



DEPARTMENT OF
**SAVINGS AND
MORTGAGE LENDING**

HECTOR RETTA, COMMISSIONER

Opening Comments

Hector Retta
Commissioner

Department Update – FY 2022

- Federal Reserve raised the federal funds target rate six (6) times this year; now at 3.75% to 4%
- Rising inflation and interest rate environment
- Geo-political stress
- Mortgage licensing activity was at record levels when compared to historical averages
- New Commissioner as of 1 February 2022
- New General Counsel effective 1 November 2022



Department Update

- 2023-2027 Strategic Plan finalized and approved by the Finance Commission in June with Goals and Actions
 - Accountable to tax and fee payers
 - Operate efficiently by maximizing resources
 - Specific measures of success in achieving performance
 - Excellent customer service
 - Transparency
- 2023 Agency Priorities
 - Legislative – State and National
 - Regulation – Thrift and Mortgage
 - Policy and Rule Development
 - Industry Outreach and Communication
 - Agency Operations
 - Mortgage Grant Fund



Legislative Issues

- The 88th Legislature will convene on 10 January 2023; Legislators may begin filing bills on 14 November 2022
- The Department tracks various legislation that may impact its operations or affect its regulated industries and responds to inquiries concerning the impact of proposed legislation
- The Department does not advocate for legislative changes but may assist the Legislature in identifying potential “clean up” changes and drafting potential bill language if called on by the Legislature to do so
- The Department welcomes input from the industry concerning any particularly problematic, confusing, or inconsistent statutory provisions





Mortgage Grant Fund

Mission Statement

To support financial education, literacy, and capability that lead to tangible improvements in financial health, enabling consumers to obtain and maintain mortgage loans.

Mortgage Grant Fund (MGF)

- Established by the 87th Texas Legislature by enactment of Texas Finance Code Chapter 156, Subchapter G
- Funded primarily by excess amounts transferred from the Recovery Fund
- Provides funding for two purposes



First Funding Purpose: MGF Grant Program



Consumer financial
education relating to
mortgage loans



Second Funding Purpose: MGF Claims

Payment of claims made against the fund for fraud committed by an unlicensed individual who acted as a residential mortgage loan originator



About MGF Grant Program

Who is Eligible to Apply?

- Non-profit organizations, including governmental organizations
- For-profit organizations, if the program has a statewide impact
- Auxiliary mortgage loan activity companies registered with the Department under Texas Finance Code Chapter 156

How Much is Awarded?

- Awards may be from \$5,000 to \$100,000
- Awarded on a reimbursement basis



Program Curriculum

- ❖ Financial literacy
- ❖ Mortgage loans
- ❖ Qualifying for a mortgage loan
- ❖ Mortgage loan origination process
- ❖ Refinancing and home equity lending



MGF Dates



2022

November 1 – 30: Open enrollment

December 1 – 31: Assess applications and select grantees

2023

January 1: Grant cycle 2023 – 2024 begins





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Examination

Best Practices and Common Violations

Ellena Meier
Chief Mortgage Examiner

Overview

- Most Common Exam Findings
 - Record Maintenance
 - Correspondence Disclosures
 - Remote Work Rule
 - Information Security Program
 - Conditional Letters
 - Unlicensed Processor
 - Tolerance Violations
 - Advertisements



Record Maintenance

- **Transaction log**
 - Should include the Initial MLO
 - Only include Texas properties
 - Only include Retail loans – not Wholesale
- **Loan files**
 - Missing documentation
 - Invoices
 - Changed Circumstance documentation
 - Disclosure Tracking
 - Too large
 - Includes multiple duplicates – signed and unsigned disclosures
- **Brokered transactions**
 - Failure to maintain loan files
 - Incomplete loan files
 - Missing or Incomplete Initial Privacy Notice



Correspondence

All correspondence sent to a mortgage applicant must include:

- Originator Name & NMLS ID
- Sponsoring Entity Name & NMLS ID

Regulation 7 Texas Administrative Code §81.200(e) states that all correspondence sent to a mortgage applicant must contain the name of the mortgage banker sponsoring the originator, followed by its NMLS identification number; and the name of the originator, followed by the originator's NMLS identification number.



Remote Work

Effective November 4, 2021

- If staff allowed to work remotely, a Remote Work Policy must be developed and implemented.
- Common criteria missing:
 - Safeguards to protect consumer data, information, and records including use of secure virtual private networks and data storage encryption where applicable;
 - Appropriate risk-based monitoring and oversight processes;
 - Monitor information systems for potential anomalies or security incidents;
 - Ensure electronic records are secured and physical records are not maintained at a remote location; and
 - Provide information security awareness (remote work) training to all employees as part of initial training and annually.

<https://www.sml.texas.gov/news/new-rules-authorization-for-remote-work/>



Information Security Program

Required criteria:

- Designate an individual to coordinate the Program and include the designated individual's name and contact information;
- Provide detailed policies and procedures for secure destruction and disposal of records;
- Identify and assess internal and external risks to confidentiality and security of consumer information;
- Test and monitor key controls identified through risk assessment;
- Document the selection and oversight measures to ensure that service providers safeguard information;
- Provide information security awareness training to all employees as part of initial training and annually; and
- Provide for periodic updating to reflect changes in risks.



Conditional Letters Requirements

- Requirements for Conditional Letters (Form A and Form B) apply to:
 - Pre-Qualifications
 - Qualifications
 - Pre-Approvals
 - Conditional Approvals
 - Mortgage Commitment Letters
- There is no requirement to issue a written notification of pre-qualification or loan approval.
- IF a letter is issued, it must contain the information in either Form A or Form B.
- The Form itself can be utilized or an alternate format that includes all the information from the sample form.
- Letters may be customized or modified by adding terms, conditions, requirements or any additional aspects of the loan as long as not misleading.
- Updated Forms effective May 1, 2020



Conditional Letters Findings

Common Findings

- Letters lacking the required information
- Department Forms utilized – not fully completed
- Outdated Forms
- Customized Letters - do not include requirements from the current Form
 - Missing Originator and Company/Banker NMLS IDs
 - Missing Originator contact information (phone, email and address)
 - Missing expiration date
- Department Forms issued in every loan file – not required

Mortgage Banker Registration

[7 Texas Administrative Code §81.201](#)

Mortgage Company License

[7 Texas Administrative Code §80.201](#)



Conditional Pre-Qualification Letter

This is not a loan approval or commitment to lend

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID #

Loan Details:

Loan Amount:

Qualifying Interest Rate:

Term:

Maximum Loan-to-Value Ratio:

Loan Type and Description:

Mortgage banker ___ has ___ has not reviewed the prospective applicant's / applicant's credit report and credit score

The prospective applicant(s) / applicant(s) has provided the mortgage banker with the following information:

Income ___ Yes ___ No ___ Not applicable

Available cash to close ___ Yes ___ No ___ Not applicable

Debts ___ Yes ___ No ___ Not applicable

Assets ___ Yes ___ No ___ Not applicable

Based on the information that the prospective applicant(s) / applicant(s) has provided, the mortgage banker has determined that the prospective applicant(s) / applicant(s) is eligible and qualified to meet the financial requirements of the loan.

