REGULATORY COMMENTARY
ON EQUITY LENDING PROCEDURES

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PREAMBLE:

The Texas Constitution has protected homesteads from forced sale for 158 years. The constitutional provisions permitted loans for the purposes of (1) purchase money; (2) taxes; (3) an owelty of partition; (4) the refinance of a lien, including tax liens; and (5) home improvements. The 75th Legislature passed House Joint Resolution 31 (HJR 31), which was adopted by the voters on November 4, 1997. Effective January 1, 1998, HJR 31 creates two additional categories of authorized liens: an equity loan and a reverse mortgage on a homestead. HJR 31 also modifies the existing provisions regarding liens on a homestead for home improvement purposes.

Section 50, Article XVI of the constitution enumerates the permissible encumbrances on a homestead. Section 50 addresses only the elements necessary to create a valid lien on a homestead. Different statutes and constitutional provisions govern the legality of credit transactions and specifically loans. Section 11, Article XVI of the constitution permits interest rates of 10% or less on credit transactions. It then states that the Legislature may by statute, classify loans and provide alternative interest rates. The Legislature did so in Title 79, Texas Civil Statutes and in Titles 3 and 4, *Texas Finance Code*. A mortgage loan's classification regarding the appropriate treatment under credit law hinges upon the lien position. A first lien mortgage loan is governed by the provisions of Subtitle I, Title 79. However, Congress in the enactment of the Depository Institutions Deregulation and Monetary Control Act of 1980 and the Alternative Mortgage Transactions Parity Act preempted state interest rate limitations on certain first lien residential mortgage loans. A secondary mortgage loan that exceeds the constitutional rate of 10% interest falls within the jurisdiction of Subtitle II, Title 79. The specific statutory provisions are found in art. 5069, Chapter 3A, Subchapter G.

Regulatory Authority

The fact that most of the provisions regarding implementation of home equity lending reside in the constitution creates a dilemma for providing interpretations of particular provisions. Inherent in an issue as complex as home equity are details that simply cannot be fully addressed within the text of the amendment. The consumer credit commissioner has had interpretation authority over the provisions of Title 79 for many years. This process works well for resolving ambiguities and providing certainties for parties entering into a credit transaction. Additionally, the Finance Commission of Texas has broad rulemaking authority over all of Title 79 to provide definition and implement the credit laws.

The state regulatory agencies with authority over authorized lenders believe it is important to follow the will of the citizenry and the Legislature and foster a workable environment for equity loans. The regulators believe it is their responsibility to provide for a reasonable implementation of home equity lending and inform the regulated community of the guidelines that will be used to enforce the provisions of HJR 31. Additionally, these policies should provide guidance to lenders and consumers concerning the regulatory views of the meaning and effect of HJR 31. The positions presented in this commentary are the opinions of the state administrative agencies responsible for regulating the entities making these loans and these views will be used to evaluate compliance with the constitutional requirements in examination and enforcement situations. However, a court may or may not defer to this interpretation in resolving a dispute between a borrower and a lender.

SECTION 50(a)

The constitutional amendment uses the term "an extension of credit." This commentary on the resolution will use the term "equity loan" for the ease of convenience and possibly for greater comprehension. An extension of credit is the same as an equity loan for the purpose of this discussion. An equity loan has been defined and authorized under the provisions of section 50(a)(6), Article XVI of the Texas Constitution. Certain provisions refer to "the date the extension of credit is made." This phrase refers to the date that the parties become contractually obligated. The definition consists of approximately 26 elements, each of which must be satisfied to be an equity loan. Section 50(a) of the constitution discusses permissible liens on a homestead. The context of this section is important in construing the provisions of the amendment. Each requirement under section 50(a)(6) is necessary to have a valid lien on the homestead. A lender or holder's failure to comply with the requirements may result in forfeiture of all principal and interest on the loan if the lender or holder fails to comply with its obligations within a reasonable time after being notified by the borrower of the failure to comply. Clarification of the individual conditions follows:

6(A) Voluntary lien

The home equity transaction must be voluntary and must be entered into under a written agreement executed with the consent of each owner and each owner's spouse. Regardless of whether a spouse has a community property interest in the homestead, the consent of that spouse must be obtained. A spouse or owner who is not a maker of the note may acknowledge his or her consent by executing a written consent to the mortgage instrument.

