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## **Home Equity Lending Guidance: COVID-19 Emergency Measures Revised Nov. 30, 2020**

*Note: This guidance revises and replaces the home equity lending guidance published by the joint financial regulatory agencies on April 22, 2020.*

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 COVID-19 pandemic.

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 they comply with Article XVI, Section 50 of the Texas Constitution to have a valid home equity lien.

In October and November 2020, the Finance Commission and Credit Union Commission adopted amendments to the home equity interpretations in Title 7, Chapter 153 of the Texas Administrative Code. These amendments went into effect on November 26, and are available in the online version of the Texas Administrative Code. Some of the amendments were adopted in response to the COVID-19 pandemic and are discussed below.

### **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 into another home equity loan 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) and amended 7 Tex. Admin. Code §153.14(3).

However, lenders are cautioned that the refinance of an existing home equity loan into a loan other than a home equity loan or a reverse mortgage is subject to the requirements of Section 50(f)(2)(A), which also imposes a one-year seasoning requirement but does not include a similar disaster exception.

**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 lowers the interest rate and 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.

In response to the *Sims* case, the commissions adopted amended 7 Tex. Admin. Code §153.11(1), explaining that Section 50(a)(6)(L)(i) does not prohibit a modification that does not satisfy and replace the original home equity loan and does not create a new extension of credit. The amendment also explains that the modification may include a deferment of the borrower’s original obligation and may include amounts that are past due under the home equity loan (e.g., accrued but unpaid interest, taxes and insurance).

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. **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.

As explained in amended 7 Tex. Admin. Code §153.15(1), the closing of a home equity loan may occur in any area located at the permanent physical address of the lender, attorney, or title company (e.g., indoor office, parking lot).

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 the Texas Uniform Electronic Transactions Act (Texas Business & Commerce Code, Chapter 322) and the federal E-Sign Act (15 U.S.C. §§7001-7006).
- 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.

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.