



**55<sup>th</sup> Annual William W.  
Gibson, Jr  
MORTGAGE LENDING  
INSTITUTE**

# Loan Modifications

**Dawn M. Lewallen** | September 16, 2021

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## Topics

- Basic Contract Requirements
- Modifications of Texas Home Equity Loans
  - Regulatory Interpretations
  - Texas Supreme Court and Case Law Interpretation
- To Record or Not to Record
- Priority Issues
- Modifications & Title Insurance
- Federal Loan Programs

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# Basic Contract Requirements



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## Tex. Bus. & Com. Code § 26.02

- Any promise, promissory notes, agreements, undertaking, security agreements, deeds of trust or other documents, or commitments, or any combination of these documents” **must be in writing** where the financial institution makes a financial accommodation **in an amount that exceeds \$50,000 (including Home Equity Loans and related modifications)**.
- These agreements must also be “**signed by the party to be bound or by that party’s authorized representative**” to be enforceable. *Grievous v. Flagstar Bank FSB*, Civ. A. No. H-11-246, 2012 U.S. Dist. LEXIS 72354, 2012 WL 1900564 (S.D. Tex. 2012), quoting Tex. Bus. & Com. Code Ann. § 26.02(b).
- Texas and federal courts have held that any subsequent agreement to modify loan term must also be in writing. *Wiley v. U.S. Bank, N.A.*, 2012 U.S. Dist. LEXIS 74548 (N.D. Tex. 2012) quoting *Montalvo v. Bank of America Corp.*, 864 F. Supp. 2d 567 (W.D. Tex. 2012)

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# Statute of Frauds

- **Garcia v. Karam, 154 Tex. 240, 276 S.W.2d 255 (Tex. 1955)**
  - A modification is unenforceable unless it is in writing when the modification encompasses a matter required to be in writing by the Statute of Frauds.
  - “If neither the portion of the written contract affected by the subsequent modification nor the matter encompassed by the modification itself is required by the Statute of Frauds to be in writing, then the oral modification will not render the contract unenforceable.”
- **Modification of the following loan terms is required to be in writing:**
  - the percentage of interest to be paid,
  - the amounts of installments,
  - security rights,
  - the terms of the remaining balance on the loan,
  - the amount of monthly payments,
  - the date of the first payment, and the amount to be paid monthly for taxes and insurance is an

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# Modifications of Texas Home Equity Loans

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Title search: Loan Modifications

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55<sup>th</sup> Annual William W. Gibson, Jr. Mortgage Lending and Servicing Institute session  
"Annotated Loan Modification"