6(B) Limitation on loan amount

The amount of the loan is limited to an amount including the aggregate total of outstanding debt against the homestead that does not exceed 80% of the fair market value of the homestead on the date the loan is closed. Thus, the limitation applies to the cash advance and charges at the inception, to the extent any charges are financed in the principal amount of the loan. The determination of the maximum principal amount of the equity loan is based upon the principal balance outstanding on the date the extension of credit is made and does not include interest accrued after the date the extension of credit is made (other than any interest capitalized and added to the principal balance on the date the extension of credit is made), or other amounts advanced by the lender after closing as a result of default, including for example, ad valorem taxes, hazard insurance premiums, and authorized collection costs, including reasonable attorney's fees. On a closed-end multiple advance loan, the principal balance also includes contractually obligated future advances not yet disbursed. For example, on a property with a fair market value of $100,000 and existing debt on the property of $30,000, the maximum amount of debt against the property could be $80,000. Subtracting the outstanding debt of $30,000, the maximum amount of the new equity loan debt would be $50,000 on the date the loan is made.

6(C) Nonrecourse

The loan is made without recourse for personal liability of each owner and each owner's spouse unless the owner or spouse has committed actual fraud in obtaining the loan. In

essence, a lender may not pursue a deficiency against any owner or any owner's spouse for any unpaid amounts, except in cases of actual fraud.

6(E) Limitation on fees

Interest and Fees

A borrower may not be required to pay fees, in addition to any interest, in excess of three percent of the principal amount. The language specifically excludes interest from the limitation. The word "interest" means interest as defined in the *Texas Credit Title* and as interpreted by the courts of the state of Texas. Accordingly, charges that constitute interest under the law, including, for example, points, are not fees subject to the three percent limit. Fees that are required to be paid and that are not interest are subject to the three percent limitation. There is no restriction on a lender absorbing costs that might otherwise be fees and, therefore, covered by the fee limitation.

Voluntary Optional Fees

The amendment defines the equity loan as a loan that "does not require the owner ... to pay ... fees ... that exceed ... 3%." The use of the word "require" is determinative in evaluating fees that are subject to the three percent limitation. Charges that are not imposed by the lender, but that are optional, are not fees subject to the three percent fee limit.

A borrower who chooses to pay premiums for certain insurance coverages, but is not required to acquire the insurance coverage as a condition to the extension of credit, does not subject those premiums to the limitation. Credit life and credit accident and health insurance coverages, if elected by the owner, are not included within the three percent limitation. However, if credit life and credit accident and health insurance were required by the lender then these charges would be included in the three percent limitation.

Fees to Originate

Fees to originate an equity loan that are not interest fall within the three percent limitation. Fees to third parties for separate and additional consideration for activities relating to originating a loan come within this characterization. For example, attorney's fees for document preparation are fees necessary to originate the loan. A broker's fee is also considered to be a fee to originate the loan.

Fees to Evaluate

Fees to evaluate the credit decision for an equity loan that are not interest are subject to the three percent limitation. This includes fees collected to cover the expenses of a credit report, survey, flood zone determination, tax certificate, title report, or appraisal.

Fees to Maintain

Fees to maintain the equity loan that are not interest are subject to the three percent limitation. This encompasses a fee charged at the inception of the loan to compensate for performing a service for the life of the loan. Examples of this fee are a flood zone determination fee and a tax service fee.

Fees to Record
Fees paid to public officials and others for the purpose of recording public documents evidencing the lien are fees subject to the three percent limitation.

Fees to Insure
Premiums to insure the equity loan are fees subject to the three percent limitation. Title insurance and mortgage insurance protection are examples of this type of fee.

Fees to Service
Any fee charged to and paid by an owner at the inception of the loan transaction to service the equity loan that is not interest is subject to the three percent limitation.

Escrow Funds
A lender may provide escrow services in a home equity transaction. Funds tendered by the borrower into an escrow account such as for the purpose of taxes, insurance premiums, maintenance or homeowner's association assessments, or similar purposes remain the property of the borrower. Hence, these funds are not subject to the three percent limitation. A lender should not contract for a right of offset against escrow funds pursuant to Section 6(H).

