

# HOME EQUITY LITIGATION IN TEXAS

## 2016 - 2018 CASE LAW AND 2017 CONSTITUTIONAL AMENDMENTS

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## **November 2017 Amendments to the Texas Constitution**

Proposition 2 was a constitutional amendment regarding home equity loans which was approved by a vote of Texans on November 7, 2017. There are five subparts.

Part A reduces the cap on closing costs from 3% to 2% of the principal amount of the extension of credit. This may sound like it will benefit borrowers, but the reduction in fees is offset by the fact that fees which were previously included in the cap are no longer included, including appraisal costs, survey costs, and title insurance costs. (Title insurance was often one of the larger closing costs under prior law.) The end result is that the borrower's "fees" may actually increase by the simple expedient of calling them something other than fees. It would appear that in most cases the actual increase will not be substantial. See discussion of 50(a)(6)(E).

Part B changes the list of authorized equity lenders. Before, the list included banks, S&Ls, credit unions and others not really relevant here. The new list includes the same list but now includes their subsidiaries. (Apparently so they can put their less credit worthy loans in the sub rather than the parent.) See discussion of 50(a)(6)(P).

Part C allows a lender to refinance an equity loan as a "traditional" mortgage rather than an equity loan. Potential downsides:

- \* An equity loan must be non-recourse, but a regular mortgage imposes personal liability on the borrower. If the borrower refinances a home equity loan into a conventional mortgage the loan will change from non-recourse to recourse.
- A traditional loan can be foreclosed without a court order which expedites the foreclosure process by at least 38 days.
- See discussion of 50(a)(6)(xi)(f).

Part D changes the limit on how much a borrower can draw on an equity line of credit. Previously, the borrower could only draw 50% of the value of the property on an equity line of credit. Now a borrower may draw up to 80% of the value of the property as of the date of the loan agreement. This basically aligns equity lines of credit with equity loans which do not have a line of credit feature. See discussion of 50(a)(6)(t).

Part E allows a lender to take a lien on property which has an agricultural exemption for property taxes. Previously, a lender could only take a lien on the portion of the property designated as homestead but not on the remaining (ag exempt) property. For property tax exemption purposes, you designate a hypothetical one acre tract as homestead and the remainder as ag exempt. (The ag exemption reduces your taxes far more than the homestead exemption.) I say hypothetical because there is no survey to identify the actual homestead acre. If the lender wanted to make an equity loan on the one acre, it would have to survey out the actual acre which was fee subject to the 3% cap. With this amendment, "problem" solved. See discussion of 50(a)(6)(I).

## **Case Law – 2016 – 2018**



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