This is not a loan approval or a commitment to lend on the terms described in the Loan Details section.

Approval of the loan requires:

1. Receipt of a complete loan application and all supporting documents requested
2. Lender verification of the information that the prospective applicant(s) / applicant(s) has provided

3. The prospective applicant's / applicant's financial status and credit report to remain substantially the same until the loan closes

4. The collateral for the loan to satisfy the lender's requirements

5. The loan, as described, to remain available in the market

6. The prospective applicant(s) / applicant(s) to execute all documents the lender requires

7. The following additional items (list):

This conditional pre-qualification expires on _____

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #



Conditional Approval Letter

Date:

Prospective Applicant(s) / Applicant(s):

Mortgage Banker:

NMLS ID #

Loan Details:

Loan Amount:

Interest Rate*:

Term:

Interest Rate Lock Expires (if applicable):

Maximum Loan-to-Value Ratio:

Loan Type and Program:

*Interest rate is subject to change unless it has been locked

Has a subject property been identified? ____ Yes ____ No

Mortgage banker has:

Reviewed prospective applicant's / applicant's credit report and credit score: ____ Yes ____ Not applicable

Verified prospective applicant's / applicant's income: ____ Yes ____ Not applicable

Verified prospective applicant's / applicant's available cash to close: ____ Yes ____ Not applicable

Verified prospective applicant's / applicant's debts and other assets: ____ Yes ____ Not applicable

Prospective applicant(s) / applicant(s) is **approved** for the loan provided that creditworthiness and financial position do not materially change prior to closing and **provided that**:

1. The subject property is appraised for an amount not less than \$ _____
2. The lender receives an acceptable title commitment
3. The lender receives an acceptable property survey
4. The subject property's condition meets lender's requirements

5. The subject property is insured in accordance with lender's requirements

6. The prospective applicant(s) / applicant(s) executes all the documents the lender requires and

7. The following additional conditions are complied with (list):

This conditional approval expires on _____.

Residential Mortgage Loan Originator Name

Mailing address

Phone number

e-mail address

NMLS ID #



Unlicensed Loan Processor

■ Unlicensed Independent Loan Processor Violations:

- Contract processor and/or processing company paid as a 1099 or directly at closing and not properly licensed in Texas
- An SML Independent Contractor Loan Processor and Underwriting Company employees unlicensed individuals to process loans
- Properly licensed loan processor bills using an unlicensed company
- Dual Compensation – The originator and processor are the same individual and receiving compensation from the consumer and lender in connection with the mortgage loan



Tolerance Violations

- Written Service Provider List inaccuracies resulted in a tolerance overage – 10% tolerance category
 - Fee disclosed in Section C of Loan Estimate – no corresponding service provider on List
 - List missing sufficient information for consumer to contact the provider (telephone number or website)
 - Service provider not available in Texas or no longer in business
- Tolerance category fee increased from Loan Estimate to Closing Disclosure with no valid changed circumstance documentation
- Valid changed circumstance – Revised Loan Estimate not disclosed within 3 business days of receiving sufficient information of valid change



Advertisements

- Missing Originator and/or Company NMLS ID
- Missing Texas Consumer Complaint / Recovery Fund Notice
 - TX Notice must be displayed or contain an interactive hyperlink that links directly to the Company's webpage that houses the Notice
- Social Media, Website or other advertisement utilizes an unregistered trade name (dba)



Resources

■ Mortgage Compliance Guide

- Includes information regarding the Transaction Log, Loan Files, Policies & Procedures, and Mortgage Call Reports
- Available on the Department website under Mortgage Examination Resources
- <https://www.sml.texas.gov/mortgage-origination/examination/>

■ FAQs

- <https://www.sml.texas.gov/mortgage-origination/faqs/>

■ Emerging Issues Meeting held monthly on the 3rd Tuesday at 9:30 a.m. (Microsoft Teams)

- Email mortgage.exam@sml.texas.gov to sign-up for the Mortgage Contact Group





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Questions?



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Review of Updated Books and Records Rule

Justin Accola
Review Examiner

Updated Sections

- 7 Texas Administrative Code §80.204
(Residential Mortgage Loan Companies)
- 7 Texas Administrative Code §81.204
(Mortgage Bankers and Residential Mortgage Loan
Originators)



Timeline

- March 11, 2022: Proposed repeal of the previously-existing §80.204 and §81.204 and replacement with new §80.204 and §81.204
(47 Texas Register 1145)
- May 14, 2022: New §80.204 and §81.204 adopted
(47 Texas Register 2736)



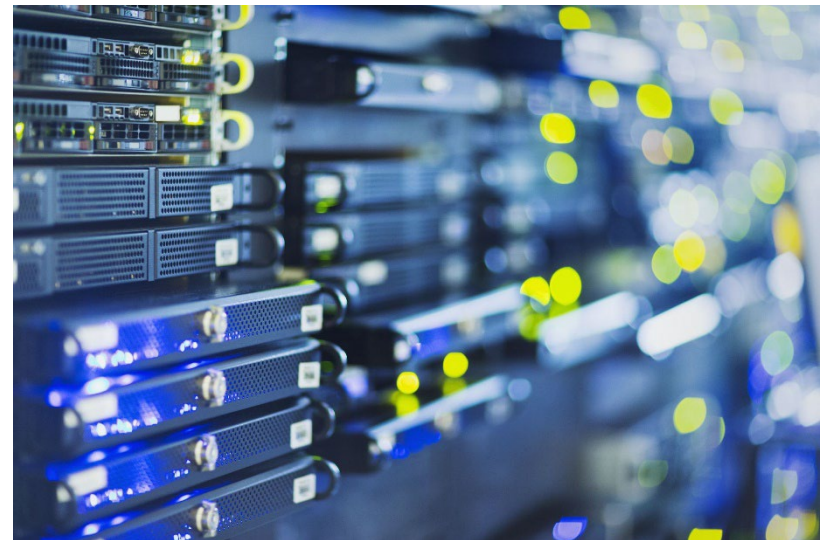
Purpose

- (i) establish a new requirement concerning the location where required records must be maintained;
- (ii) clarify existing requirements concerning the mortgage transaction log an originator is required to maintain;
- (iii) expand an existing requirement by requiring that the mortgage transaction log include information concerning the type of lien anticipated after consummation of the mortgage loan (first lien, second lien, or wrap mortgage);
- (iv) clarify existing requirements concerning the books and records that an originator must maintain by specifically identifying certain records required to comply with applicable state and federal law; and
- (v) establish a new requirement for a mortgage banker to maintain records concerning its general business operations, and simultaneously repeal such requirement as it pertains to originators under existing §81.204 as being inapplicable to an originator.



