

Loan Modifications

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The following presentation is for informational purposes only and is not and may not be construed as legal advice. No third party entity may rely upon anything cont party should consult with an attorney prior to embarking upon any specific course of action.



Topics

- Basic Contract Requirements
- Modifications of Texas Home Equity Loans

 - Regulatory InterpretationsTexas Supreme Court and Case Law Interpretation
- To Record or Not to Record
- Priority Issues
- Modifications & Title Insurance
- Federal Loan Programs



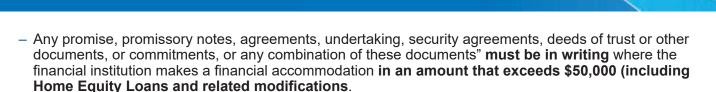
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Basic Contract Requirements



Tex. Bus. & Com. Code § 26.02



- These agreements must also be "signed by the party to be bound or by that party's authorized representative" to be enforceable. <u>Grievous v. Flagstar Bank FSB, Civ. A. No. H-11-246, 2012 U.S. Dist. LEXIS 72354, 2012 WL 1900564 (S.D. Tex. 2012)</u>, quoting <u>Tex. Bus. & Com. Code Ann. § 26.02(b)</u>.
- 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)



Statute of Frauds



- 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

Also available as part of the eCourse 2021 William W. Gibson, Jr. Mortgage Lending and Servicing eConference

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