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## **Home Equity Lending Guidance: Coronavirus Emergency Measures**

The joint financial regulatory agencies (Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Credit Union Department) issue this guidance on emergency measures for home equity lenders to consider in response to the novel coronavirus and the resulting disease, COVID-19.

On March 13, Governor Greg Abbott declared a state of disaster for all Texas counties due to COVID-19. The agencies anticipate that many lenders will be making new loans to assist in recovery efforts, and may need to adjust terms or temporarily extend maturities of existing loans where circumstances warrant and safety and soundness is not compromised. The agencies encourage lenders to work with borrowers, and support measures that will help borrowers recover and provide an opportunity to ultimately repay their debt. At the same time, lenders must ensure that they comply with Article XVI, Section 50 of the Texas Constitution in order to have a valid home equity lien.

### **Existing HELOC:**

A homeowner with an existing home equity line of credit (HELOC) may be able to obtain an additional advance on the HELOC, based upon the maximum amount and terms of the HELOC at the time the loan was originally closed. The minimum draw on an existing HELOC may not be less than \$4,000, as provided by Section 50(t)(2).

### **Refinance of Home Equity Loan:**

An existing home equity loan may be refinanced without regard to the one-year seasoning requirement if the homestead is located within an area that has been declared a “disaster” by the Governor or the President of the United States, and if the homeowner on oath requests the closing less than one year from the original closing due to the disaster. This disaster exception is described in Section 50(a)(6)(M)(iii).

### **Modification of Existing Home Equity Loan:**

An existing home equity loan may be modified at the request of the homeowner without violating the Texas Constitution if the modification is consistent with the opinion of the Texas Supreme Court in *Sims v. Carrington Mortg. Services, L.L.C.* 440 S.W.3d 10 (2014). In the context of an existing home equity loan in default, the court held that a new agreement with the borrower that capitalizes past-due interest, fees (late charges), property taxes, and insurance premiums into the principal of the loan (all past-due amounts owed under the terms of the initial loan) and a lowering of the interest rate and the amount of installment payments, but does not involve the satisfaction or replacement of the original note, an advancement of new funds, or an increase in the obligations

created by the original note, is not a new extension of credit for purposes of Section 50(a)(6). Further, the court held that the capitalization of past-due interest, taxes, insurance premiums, and fees was not an “advance of additional funds” within the meaning of Section 50(a)(6) if those amounts were among the obligations assumed by the borrower under the terms of the original loan.

As noted in 7 Texas Admin. Code §153.14(2), a home equity loan and a subsequent modification are considered a single transaction for purposes of the home equity lending requirements of Section 50(a)(6), including the percentage cap on loan fees.

Although the *Sims* case did not explicitly involve traditional payment deferrals or an extension of the term of the original note, we believe these to be permissible under the Court’s holding that “[t]he Constitution does not prohibit the restructuring of a home equity loan that already meets its requirements in order to avoid foreclosure while maintaining the terms of the original extension of credit.” **The agencies recommend that lenders consult with qualified legal counsel before engaging in home equity loan modifications.**

#### **Authorized Closing Location:**

Section 50(a)(6)(N) requires a home equity loan to be “closed only at the office of the lender, an attorney at law, or a title company.” Section 50(a)(5)(D) contains a similar requirement for home improvement loans. These two provisions do not include an exception for disasters or emergencies.

The agencies recognize that businesses are taking action to protect public safety and minimize the spread of COVID-19. This may include implementing social-distancing recommendations or requirements from local jurisdictions.

For lenders that keep their offices open and choose to continue closing home equity loans at authorized locations, the agencies encourage lenders to consider ways to close loans in accordance with social-distancing recommendations, such as the following:

- Physical separation between the borrower and any employees (which may include physical barriers, partitions, or separate rooms).
- Use of video or audio conference to communicate with the borrower and verify the borrower’s identity.
- Use of electronic systems for the borrower to view documents, as well as electronic signatures (in accordance with Texas law and the federal E-Sign Act).
- Use of an online notary (in accordance with Texas law).
- Minimizing the use of paper documents, and limiting the handling of paper documents after execution.
- Implementing enhanced sanitization protocol for areas occupied by the borrower (in accordance with recommendations of health authorities).

Lenders working with consumers on home equity loans must remain cognizant of the requirements in Section 50(a)(5)(D) and 50(a)(6)(N) and work with a qualified attorney to develop a plan to ensure loans are closed appropriately. The agencies agree that a reasonable option may include closing in any area located at the permanent physical address of the office or branch office of the

lender, attorney, or title company, as described by the interpretation at 7 Texas Administrative Code §153.15 (e.g., a parking lot).

This guidance is not an interpretation of the Texas Constitution and is not being issued under Texas Finance Code §11.308 and §15.413. This guidance does not provide any safe harbor to avoid potential civil litigation against a lender.