Format of Records

§81.204(a)(1) Format. The records required by this section may be maintained by using a physical, electronic, or digitally-imaged recordkeeping system, or a combination thereof. The records must be accurate, complete, current, legible, and readily accessible and sortable.



Location of Records

§81.204(a)(2): Location. A mortgage banker must ensure the records required by this section (or true and correct copies thereof) are maintained at or are otherwise readily accessible from either the main office of the mortgage banker or the location the mortgage banker has designated in its MU1 filing under "Books and Records Information" in NMLS.

§81.206(c)(3): requires mortgage banker to ensure that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured.



Mortgage Transaction Log - §81.204(b)(1)

(1) Mortgage Transaction Log. A mortgage transaction log, maintained on a current basis (which means all entries must be made within no more than 7 days from the date on which the matters they relate to occurred), setting forth, at a minimum:

(A) the name and contact information of each mortgage applicant;

(B) the date of the initial loan application;

(C) the full name of the originator **who took the initial loan application**, and his or her NMLS identification number;

(D) a description of the purpose for the loan (e.g., purchase, refinance, construction, **home equity, home improvement, land lot loan, wrap mortgage loan, etc.**);

(E) a description of the owner's or prospective owner's intended occupancy of the real estate **secured or designed to be secured by the loan (e.g., primary residence (including real estate (land lot) or a dwelling not suitable for occupancy at the time the loan is consummated but that the owner intends to occupy as their primary residence after consummation of the loan)**, secondary residence, or investment property (no intent to occupy as their residence));

(F) **the lien type (e.g., first lien, second lien, or wrap mortgage);**

(G) a description of the current status or disposition of the loan application (e.g., in-process, withdrawn, closed, or denied); and

(H) if the loan is closed, the identity of the person who initially funded and/or acquired the loan.



Residential Mortgage Loan File - §81.204(b)(2)

Specifically identifies certain records required to comply with applicable state and federal law.

- (A) All Transactions
- (B) Lender Transactions
- (C) Truth in Lending Act (TILA)
- (D) Real Estate Settlement Procedures Act (RESPA)
- (E) Equal Credit Opportunity Act
- (F) Home Equity Transactions
- (G) Wrap Mortgage Loans
- (H) Home Improvement Loans
- (I) Reverse Mortgages



Wrap Mortgage Loans - §81.204(b)(2)(G)

(G) Wrap Mortgage Loans. For wrap mortgage loan transactions subject to the requirements of Finance Code Chapter 159, the following records:

- (i) the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure), signed and dated by each mortgage applicant, and any foreign language disclosure statement required by Finance Code §159.102;
- (ii) the disclosure statement required by Tex. Prop. Code §5.016 provided to each existing lienholder (the disclosure statement required by Finance Code §159.101 and §78.101 of this title (relating to Required Disclosure) referenced in clause (i) of this subparagraph fulfills this requirement if it was provided to each existing lienholder); and
- (iii) documents evidencing that the wrap mortgage loan was closed by an attorney or a title company, as required by Finance Code §159.105.



Required Records of a Mortgage Banker - §81.204(c)

“establish a new requirement for a mortgage banker to maintain records concerning its general business operations, and simultaneously repeal such requirement as it pertains to originators under existing §81.204 as being inapplicable to an originator when considering that, in practice, such records are actually maintained in the ordinary course of business by the mortgage banker or mortgage company sponsoring the originator.”

- (1) General Business Records
- (2) Records Concerning Administrative Offices
- (3) Records Concerning Remote Work



Required Records of a Mortgage Banker - §81.204(c)(1)(H)

(H) policies and procedures related to the origination of residential mortgage loans by the mortgage banker and its sponsored originators, including, but not limited to:

- (i) identity theft prevention program (red flags rule; 16 C.F.R. §681.1(d));
- (ii) anti-money laundering program (31 C.F.R. §1029.210);
- (iii) information security program (16 C.F.R. §314.3(a));
- (iv) ability-to-repay underwriting policies, if any (Regulation Z, 12 C.F.R. §1026.43(c));
- (v) quality control policy, if any;
- (vi) compliance manual, if any; and
- (vii) personnel administration/employee policies, if any.



Records Concerning Remote Work - §81.204(c)(3)

(3) Records Concerning Remote Work. A mortgage banker must maintain records reflecting its compliance with the requirements for remote work, as provided by §81.206 of this title (relating to Office Locations; Remote Work).



Authorization for Remote Work - §81.206(c)

(c) Authorization for Remote Work. The employees of a mortgage banker and its sponsored originators may conduct business and work from a remote location to the same extent as if such employee or originators were physically present at a licensed or registered office of the mortgage banker; provided:

(1) maintains appropriate safeguards for the mortgage banker and its consumer data, information, and records, including the use of secure virtual private networks and data storage encryption (including cloud storage) where appropriate;

(2) employs appropriate risk-based monitoring and oversight processes for work performed from a remote location and maintains records of those processes;

(3) ensures that physical records containing consumer information are not maintained at a remote location (as defined by this section) and any electronic records containing consumer information located at or accessible from the remote location are secured;

(4) ensures that consumer information and records of the mortgage banker, including written procedures and training for work from remote locations authorized under this section, are accessible and available to the Commissioner or the Commissioner's designee on request;

(5) provides appropriate training to its employees and sponsored originators to ensure that remote employees or sponsored originators work in an environment conducive and appropriate to consumer privacy; and

(6) adopts, maintains, and follows written procedures to ensure that:

(A) the mortgage banker and its employees and sponsored originators comply with this section; and

(B) the employees and sponsored originators do not perform an activity from a remote location that would be prohibited at a registered office or administrative office of the mortgage banker.



Common Books and Records Deficiencies

- Mortgage Transaction Log fails to identify the originator who took the *initial* loan application - §81.204(b)(1)(C)
- Missing invoices for third party fees paid by or imposed on the mortgage applicant (e.g. credit report, appraisal, third party loan processor) - §81.204(b)(2)(A)(x), (xi), (xii), (xv)
- Missing documentation of specific changed circumstance to support issuance of revised disclosures bearing increased settlement charges - §81.204(b)(2)(C)(vi)
- Deficient or non-existent written procedures concerning remote work - §81.204(c)(3)





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Questions?