Subsequent Events
The three percent limitation pertains to fees charged to or paid by the owner at the inception of the loan. The lender and owner agree to certain covenants to be performed by both parties after the consummation of the transaction. The parties have a responsibility to perform their respective obligations under the contract after the transaction has been consummated.

If the owner fails to perform, certain events may be triggered that involve the assessment of costs to the owner. One example is the maintenance of homeowner's insurance on the homestead. This type of insurance coverage is normally maintained on all homesteads regardless of whether there is a loan on the property. Certainly, lenders may require borrowers to ensure that a homestead has adequate insurance protection. If the owner fails to maintain homeowner's insurance, the owner has not performed according to the covenants of the agreement. The lender may purchase insurance to maintain coverage on the collateral. This is a subsequent event and is not included in the three percent limitation.

Another example is the assessment of late charges. The assessment of these charges is a subsequent event and arises because of the owner's failure to perform under the agreement. Thus, these charges are not contained within the three percent limitation. Other examples of charges associated with subsequent events are returned check fees, collection costs, and costs associated with foreclosure.

Secondary Mortgage Loans
A secondary mortgage loan as defined in Chapter 3A is limited to the types of fees that may be charged in connection with the loan. These fees are identified in art. 5069-

3A.507 and 3A.508. A lender must comply with the provisions of Chapter 3A and the constitutional restrictions on fees in connection with a secondary mortgage loan.

Insurance Premiums
A lender may collect or include in the principal premiums or fees for the sale of insurance on the collateral of an equity loan assuming the lender complies with the rest of the terms of HJR 31 and applicable law concerning the sale of insurance in connection with a mortgage loan.

6(F) No open-end credit
The amendment provides that an equity loan may not be in the form of an open-end account that may be debited from time to time or under which credit may be extended from time to time. An open-end account is defined in article 5069-1B.002(14) as "an account under a written contract between a creditor and an obligor in connection with which:

> (i) the creditor reasonably contemplates repeated transactions and the obligor is authorized to make purchases or borrow money;
> (ii) interest ... may be charged from time to time on an outstanding unpaid balance; and
> (iii) the amount of credit that may be extended during the term of the account is generally made available to the extent that any outstanding balance is repaid..."

If an account is not an open-end account by definition, then it must be a closed-end account. A common type of closed-end secondary mortgage loan (Chapter 3A, Subchapter G) is a type of interim construction loan. The loan has multiple advances at particular stages and interest is only charged upon the principal balance outstanding. No interest is charged on funds that have not been advanced. However, credit is not made available to the extent that outstanding balances have been repaid. This distinction makes this type of loan a closed-end transaction.

Closed-end multiple advance equity loans are permissible within the context of this section. The loan should be structured so that the loan is payable in substantially equal successive monthly installments until the next advance or adjustment period. Each installment must extinguish the accrued interest and contribute to amortizing part of the principal balance.

Amounts advanced by the lender after closing as a result of default, including for example, ad valorem taxes, hazard insurance premiums, and authorized collection costs, including reasonable attorney fees, are not contemplated repeated transactions such that they would characterize the loan as an open-end account.

6(G) No prepayment penalties
A lender may not charge a penalty to a borrower for prepaying a loan or a portion of a loan early. A lockout provision in a loan contract (a provision that prohibits a borrower from paying early) is considered to be a prepayment penalty.

6(H) No additional collateral

No additional real or personal collateral other than the security interest in the homestead is permitted on an equity loan. A lender and an owner may enter into an agreement whereby a lender may acquire an interest in items incidental to the collateral. The following items are not considered additional real or personal collateral:

(i) escrow for the payment of taxes and insurance;

(ii) an undivided interest in a condominium unit, a planned unit development, or the right to the use and enjoyment of certain property owned by an association;

(iii) insurance proceeds related to the homestead; or

(iv) condemnation proceeds.

A guaranty or the obligation of a cosigner or surety is considered additional collateral, and would not be permissible in connection with an equity loan. An equity loan document should expressly disclaim and waive any and all other security interests securing any other indebtedness now or thereafter owing to the lender. Additionally, a contractual right of offset is also prohibited under this section.

