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Home Equity Update

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HOME EQUITY UPDATE¹

This paper is intended as an update of certain recent developments pertaining to Texas home equity loans, including Texas home equity lines of credit ("HELOCs"). **THIS PAPER IS NOT A DEFINITIVE EXPLANATION OF THE TEXAS HOME EQUITY LENDING LAW AND IT IS NOT INTENDED AND SHOULD NOT BE RELIED UPON AS LEGAL ADVICE REGARDING THE MEANING OF ANY PROVISION OF THE LAW.** Accordingly, readers should consult with, and seek the advice of, their own counsel with respect to any individual situation that involves the material contained in this paper, the application of such material to their specific circumstances, or any questions relating to their own affairs that may be raised by such material.

I. INTRODUCTION

The 85th Texas Legislature passed Senate Joint Resolution 60 ("SJR 60"), a copy of which is attached as Exhibit "A", proposing a constitutional amendment pertaining to home equity loans.² The proposed amendment was offered for ratification as Proposition 2 on the November 7, 2017, election ballot³ and voters approved it.⁴ The amendment took effect January 1, 2018. The changes apply to a home equity loan made on or after January 1, 2018 and to an existing home equity loan that is refinanced on or after January 1, 2018. The section below entitled "Home Equity Loans" contains a detailed discussion regarding SJR 60.

To implement SJR 60, the Finance Commission of Texas and Texas Credit Union Commission (collectively, the "Commissions") have adopted the following amendments to their interpretations⁵:

- Amendments to Sections 153.1, 153.5, and 153.14 to replace references to the three percent fee limit with references to the two percent fee limitation, and identify fees that may be excluded under SJR 60.
- Amendments to Section 153.17 to identify authorized lenders and specify that a person registered under Texas Finance Code Chapter 157 is a mortgage banker.

¹ The author acknowledges with thanks the contribution of his colleagues, Ashley DeRon and Jake Torres, to the preparation of this paper.

² Black Mann & Graham LLP has posted a Clients and Friends memo dated June 15, 2017 pertaining to SJR 60, available at: <https://www.bmandg.com/wp-content/uploads/article-repository/Home-Equity-Constitutional-Amendments-Memo.pdf>.

³ Texas Secretary of State Press Release, Secretary Pablos Draws Constitutional Amendment Order for November 7 Election, (August, 1, 2017), available at <https://www.sos.texas.gov/about/newsreleases/2017/080117.shtml>.

⁴ On November 30, 2017, Governor Abbott formally certified the ballot result.

⁵ 7 Tex. Admin. Code §§ 153.1, 153.5, 153.14, 153.17, 153.45, 153.84, 153.86 (2018) (Joint Fin. Reg. Agencies); *see also*, 42 Tex. Reg. 6580 (2017) (to be codified at 7 Tex. Admin. Code §§ 153.1, 153.5, 153.14, 153.17, 153.45, 153.84, 153.86) (2018) (Joint Fin. Reg. Agencies).

- New Section 153.45 setting forth requirements for refinancing a home equity loan as a non-home equity loan.
- Amendments to Sections 153.84 and 153.86, in addition to a repeal of Section 153.87, to remove references to the 50% limitation on additional debits or advances for a HELOC.

The interpretation amendments took effect March 29, 2018.⁶

Although not a part of the home equity interpretations, the agencies also have issued the following translated disclosures:

- An amended version of the Spanish translation of the 12-day consumer disclosure notice required by Section 50(g), as amended by SJR 60 (the "50(g) Notice"), available at <https://www.fc.texas.gov/homeinfo/home-equity-consumer-disclosure-rev-2017-spanish.pdf>.
- A new Spanish translation of the refinance disclosure required by Section 50(f)(2)(D), as added by SJR 60 (the "Refinance Disclosure"), available at <https://www.fc.texas.gov/homeinfo/home-equity-refinance-disclosure-spanish.pdf>.

II. HOME EQUITY LOANS

SJR 60 made, among others, the following changes:

- expressly excludes "any bona fide discount points used to buy down the interest rate" from the fee limit;⁷
- changed the fee limit to two percent from three percent of the original principal amount of the extension of credit;⁸
- excludes the following fees from the two percent fee limit:⁹ (i) appraisal performed by a third party appraiser;¹⁰ (ii) property survey performed by a state

⁶ In the Statement on Passage of SJR 60, the Joint Financial Regulatory Agencies addressed certain compliance requirements attendant to the interpretation amendments in stating:

Some lenders have asked what interpretive guidance they can use between January 1 and the effective date of the interpretation amendments (anticipated to be late March). During this period, if a lender complies with the proposed interpretation amendments and provides required disclosures, the agencies will not take action against the lender for violating SJR 60's requirements. However, because the proposed interpretation amendments will not be effective during this period, they will not provide lenders with a safe harbor from civil litigation.

Statement on Passage of SJR 60, State of Texas Joint Financial Regulatory Agencies, (2017), available at <https://www.fc.texas.gov/homeinfo/home-equity-stmt-sjr60-111517.pdf> (a copy of which is attached as Exhibit "G").

⁷ Tex. Const. art. XVI, § 50(a)(6)(E); *see also*, 7 Tex. Admin. Code §§ 153.5 and 153.5(3)(B).

⁸ Tex. Const. art. XVI, § 50(a)(6)(E); *see also*, 7 Tex. Admin. Code § 153.5.

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