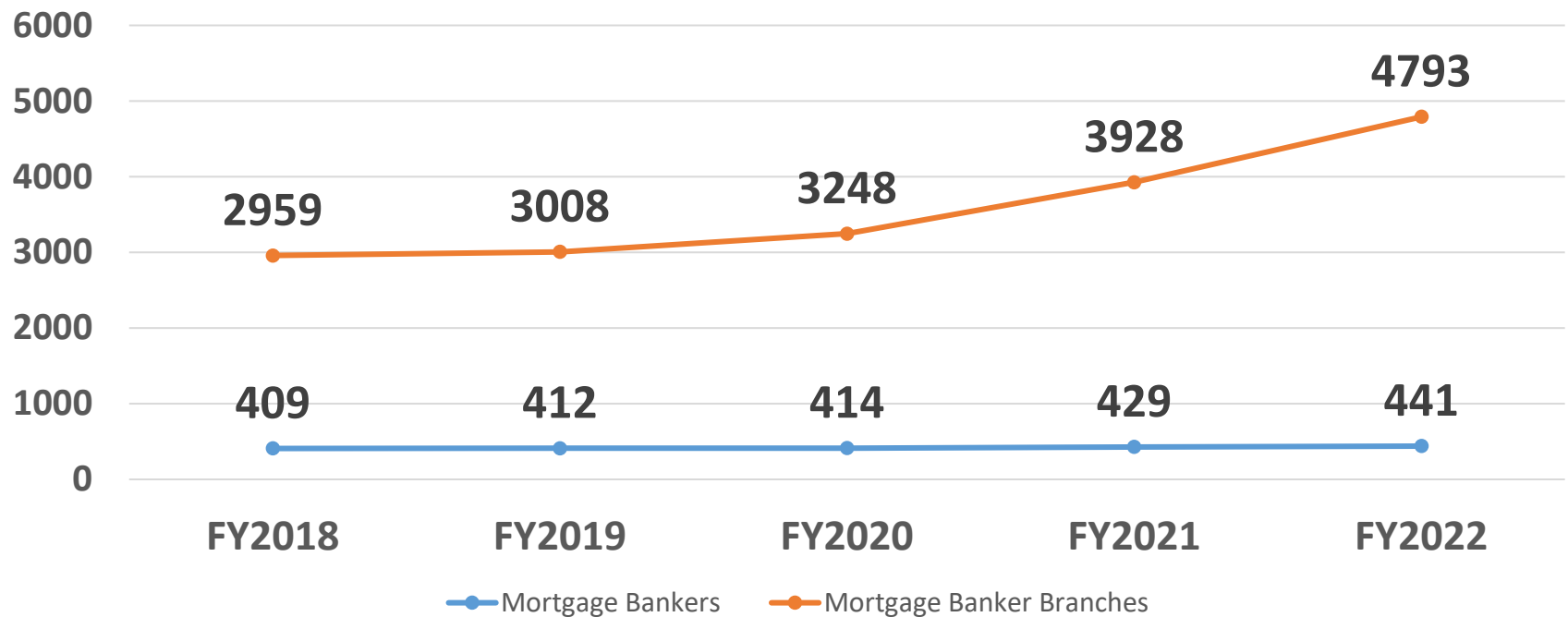
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Licensing Update and Issues
Chris Osuna
Manager of Licensing

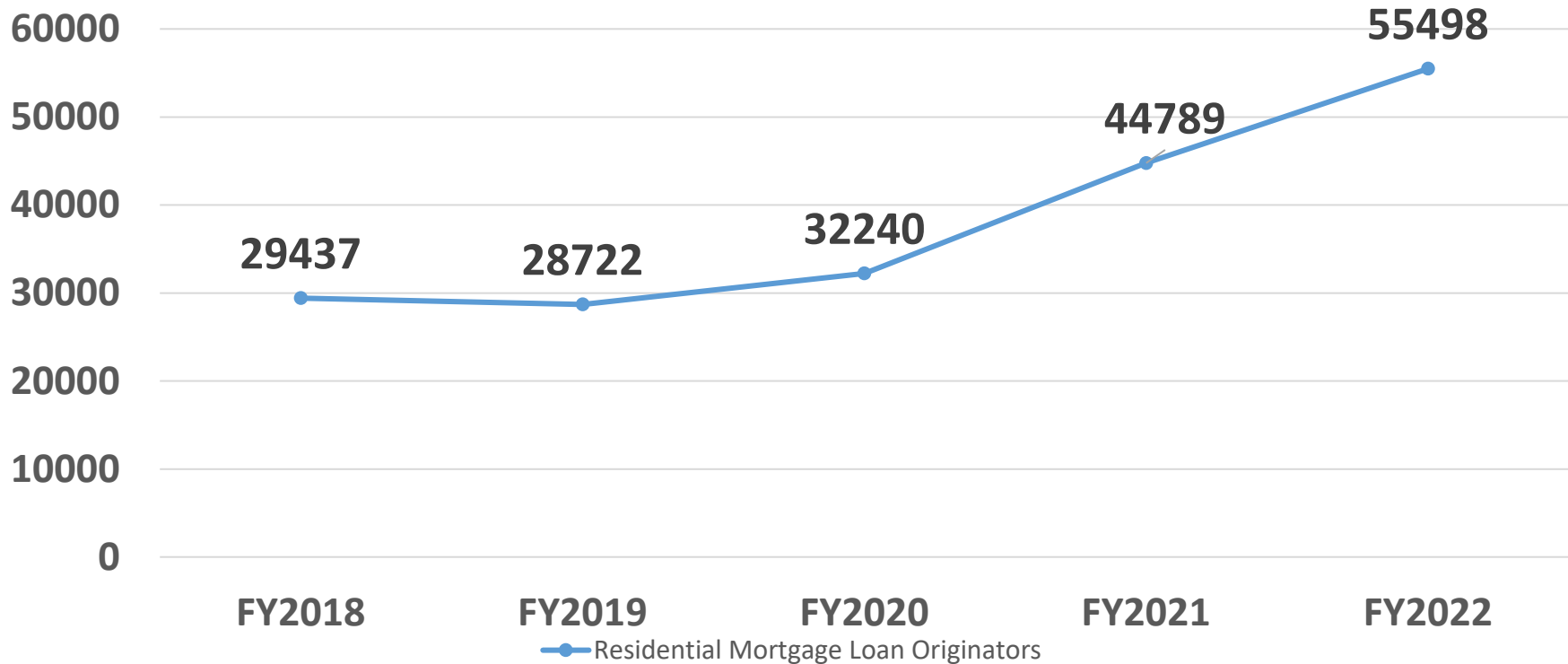
Number of Mortgage Bankers and Branches

5-Year History of Mortgage Banker Registrations and Mortgage Banker Branches
As of Fiscal Year End (08/31)



Number of Residential Mortgage Loan Originators

Number of Texas-licensed Residential Mortgage Loan Originators
5-Year History as Fiscal Year End (08/31)



2021 Licensing Data

As of November 4, 2021, the Department was performing initial review of license request within the following time frames:

- Company (MU1) – 42 days
- RMLOs (MU4) – 55 days



2022 Licensing Data

As of October 31, 2022, the processing time for initial review of a license request is as follows:

- Company (MU1) – 7 days
- RMLOs (MU4) – 6 days



2022 Licensing Data

As of October 31, 2022, Pending-Incomplete license requests:

- Company (MU1) – 22
- RMLOs (MU4) - 82



Reasons for Delay of Approval

Companies:

- Name does not match IRS Documents.
- Company or DBA not registered with the Texas Secretary of State.
- Qualified Individual not licensed in Texas.
- Registered Agent and Registered Address does not match.
- Missing approval letter from HUD Direct Endorsement, Fannie Mae, Freddie Mac or Ginnie Mae.