The Texas Constitution and the *Texas Property Code* identify a number of different types of "homesteads" and define an *urban* homestead as consisting of *not more than one acre of land*, together with any improvements thereon. TEX. CONST. ART. XIV, §51 and TEX. PROP. CODE ANN. § 41.002(a) (emphasis added). Any property owned in conjunction with the homestead (one urban acre) that is in excess of one acre is "additional real property."

Lenders are advised to carefully review the legal implications of acquiring a security interest in urban lots that comprise more than one acre.

The occurrence of urban lots exceeding one acre is quite common in many Texas municipalities. The existence of various zoning ordinances and deed restrictions severely hampers efforts to segment lots into portions that do not exceed one acre in many locations. Notwithstanding these difficulties, the Texas Property Code provides a method for a homeowner to designate a portion of a lot as their homestead.

In this method, the borrower identifies the real property to designate as the borrower's one acre homestead in a written document filed with the county clerk. TEX. PROP. CODE ANN. § 41.005(c). Designating the property in this manner is not constructively equal to legally partitioning the property. By following the procedures contained in the *Texas Property Code* to designate a one acre homestead, the borrower ensures that the lender making a home equity loan takes a security interest of not more than one acre of real property.

Although designating a one acre urban homestead may prevent a violation of TEX. CONST. § 50(a)(6)(H), it may present other problems if and when the lender initiates foreclosure proceedings. Often, an urban lot in excess of one acre is subject to a particular zoning ordinance or deed restriction which prohibits the subdivision of the lot. The foreclosure of only the designated one acre segment would constitute a sale of

less than the entire lot and a subdivision of the lot, and as such, may violate the zoning ordinance or deed restriction. This procedure may also require a partition suit (assuming that the borrower's agreement could not be acquired) to have the property sold and the proceeds split between the owners according to their respective ownership.

6(J) Acceleration prohibited

A lender may not accelerate an equity loan because of a decrease in the market value of the secured property or because the owner defaults on another indebtedness except a debt secured by a prior valid encumbrance against the homestead. A lender may accelerate a loan because of an owner's default under the covenants of the equity loan, including covenants not to commit waste or not remove property, which indirectly bear on the market value of the homestead. The equity loan documents cannot contain cross-default provisions.

6(K) Limitation on number of equity loans

An owner may have only one equity loan (that meets the definition of section 50(a)(6)) at a time, regardless of the aggregate total outstanding debt against the homestead. If 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.

6(L) Repayment schedule

The loan must be scheduled to be repaid in substantially equal successive monthly installments, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment. The second clause does not specifically state that a portion of principal must be reduced with each payment, but in order to give effect to both clauses of the amendment, to have substantially equal installments would require that some amount of principal must be reduced with each installment. This effectively precludes the permissibility of balloon payments. This provision does not preclude a lender's recovery of payments as necessary for other amounts such as taxes, adverse liens, insurance premiums, collection costs, and similar items.

6(M) Closing date

A loan may not be closed before the 12th calendar day after the later of the date that the owner makes application for the loan or the date that the owner receives the required consumer disclosure. The submission of an application to the lender includes the submission to an agent acting on behalf of the lender. An application for a loan may be given orally or electronically and does not have to be in writing. Additionally, the amendment requires that an equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property. This provision requires that an equity loan may not be refinanced before one year has elapsed since the loan's closing date.

6(N) Place of closing

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. For purposes of this section, the lender is any lender that is authorized pursuant to section 6(P), that either advances funds directly to the owner or is identified as the payee on the note. If the transaction is closed at one of these offices, but lacks the

consent of a spouse or other party, it is permissible to obtain that individual's consent by mail. A properly executed power of attorney is acceptable for designating an individual to close the loan on behalf of the owner.

6(O) Rate of interest charge

A lender may charge a fixed or variable rate of interest as authorized by statute. As discussed above, interest rates on certain first mortgages are not limited on loans subject to the federal Depository Institutions Deregulation and Monetary Control Act of 1980 and the Alternative Mortgage Transaction Parity Act. Chapter 3A authorizes the maximum rate on secondary mortgage loans. The authorization of a variable interest rate is ambiguous when read in connection with the provision relating to substantially equal successive monthly installments. In construing the constitution, provisions are viewed broadly giving maximum effect to all sections and phrases. Thus, an equity loan providing in accordance with applicable law for an interest rate that varies from time to time may provide for a payment amount that varies from time to time, assuming that the loan is regularly amortizing and that the rate adjusts on a regular basis, such as annually. The amount of the payment should not change more frequently than the interest rate adjustment. The scheduled payment amount between each payment change date should be substantially equal and the amount of the payment should equal or exceed the amount of interest scheduled to accrue between each payment date.

