of rescission, must be signed after the date of closing. The lender must provide the owner copies of documents signed after the date of closing within three business days.

*§153.51.Consumer Disclosure: Section 50(g).*

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument. In addition, an equity loan may not be closed before one business day after the lender provides the owner with a copy of the most current version of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.

(1) - (3) (No change.)

*§153.84.Restrictions on Devices and Methods to Obtain a HELOC Advance: Section 50(t)(3).*

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which an owner is prohibited from using a credit card, debit card, ~~[preprinted solicitation check,]~~ or similar device, or preprinted check unsolicited by the borrower to obtain a HELOC advance.

(1) A lender may offer one or more non-prohibited devices or methods for use by the owner to request an advance. Permissible methods include contacting the lender directly for an advance, telephonic fund transfers, and electronic fund transfers. Examples of devices that are not prohibited ~~[ similar devices-]~~ include prearranged drafts, preprinted [ convenience-] checks requested by the borrower, or written transfer instructions. Regardless of the permissible method or device used to obtain a HELOC advance, the amount of the advance must comply with:

(A) - (C) (No change.)

(2) A borrower may from time to time specifically request preprinted checks for use in obtaining a HELOC advance but may not request the lender to periodically send preprinted checks to the borrower.

(3) [ (2)-] An owner may, but is not required to, make in-person contact with the lender to request preprinted checks or to obtain a HELOC advance.

~~[(3) A credit card, which is a prohibited device under Section 50(t)(3), is a card that may be used for personal, family, or household use to debit an open end account.]~~

~~[(4) A preprinted solicitation check, which is a prohibited device under Section 50(t)(3), is a check that:]~~

~~[(A) is provided to an owner for the purpose of originating a HELOC or to a borrower for the purpose of soliciting additional advances on an existing HELOC;]~~

~~[(B) contains at least one preprinted key payment term, such as the amount or payee; and]~~

~~[(C) is not requested by the borrower or owner.]~~