Reasons for Delay of Approval

Branches:

- Not providing the Operating Agreement.
- No Texas Licensed RMLO linked to the location.
- Linked RMLO is requesting Temporary Authority.



Reasons for Delay of Approval

RMLO:

- Mailing address does not match residential address.
- Current employer information does not match the Registered Location information.
- Not providing documents in reference to Disclosure Questions that were answered “Yes”.
- ACH payment pending for the Sponsorship Request or the License Request. (10 calendar day hold on the receipt of the funds.)



New in Licensing

- October 1, 2022, the Department began receiving new and converted Electronic Surety Bonds (ESB) through NMLS for the Residential Mortgage Servicer Registration.
- Effective November 1, 2022, there is a new Licensing Fee Schedule. <https://www.sml.texas.gov/download/fee-schedule-effective-november-1-2022-august-31-2023/>
- Residential Mortgage Servicer Registrations will not have a Reinstatement option this Renewal Cycle. However, all other License and Registration types will continue to have the Reinstatement option.



2022 Renewal Cycle

The Renewal Period will run from November 1st to December 31st. Items that could delay renewal of a license:

- Outstanding Requirements.
- Continuing Education.



2022 Renewal Cycle

Things to remember about License Renewal:

- File Renewal Request as soon as possible.
- Reinstatement Period runs from January 1, 2023, to February 28, 2023.
- No Reinstatement Period for Servicers that do not renew their registration by December 31, 2022.





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Questions or Comments?



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Texas Home Equity Loans: Requirements and Limitations

William Purce
Director of Mortgage Regulation

Disclaimer

- Except for the information taken directly from regulations adopted by the Joint Financial Regulatory Agencies, none of the information in this presentation should be relied upon as an interpretation under 7 Texas Administrative Code §151.1.
- The information reflected in this presentation should not be considered a Written Notice from the Commissioner under Section 156.404 or Section 157.029 of the Texas Finance Code.





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Basic Information

What is a Homestead and Permissible Homestead Liens?

A homestead is a place of residence for a family or of a single adult person and shall be, and is protected from forced sale except for the following debts:

1. purchase money;
2. property taxes (ad valorem tax);
3. owelty of partition;
4. refinance of an existing lien against the homestead (including a federal tax lien);
5. home improvement loan;
6. home equity loan;
7. reverse mortgage; or
8. conversion and refinance of personal property lien secured by a manufactured home to a lien on real property.

Article XVI, Section 50(a) of the Texas Constitution



Establishment of Homestead

- Homestead rights enjoy “sacred levels of protection” by the courts. *CVN Group, Inc. v. Delgado*, 47 S.W.3d 157 (Tex. App. – Austin 2001), rev’d on other grounds, 95 S.W.3d (Tex. 2002).
- Homestead laws are liberally construed by the courts. *London v. London*, 342 S.W.3d 768, 776 (Tex. App.-Houston [14th Dist.] 2011, no pet.)
- To establish homestead rights, a person must show:
 - an overt act of homestead usage (e.g. residing in the house); and
 - an intent on part of owner to claim land as homestead (e.g. filing an affidavit designating the homestead in real property records or filing for a homestead exemption for taxes).



Homestead – Real Property Only

- A homestead claim must also be based on a real property interest.
 - The property's attachment to the land must be “sufficient to make the personal property a permanent part of the realty.” *Norris v. Thomas*, 215 S.W.3d 851 (Tex. 2007) (holding that a yacht is not a homestead).
 - Manufactured home or mobile home not affixed to the real property do not qualify to be a homestead.
- Homestead property may be used for commercial purposes (e.g. growing crops, timberland, oil and gas production, or other purposes)



Urban vs Rural Homestead

Two types of homestead: Rural and Urban

➤ **Rural homestead**

- **Up to 100 acres for a single adult person**
- **Up to 200 acres for a family**

➤ **Urban homestead**

- **Up to 10 acres**
- **May be one or more contiguous lots**

Texas Property Code, § 41.002(c)



Disguised Home Equity Loan Transaction

Except for a sale of a family homestead to a family member (parent, stepparent, grandparent, child, stepchild, brother, half brother, sister, half sister, or grandchild of an adult member of the family), any sale or purported sale in whole or in part of a homestead at a fixed purchase price that is less than the appraised fair market value of the property at the time of the sale or purported sale, and in connection with which the buyer of the property executes a lease of the property to the seller at lease payments that exceed the fair rental value of the property, is considered to be a loan with all payments made from the seller to the buyer in excess of the sales price considered to be interest subject to Title 4, Finance Code.

Texas Property Code, § 41.006(a)





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Home Equity Loans

Article XVI, Section 50(a)(6) of the TX. Constitution

Home Equity Requirements and Limitations

- In making a home equity loan or a line of credit, an authorized lender must comply with, at least, 26 limitations and restrictions.
- If a lender does not comply with all 26 limitations and restrictions, the lender is subject to the cure provisions including possible forfeiture of all principal and interest on the home equity loan.
- The cure provisions are found under Article XVI, Section 50(a)(6)(Q)(x) of the Texas Constitution.



Home Equity Requirements and Limitations

Voluntary Lien

- **Voluntary Lien** – Written consent of each owner and each owner's spouse must be obtained, regardless of whether any owner's spouse has a community property interest
 - Consent may be included in the mortgage instrument (e.g. deed of trust) or a separate document
 - Lender may require each owner and each owner's spouse to sign the mortgage instrument
 - ❖ **Note – Under Regulation B, 12 C.F.R. § 1002.7(d), a lender cannot require the spouse to sign the promissory note if the person applies for credit and is qualified on their own.**

Article XVI, Section 50(a)(6)(A) of the Texas Constitution and 7 Texas Administrative Code § 153.2



Home Equity Requirements and Limitations

80% Loan-to-Value

- **Loan-to-Value** – Principal Balance of Home Equity Loan plus the aggregate total of all outstanding balances on valid encumbrances of record against the homestead cannot exceed 80% of the fair market value of the homestead.

Principal Balance includes:

1. the amount of the cash advanced (cash to borrower and other amounts advanced on behalf of the borrower);
2. charges at the inception of the loan that are financed in the principal amount of the loan; and
3. any contractually obligated future advances not yet disbursed if a closed-end multiple advance equity loan.