An adjustable rate loan may provide for discount interest that results in a low initial interest rate. An equity loan must be structured in a way such that the transaction regularly amortizes, contributes to amortization of principal, and does not result in a balloon payment.

6(P) Authorized lenders

An equity loan may be:

"made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;

(iii) a person licensed to make regulated loans, as provided by statute of this state;

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; or

(v) a person who is related to the homestead owner within the second degree of affinity and consanguinity..."

Unless a lender meets the definitions of (i), (ii), (iv), or (v), the lender must obtain a regulated loan license to meet the provisions of (iii). It is important to review the provisions of Chapter 3A regarding licensing as well as the statutory provisions regarding secondary mortgage loans. A secondary mortgage loan made, negotiated, or arranged

at a rate of interest in excess of 10% must be made by an authorized lender. An authorized lender is defined by statute to be a bank, savings and loan association, savings bank, credit union, or the holder of a regulated loan license. These qualifications are inclusive of the constitutional amendment. In other words, a lender must meet both sets of qualifications, those of the constitution and the statute, in order to make an equity loan that is a secondary mortgage loan. Constitutional law should be interpreted in harmony with statutory law.

Depository Institutions
A bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or of the United States is defined as an authorized lender. The provisions of Chapter 3A regarding the definitions of authorized lenders reflect a similar listing of depository institutions. However, the consumer credit commissioner has interpreted the applicability of these standards to banks chartered in other states. Section 521 of the Depository Institutions Deregulation and Monetary Control Act of 1980 exempts state-chartered insured banks from any procedural requirements of other states related to interest rate restrictions, including licensing, otherwise applicable to lenders imposing such interest rates. [Consumer credit commissioner interpretation letter 85-4] Thus, a bank chartered in another state need not obtain a regulated loan license.

HUD-Approved Mortgagees
A person approved as a mortgagee by the United States government to make federally insured loans is an authorized lender. The Department of Housing and Urban Development (HUD) approves lenders to make federally insured loans. A HUD-approved mortgagee is entitled to make equity loans. Under the terms of the amendment, a HUD-approved mortgagee may make equity loans as first mortgage loans or secondary mortgage loans at a rate of interest of 10% or below. If a HUD-approved mortgagee makes a secondary mortgage loan at a rate greater than 10%, then the HUD-approved mortgagee should comply with the provisions of Chapter 3A regarding licensure.

Mortgage Brokers
A mortgage broker must be licensed to make loans. The constitutional amendment only refers to an equity loan "made" by a lender. Making a loan is the process of determining to extend the credit, the act of funding a loan, or being identified as the "payee" of the note. If the loan documents recognize a person as making or originating the loan and then the transaction is immediately assigned (often referred to as "table funding") to the ultimate lender, both of these lenders (the originator and the funder) must be licensed or otherwise qualify as authorized lenders. A person who only arranges loans does not necessarily fall into this category. Again, one must look to the provisions of Chapter 3A regarding activities that require a license. Thus, a broker negotiating or arranging secondary mortgage equity loans at an interest rate greater than 10% must be licensed. A mortgage broker only arranging a first lien equity loan or a cash-out refinance need not be licensed if the broker did not "make" the loan.

6(Q)(i) Limitation on application of proceeds

The owner cannot be required to apply the loan proceeds to repay another debt, except debt secured by the homestead, or debt to another creditor. The amendment states that the owner cannot be required to repay to the same lender a non-homestead debt. An owner is entitled to use the proceeds of an equity loan for any lawful purpose, at the owner's discretion. An owner is not precluded from voluntarily paying off a debt that is owed to the same lender, but an owner may not be required to pay off another debt, except a mortgage secured by the homestead which is being refinanced. A lender should obtain a signed acknowledgment from the owner evidencing the borrower's voluntary repayment of any existing debt if the owner directs that the proceeds should be disbursed directly to existing creditors.

