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**To:** Clients and Friends

**From:** Thomas E. Black, Jr., David F. Dulock, Daniel S. Engle

**Subject:** Home Equity Lending Proposed Constitutional Amendments (S.J.R. 60)

The Texas Legislature recently passed Senate Joint Resolution 60 (S.J.R. 60), a joint resolution proposing amendments to the Texas Constitution that would change provisions governing Texas Home Equity lending. S.J.R. 60 will be submitted to the voters at an election to be held November 7, 2017, and, if approved, will take effect January 1, 2018. With regard to the amendments proposed by S.J.R. 60, this memorandum discusses the following: (i) changes with substantive effect (Major Changes); (ii) changes with less substantive effect (Minor Changes); (iii) potential implementation issues—including our view that the changes will create a twelve-day window from January 1, 2018, to January 12, 2018, during which home equity loans cannot close (Implementation Issues); and (iv) an assessment of the likelihood of approval (Likelihood of Passage). For reference, the text of S.J.R. 60 is reprinted in an addendum to this memorandum.

**Major Changes**

If approved by the voters, these proposed amendments will create major changes in Texas Home Equity Lending by: (1) eliminating the ban on home equity loans on homesteads with agricultural exemptions; (2) reducing the 3% fee cap to a 2% fee cap with certain fees excluded from this 2% fee cap; (3) permitting, under certain conditions, a home equity loan to be refinanced as a non-home equity loan; (4) repealing the 50% ceiling on additional advances under Home Equity Lines of Credit; (5) updating who is authorized to make home equity loans; and (6) amending the 12-day notice disclosure to reflect these changes, as more fully discussed below.

(1) S.J.R. 60 proposes to repeal Article XVI, Section 50(a)(6)(I) of the Texas Constitution, the provision prohibiting home equity loans on property with an agricultural exemption other than dairy farms. This would eliminate a major risk factor for lenders generating loans in rural areas as well as provide more options for borrowers.

(2) S.J.R. 60 proposes significant modifications to the current 3% fee cap in Article XVI, Section 50(a)(6)(E). The fee cap would be reduced to a 2% fee cap, but the following fees would be excluded from this 2% fee cap: (i) an appraisal performed by a third party appraiser, (ii) a property survey by a state registered or licensed surveyor, (iii) a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law, or (iv) if a mortgagee title policy is not issued, a title examination report if its cost is less than the state base premium for a mortgagee title policy without endorsements. The language in these proposed changes pose a few interpretative questions.

While the “third party” qualification for appraisals would exclude appraisals prepared by in-house, lender appraisers, it is uncertain whether an appraiser employed by an affiliate of a lender would be “third party.” Additionally, it appears that the exclusion is only for the appraisal itself and other fees paid to a third party appraiser, such as an “appraisal management fee,” would not be excluded from the 2% fee cap.

It is also important to note that the title company exclusions are restricted to the premium for the mortgagee policy and its endorsements (or the title report). Other services performed by a title company in connection with a home equity loan closing, such as settlement fees, notary fees, recording fees, etc. will not be exempt from the 2% fee cap. In addition, the nomenclature in the “mortgagee policy” exclusion does not match the nomenclature in the Texas Title Insurance Basic Manual for this type of title insurance policy, which could create future interpretative issues. Also, the endorsements exclusion raises the following questions. Is the exclusion limited to the required T-42 Equity Loan Mortgage Endorsement? Does the exclusion also include the permissible T-42.1 Supplemental Coverage Equity Loan Mortgage Endorsement? Would the exclusion include non-home equity endorsements required by the lender? New Home Equity Lending Interpretations jointly issued by the Finance Commission and Credit Union Commission, the financial regulatory agencies constitutionally and statutorily empowered to issue these interpretations, will have to answer these questions.