Article XVI, Section 50(a)(6)(B) of the Texas Constitution and 7 Texas Administrative Code § 153.3



Home Equity Requirements and Limitations

80% Loan-to-Value Examples

Example #1:

Fair Market Value: \$100,000.00

Outstanding Debt on Homestead: \$ 0.00

80% Loan-to-Value Calculation (Maximum Principal Balance)

(Fair Market Value x 80%) – Outstanding Debt = Max. Prin.

$(\$100,000.00 \times .80) - \$0.00 = \$80,000.00$

Example #2:

Fair Market Value: \$400,000.00

Outstanding Debt on Homestead: \$167,125.00

$(\$400,000.00 \times .80) - \$167,125.00 = \$152,875.00$



Home Equity Requirements and Limitations

Non-Recourse – No Personal Liability

- **Non-recourse** – Home Equity Loan must be without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the loan by actual fraud.
 - **If home equity loan is foreclosed, the lender is prohibited from pursuing the deficiency balance except for actual fraud.**
 - **Actual Fraud encompasses dishonesty of purpose or intentional breaches of duty that are designed to injure another or to gain an undue and unconscientious advantage.**

Article XVI, Section 50(a)(6)(C) of the Texas Constitution and 7 Texas Administrative Code § 153.4



Home Equity Requirements and Limitations

Foreclosure by Court Order Only

- **Foreclosure by court order only** – A Home Equity Loan may only be foreclosed upon with a court order.
 - **Foreclosures must be either:**
 - **judicial foreclosure or**
 - **an expedited foreclosure with a court order under Rules 735 and 736 of the Texas Rules of Civil Procedure**

Article XVI, Section 50(a)(6)(D) of the Texas Constitution



Home Equity Requirements and Limitations

2% Fee Limit

- **2% limitation on fees and charges** – The owner of the homestead property is not required to pay any fees that exceed two percent of the original principal amount of the Home Equity Loan excluding:
 - Per-diem interest
 - Contractual Interest (excluding origination fees and origination points)
 - Bona-fide Discount Points
 - Appraisal fees performed by a third-party appraiser excluding appraisal management fees
 - Property survey fees performed by a licensed or registered surveyor
 - Title insurance premiums (base premium plus lawful endorsements)
 - Abstract title fees (if less than the basic title insurance)
 - Optional Insurance (credit life and credit accident and health insurance)
 - Property Insurance Premiums (Homeowners insurance)
 - Charges Absorbed by the Lender
 - Escrow Reserves

Article XVI, Section 50(a)(6)(E) of the Texas Constitution and 7 Texas Administrative Code § 153.5



Home Equity Requirements and Limitations

2% Fee Limit Example

Cash to Borrower:	\$50,000.00
Title Insurance Premium (Basic)	\$ 496.00
T-42 Title Endorsement (10% of Basic):	\$ 49.60
Appraisal Fee paid to ABC Appraisal:	\$ 500.00
Appraisal Management Fee:	\$ 50.00
Survey Fee paid XYZ Surveyors:	\$ 456.00
Administrative Fee:	\$ 25.00
Recording Fees:	\$ 55.00
Document Preparation Fee paid to Atty:	\$ 350.00
Per-Diem Interest (12 days @ \$17.09/day):	<u>\$ 205.08</u>
Principal Balance (all fees financed)	\$52,186.68



Home Equity Requirements and Limitations

2% Fee Limit Example

Maximum Fees for a Home Equity Loan:

Principal Balance of the Loan x .02 = Maximum Fees

\$52,186.68 x .02 = \$1,042.73

Fees included in the 2%

Appraisal Management Fee:	\$	50.00
Administrative Fee:	\$	25.00
Recording Fees:	\$	55.00
Document Preparation Fee paid to Atty:	\$	<u>350.00</u>
Total Fees included in the 2% limitation:	\$	480.00



Home Equity Requirements and Limitations

No Prepayment Penalty

- **No Prepayment Penalty Allowed** - A holder may not charge a prepayment penalty (a fee for paying all or part of the principal early) on a Home Equity Loan.
 - **Lockout provisions are also not permitted because it is considered a prepayment penalty.**
 - **A lockout provision is a provision in a loan agreement that prohibits a borrower from paying the loan early.**

Article XVI, Section 50(a)(6)(G) of the Texas Constitution and 7 Texas Administrative Code §153.4



Home Equity Requirements and Limitations

No Additional Security

- **No Additional Real or Personal Property** – A Home Equity Loan may not be secured by any additional real or personal property.
 - **Prohibited real or personal property includes:**
 - **Guaranty or surety (e.g. cosigner)**
 - **Contractual right of offset (a right of offset is a when financial institution may deduct money out of a deposit account in order to satisfy an outstanding debt to the same financial institution)**
 - **Contractual cross-collateralization clause (a provision in a loan agreement that puts the borrower in default if the borrower defaults on another obligation).**

Article XVI, Section 50(a)(6)(H) of the Texas Constitution and 7 Texas Administrative Code §153.8



Home Equity Requirements and Limitations

No Additional Security

- **No Additional Real or Personal Property** – A Home Equity Loan may not be secured by any additional real or personal property.
 - **Prohibited real or personal property includes:**
 - **Motor vehicles or other personal property**
 - **If an urban homestead, any portion of the homestead property more than 10 acres.**
 - **If a rural homestead, any portion of the homestead property greater than:**
 - ❖ **200 acres if a family**
 - ❖ **100 acres if a single, adult person**

Article XVI, Section 50(a)(6)(H) of the Texas Constitution and 7 Texas Administrative Code §153.8



Home Equity Requirements and Limitations

Acceleration of Debt Prohibited in Certain Cases

- **Acceleration Limited** - No acceleration of the debt because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead.
 - Acceleration is permitted for default under a covenant of the loan agreement (e.g. failure to make payments, maintain insurance, or illegal use of the property)
 - Contractual cross-default clauses are permitted only if the lien associated with loan is subordinate to the lien referenced by the cross-default clause.

Article XVI, Section 50(a)(6)(J) of the Texas Constitution and 7 Texas Administrative Code § 153.9



Home Equity Requirements and Limitations

Only One Outstanding Home Equity Loan

- **One Outstanding Home Equity Loan** – An owner may have only one equity loan (closed-end loan or home equity line of credit) at a time, regardless of the aggregate total outstanding debt against the homestead.
 - If under Texas law the property ceases to be the homestead of the owner, then the lender may treat what was previously a home equity mortgage as a non-homestead mortgage.

Article XVI, Section 50(a)(6)(K) of the Texas Constitution and 7 Texas Administrative Code § 153.10



Home Equity Requirements and Limitations

Repayment Schedule Limitations

- **Repayment Schedule Limitations** – Unless the Home Equity Loan is a home equity line of credit, the loan must:
 1. be repaid in substantially equal successive periodic installments (each payment must include some principal and, at least, the amount of accrued interest);
 2. have a repayment schedule of at least bi-weekly payments (14 days between payments) but not less often than monthly payments (same definition of a month);
 3. have the first payment due no later than two months from the date of closing; and
 4. **NOT** have a balloon payment.