6(Q)(iii) No blanks in the contract

The "blanks that are left to be filled in" referenced in (a)(6)(Q)(iii) refers to the loan contract terms and not to signature blocks that must be signed to execute the document.

6(Q)(v) Copies of documents

At closing, the lender must provide the owner with a copy of all documents that are signed at closing in connection with the equity loan. The lender is not required to give the owner copies of documents that were signed by the owner prior to closing, such as those signed during the application process. With respect to any documents which, because of their nature cannot be signed at closing, such as a notification of the borrower's election not to rescind under the right of rescission, the lender must provide the owner copies of these documents within a reasonable time after execution. Three business days is a reasonable time for providing these documents to the owner.

6(Q)(vi) Equity loan disclosure

The security instruments must contain a disclosure that the loan is an equity loan subject to section 50(a)(6), Article XVI, Texas Constitution. This disclosure should appear in the mortgage instrument in a way such that it is boldfaced, capitalized, underlined, or otherwise conspicuously set out from the surrounding material.

6(Q)(vii) Release of lien

The lender must cancel and return the note to the owner and give the owner, without charge, a release of lien or a copy of an endorsement and assignment of the lien to another lender refinancing the loan within a reasonable time after termination and full payment of the loan. The lender or holder, at its option, may provide the owner a release of lien or an endorsement and assignment of the lien to another lender refinancing the loan. Thirty days is a reasonable time for the lender to perform the duties required under this section. An affidavit of lost note, or equivalent, may be returned to the owner in lieu of the original note, if the original note has been lost.

6(Q)(viii) Right of rescission

The owner and the owner's spouse have three days in which to rescind the extension of credit after the loan is closed. The rescission period begins at closing (the signing of the loan documents). Closing may occur only on or after the 12th calendar day after the later of the date that the owner makes application for the loan or the date that the owner receives the required consumer disclosure under Section (a)(6)(M)(i). This provision

gives the owner's spouse who may not necessarily have community property ownership three calendar days to rescind the transaction. If the third calendar day falls on a Sunday or legal holiday then the right of rescission is extended to the next business day. A lender must still comply with the provisions of the Truth-in-Lending Act permitting the borrower three business days to rescind a mortgage loan in applicable transactions. If a lender complies with the right of rescission procedures in the Truth-in-Lending Act and Regulation Z, this will satisfy the requirements of complying with this section if the notices are given to all owners of the homestead and to each spouse of an owner.

6(Q)(ix) Acknowledgment of fair market value

The owner and the lender must agree on the fair market value of the property on the date the loan is made. A written acknowledgment will evidence that agreement.

SECTION 50 (e)

Section 50(e) states that a refinance of an existing mortgage transaction that includes the advance of additional funds may not be secured by a valid lien against the homestead unless the refinance complies with Section 50(a)(6) or the advance of all the additional funds is for reasonable costs necessary to refinance the debt or for a purpose described in Subsection (a)(2) taxes, (a)(3) owelty of partition, or (a)(5) home improvement. The Texas Legislature, as the framer of this constitutional amendment, was clear in suggesting that this Amendment was not intended to alter the law pertaining to refinancing mortgages as it existed prior to the enactment of the Amendment. The question of reasonableness and necessity of costs should relate to the type and amount of the costs. In a secondary mortgage loan, reasonable costs are those costs which are lawful in light of the governing or applicable law which authorizes the assessment of particular costs. In the context of other mortgage loans, reasonable costs are those costs which are lawful in light of other governing or applicable law. Reasonable and necessary costs may include reserves or impounds (escrow trust accounts) for taxes and insurance, if the reserves comply with applicable law.

SECTION 50(g)

This section prescribes the consumer disclosure that must be given at least 12 days in advance of the closing of an equity loan. A lender should establish verifiable procedures to ensure that an owner receives the required notice within the specified time frame. If a lender mails the notice to the owner, the lender shall allow a reasonable period of time for delivery. A three day period not including Sundays and legal holidays, constitutes a rebuttable presumption for sufficient mailing and delivery. Certain provisions of the notice do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the notice to clarify any discrepancies or inconsistencies.