(3) Proposed subsection (f)(2) of S.J.R. 60 proposes to amend Article XVI, Section 50(f) of the Texas Constitution to allow a home equity loan to be refinanced as a non-home equity refinance loan under Article XVI, Section 50(a)(4). Currently, a home equity loan made by the owner on the owner’s current homestead may only be refinanced as another home equity loan or as a reverse mortgage (the “once an (a)(6), always an (a)(6)” rule). S.J.R. 60 proposes the following conditions must be met in order for the owner to refinance the owner’s home equity loan as a non-home equity refinance loan under Article XVI, subsection 50(a)(4): (1) the refinance is not closed before the first anniversary of the date the home equity loan was closed; (2) no additional funds are advanced other than funds advanced to refinance a debt under subsections 50(a)(1) through (a)(7) or actual costs and reserves required by the lender to refinance the debt; (3) the principal amount of the refinance when added to the aggregate total of the outstanding principal balances of all valid encumbrances of record against the homestead does not exceed 80% of the homestead’s fair market value on the date of the refinance (*note that unlike Section 50(a)(6)(Q)(ix), S.J.R. 60 does not propose a requirement that the owner and the lender sign a written acknowledgment of the fair market value of the homestead for a non-home equity refinance*); and (4) the lender provides the owner the written notice prescribed by proposed subsection (f)(2)(D) of S.J.R. 60 on a separate document within three business days of application and at least twelve days before the refinance is closed (*we presume that this 12-day period will be counted the same as for the 12<sup>th</sup> day for the notice prescribed by Section 50(g) - see Home Equity Lending Interpretation §153.12 – but this will have to be addressed by a new Home Equity Lending Interpretation*). Proposed subsection (f-1) of S.J.R. 60 stipulates that the lien securing a refinance made in accordance with proposed subsection (f)(2) “is deemed” to be a refinance lien under subsection (a)(4) and also provides that an affidavit executed by the owner **or** the owner’s spouse acknowledging that the above subsection (f)(2) requirements were met “conclusively establishes” that the requirements of subsection (a)(4) were met. It is noteworthy that a refinance of a home equity loan pursuant to proposed subsection (f)(2) may be a recourse loan—a change from a home equity loan which is nonrecourse—and that the affidavit may be executed by either the owner or the owner’s spouse. We recommend that this affidavit be a required closing document and that it always be executed by the owner and the owner’s spouse.

This refinance provision creates a few interpretative questions. First, it is unclear whether this would apply only to closed-end home equity loans or if a HELOC could be refinanced under this provision. Second, it does not appear that there are any cure provisions if a

(f)(2) refinance does not meet all the requirements. A court could struggle with weighing an affidavit that “conclusively establishes” that the requirements have been met against clear evidence to the contrary (for example, a recent appraisal that shows LTV is over 80%). However, even if a failure to meet a (f)(2) requirement could invalidate a loan made under this provision, a lender would be protected by equitable subrogation in the amount of valid non-home equity loans paid off that were secured by the homestead. Also, does the affidavit “conclusively establish” the validity of the (f)(2) refinance loan in the event the underlying home equity loan refinanced was void due to an uncured subsection 50(a)(6) violation? If the answer is “no” and the underlying home equity loan remains uncured, the (f)(2) refinance loan will be void and all subsequent refinances that are based on it. As noted above, equitable subrogation could validate all or part of these loans.

Also of note, proposed subsection (f)(2) contains confusing language that could require interpretation by the Finance Commission and Credit Union Commission. Proposed (f)(2)(B) likely contains a typographical error as it states “the *refinanced* extension of credit does not include the advance of any additional funds.” It is likely this was intended to read “the *refinance of the* extension of credit . . . .” Proposed (f)(2)(B)(ii) also uses different language than the existing refinance provision in Article XVI, Section 50(e)(2) (*i.e.*, “the advance of all the additional funds is for reasonable costs necessary to refinance such debt . . . ”). Proposed (f)(2)(B)(ii) states “actual costs and reserves required by the lender to refinance the debt . . . [.]” The Commissions may need to issue new Interpretations to address these language differences—*i.e.*, are “reasonable costs necessary to” the same as or different from “actual costs required by”?

Finally, and as will be discussed later in this memorandum, we believe that the new 12-day notice mandated under subsection (f)(2)(D) of S.J.R. 60 cannot be given until January 1, 2018, which would prevent any refinances of home equity loans under subsection (f)(2) until January 13, 2018.

