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TO: Clients and Friends

FROM: David F. Dulock

SUBJECT: Home Equity Lending – Revisions to Interpretations §§153.22, 153.84

The Finance Commission of Texas and the Texas Credit Union Commission (“Commissions”) have jointly revised the following home equity Interpretations: §153.22 (*Copies of Documents*) and §153.84 (*Restrictions on Devices and Methods to Obtain a HELOC Advance*) to comply with the December 4, 2007 amendments to §§50(a)(6) and (t)(3), Article XVI, of the Texas Constitution. These revised Interpretations are published in the July 4, 2008 issue of the *Texas Register* and became effective July 10, 2008.

The full text of revised §§153.22 and 153.84 are printed below along with our comments contained at the end of each Interpretation:

“§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 executed documents that are signed by the owner at closing in connection with the equity loan. One copy of these documents may be provided to married owners. This requirement does not obligate the lender to give the owner copies of documents that were signed by the owner prior to or after closing.”

Our Comments: (1) Under the revised Interpretation, lenders must provide at closing a copy of the final loan application [as required by amended Section 50(a)(6)(Q)(v)] and a copy of the closing documents only after they are signed. (2) Married owners are only entitled to single copy of the executed closing documents. (3) Lenders will be no longer be required to provide to the borrowers a copy of post-closing documents. However, this does not relieve lenders from their obligation to provide, prior to closing, a copy of the loan application (if not previously provided) and a final HUD-1 [as required by amended Section 50(a)(6)(M)(ii)].

“§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, 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 include prearranged drafts, preprinted 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) the advance requirements in Section 50(t)(2);
- (B) the loan to value limits in Section 50(t)(5); and
- (C) the debit or advance limits in Section 50(t)(6).

(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. A borrower may use a check reorder form, which may be included with preprinted checks, as a means of requesting a specific number of preprinted checks.

(3) 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.”

***Our Comment:** Previous paragraph (2) is now part of new paragraph (3) and previous paragraphs (3) and (4) have been deleted, as their respective definitions of “credit card” and “preprinted solicitation check” are now unnecessary due to the 2007 amendment to Section 50(t)(3).*

The revised Interpretations became effective July 10, 2008, and their purpose is to conform these Interpretations to the constitutional requirements that have been in effect since December 4, 2007.

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 information in this Memorandum to your specific case or circumstances.