Changes to Home Equity Lending in Texas – (S.J.R. 60)





Please send questions to homeequity@bmandg.com.

S.J.R. 60

▶ Passed by the Texas Legislature on May 6, 2017

▶ Passed by majority of Texas voters on November 7, 2017

▶ Becomes effective for closings on and after January 1, 2018

Major Changes

1. Eliminating the ban on home equity loans on homesteads with agricultural exemptions.

- S.J.R. 60 repeals 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.
- As of January 1, 2018, lenders may close 50(a)(6) loans on properties with agricultural exemptions in place at the time of closing.

2. Reducing the 3% fee cap to a 2% fee cap with certain fees excluded from this 2% fee cap.

The following fees are excluded from the 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.

3. Permitting, under certain conditions, a home equity loan to be refinanced as a non-home equity loan.

- 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).
- Provided that the following conditions are met, S.J.R. 60 allows the owner to refinance the owner's home equity loan as a non-home equity refinance loan under Article XVI, subsection 50(a)(4):
 - i. The refinance is not closed before the first anniversary of the date the home equity loan was closed;
 - 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;
 - 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; and
 - 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.

(f) (2) Notice for Loan Converting from A6 to A4

"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."

4. Repealing the 50% ceiling on additional advances under Home Equity Lines of Credit (HELOCs).

- S.J.R. 60 eliminates 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)(B) is not affected by the repeal of subsection 50(t)(6).

5. Updating who is authorized to make home equity loans.

- Subsection (a)(6)(P)(i) states that subsidiaries of the banks, savings and loan associations, savings banks, and credit unions doing business under the laws of Texas or of the United States also may make home equity loans.
- ▶ 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. Amending The 12-day Notice Disclosure Prescribed For 50(a)(6) Loans

New 12-Day Notice for A6 Loans

"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 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;

Implementation Issues for S.J.R. 60.

1. Borrowers that want to convert to a rate/term refinance — The Pipeline Issue

For home equity loans sought to be refinanced as a non-home equity loans under Article XVI, Section 50(a)(4), the new notice required by Section 50(f)(2)(D) must be provided within three business days of application and at least twelve days before the refinance is closed.

It appears that a new 50(f)(2) application would have to be submitted on or after January 1, 2018 for a transition of a non-cash-out 50(a)(6) loan currently in the pipeline to a 50(f)(2) loan.

2. Borrowers that want to convert to a rate/term refinance — The "Provided" Issue

For home equity loans sought to be refinanced as a non-home equity loans under Article XVI, Section 50(a)(4), the new notice required by Section 50(f)(2)(D) must be <u>provided</u> within three business days of application and at least twelve days before the refinance is closed.

▶ Proposed Amendments – "Provide" means to supply or make available. Disclosure is supplied or made available when it is delivered to the borrower

3. Borrowers that want to remain with a 50 (a) (6)

"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." Texas Attorney General Opinion No.DM- 452

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.

4. Application taken in 2017 but closes in 2018

▶ 2% or 3% test?

▶ Old or new 12-day?

5. Old 12-day vs. New 12-day notice (or both)? - Which notice are we subject to if a loan is applied for in 2017 but closes in 2018?

If the loan is applied for in 2017, but does not close in 2017, the lender will have to wait until January 1, 2018, provide the new form of 12-day disclosure and wait the 12 days to close.

6. If a loan is A6, but a subsequent rate/term refi is an A4, can a borrower then do a cash-out refinance of the A4 and switch it to A6 again?

Yes. If the refinance of the (a)(6) loan meets the new 50(f)(2) requirements, the 50(f)(2) refinance loan is considered to be a refinance under 50(a)(4).

Look at the requirements (or Lack thereof) for 50 (a) (4) loans.

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:

(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.

7. Other Considerations

- ▶ Finance Commission Interpretation Rules Finalized
- ▶ FNMA/FHLMC Documents Finalized
- ▶ Title Insurance Document Policies
- Investor Guidelines Finalized

Proposition 2 (Home Equity) Timeline

- Oct 20, 2017: Finance Commission voted to publish amendments for comment
- Nov 3, 2017: Credit Union Commission voted to publish amendments for comment
- Nov 7, 2017: Constitutional amendment election
- Nov 13, 2017: Submit amendments to Texas Register
- Nov 15, 2017: Issue guidance & post Spanish translations
- Nov 24, 2017: Amendments will be published in Texas Register
- ▶ Nov 24 Dec 25, 2017: Official Comment period
- **Jan 1, 2018**: SJR 60 goes into effect
- **Feb 16, 2018**: Finance Commission votes to adopt amendments
- March 9, 2018: Credit Union Commission votes to adopt amendments
- **Late March, 2018**: Amendments to interpretations go into effect

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