(4) With regard to home equity lines of credit (HELOCs) under Article XVI, Section 50(t) of the Texas Constitution, S.J.R. 60 proposes to eliminate subsection 50(t)(6) that prevents additional advances on a HELOC if the principal amount outstanding on the HELOC exceeds 50% of the fair market value of the homestead on the date the HELOC was established. The 80% fair market value cap under subsection (a)(6)(K) is not affected by the repeal of subsection 50(t)(6) and is reflected in the revision to the Section 50(g) 12-day notice discussed below.

(5) S.J.R. 60 clarifies and adds language regarding the entities and persons authorized to make home equity loans. Proposed subsection (a)(6)(P)(i) states that subsidiaries of the enumerated banks, savings and loan associations, savings banks, and credit unions also may make home equity loans. Proposed subsection (a)(6)(P)(vi) replaces the term “broker” with “banker or mortgage company”, clarifying that licensed mortgage companies and registered mortgage bankers may make home equity loans.

(6) The last major change proposed by S.J.R. 60 is to the 12-day notice in Article XVI, Section 50(g) in order to conform the notice language to the amended language in the proposed amendments discussed in paragraphs (1), (2) and (4) above. As will be explained later in the memorandum, the changes to this notice will create a window from January 1, 2018, to January 12, 2018, when home equity loans cannot close.

### **Minor Changes**

S.J.R. 60 also proposes changes that codify established case law or make minor alterations in language. These include: (1) adding language to subsection (a)(6)(E) that bona fide discount points used to buy down the interest rate are not fees (a codification of the Texas Supreme Court’s holding in *Finance Commission of Texas v. Norwood*, 418 S.W.3d 566 (Tex. 2013)); (2) amending the language in subsection (a)(6)(Q)(vi) by replacing “Section 50(a)(6), Article XVI, Texas Constitution” with “Subsection (a)(6) of this section”; and (3) deleting “or (I)” from the cure provisions in subsection (a)(6)(Q)(x)(b), which will eliminate this agricultural use cure provision for home equity loans made in 2018 because of S.J.R. 60’s prospective repeal of subsection (a)(6)(I).

### **Implementation Issues**

The implementation issues that we foresee are that the S.J.R. 60 proposed amendments to the language in the 12-day notice required by Section 50(g) will, in our view, create a twelve day window from January 1, 2018, to January 12, 2018, during which home equity loans and the new non-home equity refinance of home equity loans cannot close. This is based on our reading of the November 6, 1997, Texas Attorney General Opinion No. DM-452—issued just after passage of the amendment allowing home equity lending in Texas—that opined, in pertinent part regarding the 12-day notice, as follows:

Before the amendment becomes effective ... the provisions of the amendment referred to in the notice have no legal effect. Notice given before the effective date of the amendment is not notice “prescribed by” the amendment. Therefore, the amendment’s notice requirement is not satisfied if notice is given before the effective date of the amendment, and thus the twelve-day waiting period is not triggered by such a notice.

### **SUMMARY**

... [T]he notice to borrowers prescribed by the amendment is not effective if given before the amendment’s effective date.

As the language of the current 12-day notice will be amended if S.J.R. 60 is approved by the voters, and if the rationale in Attorney General Opinion DM-452 is applicable to the amended 12-day notice proposed by S.J.R. 60, then it follows that:

- the current 12-day notice will not be effective if given in 2017 for a home equity loan closing in 2018, as it would not disclose the proper information; and
- the proposed amended 12-day notice will not be effective if given before January 1, 2018.

This reasoning likewise will apply to the proposed 12-day notice in subsection (f)(2)(D) for non-home equity refinances of home equity loans, which also will not be effective if given before January 1, 2018.

### **Likelihood of Passage**

For the amendments in S.J.R. 60 to take effect, it must be approved by a simple majority of Texas voters at an election to be held on November 7, 2017. It is very likely that voters will ratify S.J.R. 60 as it was passed by a near consensus in both the Texas House (143 Yeas, 0 Nays, 2 Present) and Texas Senate (30 Yeas, 0 Nays) and the ballot language is crafted to appeal to voters:

The constitutional amendment to establish a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads.

Also, the last amendment to Article XVI, Section 50(a) of the Texas Constitution back in 2007 passed with a majority of 77.5% of the vote, suggesting that Texas voters are amenable to changes in home equity lending. As the passage S.J.R. 60 is very likely, we recommend that mortgage originators and lenders begin preparing now for the January 1, 2018, effective date of S.J.R. 60.