Article XVI, Section 50(a)(6)(L)(i) of the Texas Constitution and 7 Texas Administrative Code § 153.11



Home Equity Requirements and Limitations

Closing Date Limitations

- **Closing Date Limitation** – No Home Equity Loan may be closed before the 12th calendar day after the later of: (1) the date that the owner submits an application for the loan to the lender; or (2) the date that the lender provides the required 12-day disclosure.
 - Loan Application may be made to an agent acting on behalf of the lender (e.g. brokered loan)
 - Loan Application may be submitted orally or electronically (UETA and E-Sign Act apply for electronic signatures and delivery)

Article XVI, Section 50(a)(6)(M)(i) of the Texas Constitution and 7 Texas Administrative Code § 153.12



Home Equity Requirements and Limitations

12-day Disclosure (Notice Concerning Extension of Credit)

- The 12-day Disclosure must be on a separate instrument (separate page).
- The 12-day Disclosure must be provided, at least, in English and an additional copy of the notice translated into the written language in which the discussions were conducted.
- [English](#) and [Spanish](#) versions located on the Finance Commission website
- If an owner has executed a valid power of attorney, the lender may provide the 12-day Disclosure to the attorney-in-fact instead of the owner (borrower).

Article XVI, Section 50(g) of the Texas Constitution and 7 Texas Administrative Code, § 153.51



Home Equity Requirements and Limitations

12-day Disclosure (Notice Concerning Extension of Credit)

- If a lender mails the consumer disclosure to the owner, the lender shall allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.
- A lender may rely on an established system of verifiable procedures to evidence compliance.

Article XVI, Section 50(g) of the Texas Constitution and 7 Texas Administrative Code, § 153.51



Home Equity Requirements and Limitations

Right of Rescission

- **Right of Rescission** - The owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge.
- A lender may use the “Notice of Right to Cancel” (the model rescission notice) found in Appendix G and H of the Regulation Z.
- Unlike Truth in Lending, the right to rescind applies to non-owner spouses.

Article XVI, Section 50(a)(6)(Q)(viii) of the Texas Constitution & 7 Texas Administrative Code, § 153.25



Home Equity Requirements and Limitations

Right of Rescission

- The three-day rescission period does not include Sundays and federal legal public holidays.
- Federal legal public holidays include:
 1. New Year's Day,
 2. the Birthday of Martin Luther King, Jr.,
 3. Washington's Birthday, (President's Day),
 4. Memorial Day,
 5. Juneteenth,
 6. Independence Day,
 7. Labor Day,
 8. Columbus Day,
 9. Veterans Day,
 10. Thanksgiving Day, and
 11. Christmas Day



Home Equity Requirements and Limitations

Right of Rescission

- The creditor must wait until it is reasonably satisfied that the consumer has not rescinded. For example, the creditor may satisfy itself by doing one of the following:
 - A. waiting a reasonable time after expiration of the rescission period to allow for delivery of a mailed notice and/or
 - B. obtaining a written statement from the consumer that the right has not been exercised (TX-SML record retention requirement).
- When more than one consumer has the right to rescind, the creditor cannot reasonably rely on the assurance of only one consumer because other consumers may exercise the right.



Home Equity Requirements and Limitations

Timing Example #1

- **Example #1 – If an applicant applies for a home equity loan in person on November 7, 2022 and receives the 12-day disclosure that same day, the first day the loan could close is November 19, 2022.**



Timing of Closing

November 2022						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		November 1	November 2	November 3	November 4	November 5
November 6	November 7 Application Taken in- person 12-day notice provided	November 8 Day 1	November 9 Day 2	November 10 Day 3	November 11 Veteran's Day (Holiday) Day 4	November 12 Day 5
November 13 Day 6	November 14 Day 7	November 15 Day 8	November 16 Day 9	November 17 Day 10	November 18 Day 11	November 19 Day 12 Closing Day
November 20	November 21 Day 1 rescission	November 22 Day 2 rescission	November 23 Day 3 rescission	November 24 Thanksgiving (Holiday)	November 25	November 26
November 27	November 28	November 29	November 30			

Home Equity Requirements and Limitations

Timing Example #2

- **Example #2 – If an applicant applies for a home equity loan with a mortgage banker on November 8, 2022 (application taken) and the mortgage banker provides the 12-day disclosure on November 9, 2022, the first day the loan could close is November 21, 2022.**



Timing of Closing

November 2022						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		November 1	November 2	November 3	November 4	November 5
November 6	November 7	November 8 Application Taken	November 9 12-day notice provided electronically	November 10 Day 1	November 11 Veteran's Day (Holiday) Day 2	November 12 Day 3
November 13 Day 4	November 14 Day 5	November 15 Day 6	November 16 Day 7	November 17 Day 8	November 18 Day 9	November 19 Day 10
November 20 Day 11	November 21 Day 12 Closing Date	November 22 Day 1 rescission	November 23 Day 2 rescission	November 24 Thanksgiving (Holiday)	November 25 Day 3 rescission	November 26
November 27	November 28	November 29	November 30			

Home Equity Requirements and Limitations

Timing Example #3

- **Example #3** – If an applicant applies for a home equity loan online on November 10, 2022 and the mortgage banker mails the 12-day disclosure on November 10, 2022 to the applicant, the first day the loan could close is November 27, 2022 [3-day mailing rule applies where November 11, 2022 (Veteran's Day - legal holiday) and Sunday, November 13, 2022 do not count].



Timing of Closing

November 2022						
Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		November 1	November 2	November 3	November 4	November 5
November 6	November 7	November 8	November 9	November 10 Application Taken Online 12-day notice <u>mailed</u> to applicant	November 11 Veteran's Day (Holiday)	November 12 First Mailing Day
November 13	November 14 Second Mailing Day	November 15 Third Mailing Day	November 16 Day 1	November 17 Day 2	November 18 Day 3	November 19 Day 4
November 20 Day 5	November 21 Day 6	November 22 Day 7	November 23 Day 8	November 24 Thanksgiving Day 9	November 25 Day 10	November 26 Day 11
November 27 Day 12 Closing Day	November 28 Day 1 rescission	November 29 Day 2 rescission	November 30 Day 3 rescission			

Home Equity Requirements and Limitations

Location of Closing

- **Location of Closing** – A Home Equity Loan may be closed only at an office of the lender, an attorney at law, or a title company.
- The lender must be an authorized lender (see slide 39) and be the company that advanced the funds or was identified as the payee on the promissory note.