Addendum: S.J.R. 60 Proposed Amendments to Section 50, Article XVI, Texas Constitution

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## **Addendum**

(The Text of Proposed S.J.R. 60 is reprinted below. The underlined text is added; the text enclosed in brackets with strikeovers is deleted; and the remaining text is unchanged.)

By: Hancock

S.J.R. No. 60

### SENATE JOINT RESOLUTION

proposing a constitutional amendment establishing a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads.

BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 50, Article XVI, Texas Constitution, is amended by amending Subsections (a), (f), (g), and (t) and adding Subsection (f-1) to read as follows:

(a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) the taxes due thereon;

(3) an owelty of partition imposed against the entirety of the property by a court order or by a written agreement of the parties to the partition, including a debt of one spouse in favor of the other spouse resulting from a division or an award of a family homestead in a divorce proceeding;

(4) the refinance of a lien against a homestead, including a federal tax lien resulting from the tax debt of both spouses, if the homestead is a family homestead, or from the tax debt of the owner;

(5) work and material used in constructing new improvements thereon, if contracted for in writing, or work and material used to repair or renovate existing improvements thereon if:

(A) the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead;

(B) the contract for the work and material is not executed by the owner or the owner's spouse before the fifth day after the owner makes written application for any extension of credit for the work and material, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing; and

(D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

(6) an extension of credit that:

(A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse;

(B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;

(C) is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;

(D) is secured by a lien that may be foreclosed upon only by a court order;

(E) does not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two [~~three~~] percent of the original principal amount of the extension of credit, excluding fees for:

(i) an appraisal performed by a third party appraiser;

(ii) a property survey performed by a state registered or licensed surveyor;

(iii) a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law; or

(iv) a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law;

(F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time unless the open-end account is a home equity line of credit;

(G) is payable in advance without penalty or other charge;

(H) is not secured by any additional real or personal property other than the homestead;

(I) ~~(repealed) [is not secured by homestead property that on the date of closing is designated for agricultural use as provided by statutes governing property tax, unless such homestead property is used primarily for the production of milk];~~

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1)-(a)(5) or Subsection (a)(8) of this section;

(L) is scheduled to be repaid:

(i) in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment; or

(ii) if the extension of credit is a home equity line of credit, in periodic payments described under Subsection (t)(8) of this section;

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits a loan application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section;

(ii) one business day after the date that the owner of the homestead receives a copy 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. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner,

the lender may provide the documentation to the owner or the lender may modify previously provided documentation on the date of closing; and

(iii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a refinance described by Paragraph (Q)(x)(f) of this subdivision, unless the owner on oath requests an earlier closing due to a state of emergency that:

(a) has been declared by the president of the United States or the governor as provided by law; and

(b) applies to the area where the homestead is located;

(N) is closed only at the office of the lender, an attorney at law, or a title company;

(O) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;

(P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this subparagraph;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;

(iii) a person licensed to make regulated loans, as provided by statute of this state;

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase;

(v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; or

(vi) a person regulated by this state as a mortgage banker or mortgage company [~~broker~~]; and

(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks relating to substantive terms of agreement are left to be filled in;

(iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) at the time the extension of credit is made, the owner of the homestead shall receive a copy of the final loan application and all executed documents signed by the owner at closing related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Subsection (a)(6) of this section [~~Section 50(a)(6), Article XVI, Texas Constitution~~];

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

(viii) the owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge;



(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made;

(x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by:

(a) paying to the owner an amount equal to any overcharge paid by the owner under or related to the extension of credit if the owner has paid an amount that exceeds an amount stated in the applicable Paragraph (E), (G), or (O) of this subdivision;

(b) sending the owner a written acknowledgement that the lien is valid only in the amount that the extension of credit does not exceed the percentage described by Paragraph (B) of this subdivision, if applicable, or is not secured by property described under Paragraph (H) [~~or (F)~~] of this subdivision, if applicable;

(c) sending the owner a written notice modifying any other amount, percentage, term, or other provision prohibited by this section to a permitted amount, percentage, term, or other provision and adjusting the account of the borrower to ensure that the borrower is not required to pay more than an amount permitted by this section and is not subject to any other term or provision prohibited by this section;

(d) delivering the required documents to the borrower if the lender fails to comply with Subparagraph (v) of this paragraph or obtaining the appropriate signatures if the lender fails to comply with Subparagraph (ix) of this paragraph;

(e) sending the owner a written acknowledgement, if the failure to comply is prohibited by Paragraph (K) of this subdivision, that the accrual of interest and all of the owner's obligations under the extension of credit are abated while any prior lien prohibited under Paragraph (K) remains secured by the homestead; or

(f) if the failure to comply cannot be cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the failure to comply by a refund or credit to the owner of \$1,000 and offering the owner the right to refinance the extension of credit with the lender or holder for the remaining term of the loan at no cost to the owner on the same terms, including interest, as the original extension of credit with any modifications necessary to comply with this section or on terms on which the owner and the lender or holder otherwise agree that comply with this section; and

(xi) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the extension of credit is made by a person other than a person described under Paragraph (P) of this subdivision or if the lien was not created under a written agreement with the consent of each owner and each owner's spouse, unless each owner and each owner's spouse who did not initially consent subsequently consents;

(7) a reverse mortgage; or

(8) the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property, including the refinance of the purchase price of the manufactured home, the cost of installing the manufactured home on the real property, and the refinance of the purchase price of the real property.

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless either:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section; or

(2) all of the following conditions are met:

(A) the refinance is not closed before the first anniversary of the date the extension of credit was closed;

(B) the refinanced extension of credit does not include the advance of any additional funds other than:

(i) funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of this section; or

(ii) actual costs and reserves required by the lender to refinance the debt;

(C) the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made; and

(D) the lender provides the owner the following written notice on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed:

"YOUR EXISTING LOAN THAT YOU DESIRE TO REFINANCE IS A HOME EQUITY LOAN. YOU MAY HAVE THE OPTION TO REFINANCE YOUR HOME EQUITY LOAN AS EITHER A HOME EQUITY LOAN OR AS A NON-HOME EQUITY LOAN, IF OFFERED BY YOUR LENDER.

"HOME EQUITY LOANS HAVE IMPORTANT CONSUMER PROTECTIONS. A LENDER MAY ONLY FORECLOSE A HOME EQUITY LOAN BASED ON A COURT ORDER. A HOME EQUITY LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE.

"IF YOU HAVE APPLIED TO REFINANCE YOUR EXISTING HOME EQUITY LOAN AS A NON-HOME EQUITY LOAN, YOU WILL LOSE CERTAIN CONSUMER PROTECTIONS. A NON-HOME EQUITY REFINANCED LOAN:

"(1) WILL PERMIT THE LENDER TO FORECLOSE WITHOUT A COURT ORDER;

"(2) WILL BE WITH RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE; AND

"(3) MAY ALSO CONTAIN OTHER TERMS OR CONDITIONS THAT MAY NOT BE PERMITTED IN A TRADITIONAL HOME EQUITY LOAN.

"BEFORE YOU REFINANCE YOUR EXISTING HOME EQUITY LOAN TO MAKE IT A NON-HOME EQUITY LOAN, YOU SHOULD MAKE SURE YOU UNDERSTAND THAT YOU ARE WAIVING IMPORTANT PROTECTIONS THAT HOME EQUITY LOANS PROVIDE UNDER THE LAW AND SHOULD CONSIDER CONSULTING WITH AN ATTORNEY OF YOUR CHOOSING REGARDING THESE PROTECTIONS.

"YOU MAY WISH TO ASK YOUR LENDER TO REFINANCE YOUR LOAN AS A HOME EQUITY LOAN. HOWEVER, A HOME EQUITY LOAN MAY HAVE A HIGHER INTEREST RATE AND CLOSING COSTS THAN A NON-HOME EQUITY LOAN."

(f-1) A lien securing a refinance of debt under Subsection (f)(2) of this section is deemed to be a lien described by Subsection (a)(4) of this section. An affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection (f)(2) of this section have been met conclusively establishes that the requirements of Subsection (a)(4) of this section have been met.