Article XVI, Section 50(a)(6)(N) of the Texas Constitution and 7 Texas Administrative Code, §153.15



Home Equity Requirements and Limitations

Location of Closing

- A power of attorney allowing an attorney-in-fact to execute the closing documents on behalf of the owner or owner's spouse must be consented to and signed at an office of the lender, an attorney at law, or a title company.
- To prove compliance with this requirement, the lender must have a verifiable procedure that includes:
 - (A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed; or
 - (B) an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed; or
 - (C) a certificate of acknowledgement signed by a notary public under Chapter 121, Civil Practice and Remedies Code, acknowledging the date and place at which the power of attorney was executed.

Article XVI, Section 50(a)(6)(N) of the Texas Constitution and 7 Texas Administrative Code, §153.15



Home Equity Requirements or Limitations Authorized Lender

- **Authorized Lender Only** – A home equity loan must be made by one of the following:
 - A depository institution or a subsidiary of the depository institution (e.g. bank, savings bank, savings and loan association, or credit union)
 - Chapter 342 regulated lender (Tex. Fin. Code, § 342.051)
 - Federally-chartered lending instrumentality (e.g. HUD-approved mortgagee but excludes loan correspondents to a HUD-approved mortgagee)
 - Mortgage company licensed under Tex. Fin. Code, Chp. 156
 - Mortgage banker registered under Tex. Fin. Code, Chp. 157
 - Person selling the homestead property to the current owner who provided all or part of the financing for the purchase
 - A person who is related to the homestead owner within the second degree of affinity or consanguinity

Article XVI, Section 50(a)(6)(P) of the Texas Constitution & 7 Texas Administrative Code, § 153.17



Home Equity Requirements and Limitations

Limitation on Application of Proceeds

- **Limitation on Application of Proceeds** – An owner of the homestead may not be required to apply the proceeds of the home equity loan or home equity line of credit to repay another debt except for a debt secured by the homestead or debt to another lender.
 - **An owner may use the proceeds to pay off the non-homestead debt with the same lender if it is voluntary and the owner (borrower) signs a written statement indicating that it is voluntarily using the proceeds to pay on a debt owed to the lender making the equity loan.**

Article XVI, Section 50(a)(6)(Q)(i) of the Texas Constitution & 7 Texas Administrative Code, § 153.18



Home Equity Requirements and Limitations

Copies of Documents

- **Copies of Documents** - At closing, the lender must provide the owner with a copy of the final loan application and all executed documents that are signed by the owner at closing in connection with the equity loan.
- One copy of these documents may be provided to married owners.
- This requirement does not obligate the lender to give the owner copies of documents that were signed by the owner prior to or after closing.

Article XVI, Section 50(a)(6)(Q)(v) of the Texas Constitution & 7 Texas Administrative Code, § 153.22



Home Equity Requirements and Limitations Security Instrument Disclosure

- **Security Instrument Disclosure** – The security instrument (e.g. home equity deed of trust) must contain a disclosure that the loan is a home equity loan

“THIS SECURITY INSTRUMENT SECURES AN EXTENSION OF CREDIT THAT IS THE TYPE OF CREDIT DEFINED BY SUBSECTION (a)(6) OF SECTION 50, ARTICLE XVI OF THE TEXAS CONSTITUTION.”

Article XVI, Section 50(a)(6)(Q)(vi) of the Texas Constitution



Home Equity Requirements and Limitations

Release of Lien

- **Release of Lien – Within 30 days after the payoff date, the lender must:**
 - **cancel and return the promissory note to the owner (an affidavit of lost or imaged note is acceptable if the original note has been lost or imaged); and**
 - **give the owner either:**
 - **a recordable release of lien; or**
 - **an endorsement and assignment of the lien to another lender refinancing the loan.**

Article XVI, Section 50(a)(6)(Q)(vii) of the Texas Constitution & 7 Texas Administrative Code, § 153.24



Home Equity Requirements and Limitations

Release of Lien

- The lender or its agent must provide the recordable release of lien free of charge to the owner.
- In other words, the lender may not, directly or indirectly, assess, charge, or receive a fee for preparing the recordable release of lien and returning the paid-out documents to the owner.
- The lender is not required to record the release of lien in the real property records; however, if the lender does record the release, the lender may assess, charge, and receive the actual recording fee paid to the county clerk's office.
- Recording fees are established by law (Texas Local Government Code, Chp. 118) and usually range from \$16 to \$36 for the first page depending upon the county.

Article XVI, Section 50(a)(6)(Q)(vii) of the Texas Constitution & 7 Texas Administrative Code, § 153.24



Home Equity Requirements and Limitations

Acknowledgment of Fair Market Value

- **Acknowledgment of Fair Market Value** – The owner of the homestead and the lender must sign a written acknowledgment as to the fair market value of the homestead property on the date of the loan.
- A lender or assignee may conclusively rely on the written acknowledgment as to the fair market value of the homestead property made if:
 - (1) the value acknowledged to is the value estimate in an appraisal or evaluation prepared in accordance with a state or federal requirement for home equity loans; and
 - (2) the lender or assignee does not have actual knowledge at the time of the payment of value or advance of funds by the lender or assignee that the fair market value was incorrect.

Article XVI, Section 50(a)(6)(Q)(ix) and (h) of the Texas Constitution and 7 Texas Administrative Code § 153.26



Home Equity Requirements and Limitations

Refinance of a Home Equity Loan

A refinance of home equity loan may not be secured by a valid lien against the homestead unless either:

- (1) the refinance of the debt is a home equity loan or reverse mortgage; or**
- (2) a rate and term refinance of the home equity loan satisfies all of the following conditions:**
 - (A) one year from the date of the home equity loan was closed has lapsed (some title insurance companies require one year from the date the lien was recorded in the real property records);**
 - (B) advance of any additional funds includes only:**
 - (i) funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of this section (excluding additional cash or cash equivalent to the borrower); or**
 - (ii) actual costs and reserves required by the lender to refinance the debt;**
 - (C) the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made; and**
 - (D) the lender provides the owner a prescribed written notice on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed.**

Article XVI, Section 50(f) of the Texas Constitution and 7 Texas Administrative Code § 153.45



Home Equity Requirements and Limitations

Refinance of a Home Equity Loan

- Refinance Disclosure must be on a separate instrument (separate page).
- Refinance Disclosure must be provided not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date of the refinance.
- The 3-day mailing limitation also applies to the Refinance Disclosure.
- For the purposes of a business day, a business day applies only to the days the lender is open for substantially all of its business functions.
- Refinance Disclosure must be provided, at least, in English and an additional copy of the notice translated into the written language in which the discussions were conducted.
- [English](#) and [Spanish](#) versions may be located on the Finance Commission of Texas website.

Article XVI, Section 50(f)(1) and (f)(2) of the Texas Constitution and 7 Texas Administrative Code § § 153.1(2)(B) and 153.45





DEPARTMENT OF
**SAVINGS AND
MORTGAGE LENDING**

HECTOR RETTA, COMMISSIONER

Questions?