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead property if the extension of credit is not closed before the 12<sup>th</sup> day after the lender provides the owner with the following written notice on a separate instrument:

"NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

"SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

"(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER 'S SPOUSE;

"(B)THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

"(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

"(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

"(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 2 [3] PERCENT OF THE LOAN AMOUNT, EXCEPT FOR A FEE OR CHARGE FOR AN APPRAISAL PERFORMED BY A THIRD PARTY APPRAISER, A PROPERTY SURVEY PERFORMED BY A STATE REGISTERED OR LICENSED SURVEYOR, A STATE BASE PREMIUM FOR A MORTGAGEE POLICY OF TITLE INSURANCE WITH ENDORSEMENTS, OR A TITLE EXAMINATION REPORT;

"(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

"(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

"(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

"(I) ~~(repealed) [THE LOAN MAY NOT BE SECURED BY HOMESTEAD PROPERTY THAT IS DESIGNATED FOR AGRICULTURAL USE AS OF THE DATE OF CLOSING, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK];~~

"(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

"(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

"(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

"(M)THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A LOAN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND MAY NOT WITHOUT YOUR CONSENT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH YOU RECEIVE A COPY OF YOUR 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; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN, UNLESS ON OATH

YOU REQUEST AN EARLIER CLOSING DUE TO A DECLARED STATE OF EMERGENCY;

"(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

"(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

"(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

"(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT EXCEPT A DEBT THAT IS SECURED BY YOUR HOME OR OWED TO ANOTHER LENDER;

"(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

"(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS FOR SUBSTANTIVE TERMS OF AGREEMENT LEFT TO BE FILLED IN;

"(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

"(5) PROVIDE THAT YOU RECEIVE A COPY OF YOUR FINAL LOAN APPLICATION AND ALL EXECUTED DOCUMENTS YOU SIGN AT CLOSING;

"(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

"(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

"(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

"(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

"(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

"(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW MONEY UNDER THE LINE OF CREDIT;

"(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN AMOUNT OF AT LEAST \$4,000;

"(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, OR SIMILAR DEVICE, OR PREPRINTED CHECK THAT YOU DID NOT SOLICIT, TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

"(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

"(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF CREDIT IS ESTABLISHED;

"(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEEDS 80 [~~50~~] PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS

DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 80 [50] PERCENT OF THE FAIR MARKET VALUE; AND

"(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE LINE OF CREDIT.

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

If the discussions with the borrower are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the notice translated into the written language in which the discussions were conducted.

(t) A home equity line of credit 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:

(1) the owner requests advances, repays money, and reborrows money;

(2) any single debit or advance is not less than \$4,000;

(3) the owner does not use a credit card, debit card, or similar device, or preprinted check unsolicited by the borrower, to obtain an advance;

(4) any fees described by Subsection (a)(6)(E) of this section are charged and collected only at the time the extension of credit is established and no fee is charged or collected in connection with any debit or advance;

(5) the maximum principal amount that may be extended under the account, when added to the aggregate total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, does not exceed an amount described under Subsection (a)(6)(B) of this section;

(6) ~~(repealed) [no additional debits or advances are made if the total principal amount outstanding exceeds an amount equal to 50 percent of the fair market value of the homestead as determined on the date the account is established];~~

(7) the lender or holder may not unilaterally amend the extension of credit; and

(8) repayment is to be made in regular periodic installments, not more often than every 14 days and not less often than monthly, beginning not later than two months from the date the extension of credit is established, and:

(A) during the period during which the owner may request advances, each installment equals or exceeds the amount of accrued interest; and

(B) after the period during which the owner may request advances, installments are substantially equal.

SECTION 2. The following temporary provision is added to the Texas Constitution:

TEMPORARY PROVISION. (a) This temporary provision applies to the constitutional amendment proposed by the 85th Legislature, Regular Session, 2017, to establish a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads.

(b) The constitutional amendment takes effect January 1, 2018.

(c) The changes in law made by the constitutional amendment apply only to a home equity loan made on or after the effective date of the constitutional amendment and to an existing home equity loan that is refinanced on or after the effective date of the constitutional amendment.

(d) This temporary provision takes effect on the adoption of the constitutional amendment by the voters and expires January 1, 2019.

SECTION 3. This proposed constitutional amendment shall be submitted to the voters at an election to be held November 7, 2017. The ballot shall be printed to provide for voting for or against the proposition: "The constitutional amendment to establish a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads."