

*Title 7. Banking and Securities
Part 8. Joint Financial Regulatory Agencies
Chapter 153. Home Equity Lending*

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") adopt amendments to §153.1 (relating to Definitions), §153.5 (relating to Two Percent Fee Limitation: Section 50(a)(6)(E)), §153.12 (relating to Closing Date: Section 50(a)(6)(M)(i)), §153.13 (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii)), §153.17 (relating to Authorized Lenders: Section 50(a)(6)(P)), §153.22 (relating to Copies of Documents: Section 50(a)(6)(Q)(v)), §153.26 (relating to Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)), §153.45 (relating to Refinance of an Equity Loan: Section 50(f)), and §153.51 (Consumer Disclosure: Section 50(g)) in 7 TAC, Chapter 153, concerning Home Equity Lending.

The commissions adopt the amendments to §153.5, §153.12, §153.13, §153.17, §153.22, §153.26, §153.45, and §153.51 without changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5690).

The commissions adopt the amendments to §153.1 with changes to the proposed text as published in the September 10, 2021, issue of the *Texas Register* (46 TexReg 5690).

The commissions received no official comments on the proposal.

7 TAC Chapter 153 contains the commissions' interpretations of the home equity lending provisions of Texas Constitution, Article XVI, Section 50 ("Section 50"). In general, the purposes of the rule changes to 7 TAC Chapter 153 are: (1) to specify requirements for electronic

disclosures, and (2) to describe Section 50's applicability to out-of-state financial institutions.

The interpretations in 7 TAC Chapter 153 are administered by the Joint Financial Regulatory Agencies ("agencies"), consisting of the Texas Department of Banking, Department of Savings and Mortgage Lending, Office of Consumer Credit Commissioner, and Texas Credit Union Department. The agencies distributed an early precomment draft of proposed changes to interested stakeholders for review, and then held an online webinar regarding the proposed changes. The agencies received one informal precomment on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

Amendments to §153.1 add definitions and statutory citations for the terms "E-Sign Act" (referring to the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006) and "UETA" (referring to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322). The terms "E-Sign Act" and "UETA" provide a concise way to refer to these two statutes, and are used throughout this adoption in connection with electronic disclosures. Amendments throughout §153.1 also renumber other definitions accordingly.

Based on input from staff of the *Texas Register*, changes have been made to the definitions of "Fair market value" and "Preclosing disclosure" in §153.1(10) and (15), to conform to letter case conventions used for other defined terms.

Amendments to §153.5 revise the title to this section to conform to letter case conventions used in other rules. In addition, citations to the definition of "interest" in §153.1 will be updated to reflect the renumbering described in the previous paragraph.

Amendments to §153.12 relate to oral and electronic loan applications. Section 50(a)(6)(M)(i) provides that a home equity loan closing must occur at least 12 days after the owner "submits a loan application to the lender." New §153.12(3) explains that a loan application may be submitted electronically in accordance with state and federal law governing electronic disclosures, with references to the UETA and the E-Sign Act. These amendments respond to an informal precomment recommending amendments to §153.12 on electronic disclosures. An amendment to §153.12(2) also replaces the word "given" with "submitted," to be consistent with Section 50(a)(6)(M)(i).

An amendment to §153.13 describes requirements for providing an electronic copy of the preclosing disclosure. Section 50(a)(6)(M)(ii) of the Texas Constitution requires the lender to provide the owner with a copy of the loan application and a final itemized disclosure of amounts that will be charged at closing. The current interpretation at §153.13 refers to these items as the "preclosing disclosure." New §153.13(4) explains that the lender may provide the preclosing disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, and includes references to the UETA and the E-Sign Act.

The amendment to §153.13 responds to a request that the commissions received in September 2020, while the commissions

were conducting a rule review of Chapter 153. As a result of the rule review, the commissions amended §153.22 to specify that the lender may provide signed documents electronically in accordance with state and federal law. In an official comment, a stakeholder recommended either: (1) adopting a new section to specify that the lender may electronically deliver all notices, disclosures, and documents to the property owner, or (2) amending Chapter 153's individual sections on required disclosures to specify that the lender may electronically deliver each disclosure. Although the commissions and the agencies generally do not object to the use of electronic disclosures, the commissions received this suggestion too late in the rulemaking process to include the proposed changes in the October 2020 adoption of rule review amendments. The commissions indicated that the agencies would revisit this issue in the future. After reviewing the request, the commissions believe that it is appropriate to amend each section of Chapter 153 requiring disclosures individually. This will help ensure that Chapter 153 remains clear with respect to which constitutional provision is interpreted by each section of Chapter 153.

In addition, an informal precomment recommended that §153.13 (and other sections in this adoption) consistently refer to both electronic signatures and delivery of electronic documents, when describing requirements under state and federal law. In response to this precomment, the new text throughout this adoption refers to both of these sets of requirements.

An amendment to §153.17 describes Section 50's applicability to out-of-state financial institutions. Section 50(a)(6)(P) of the Texas Constitution lists the entities that are authorized to make home equity loans,

and includes "a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States." New §153.17(2) specifies that for purposes of Section 50(a)(6)(P), a "bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States" includes a financial institution described by Texas Finance Code, §201.101(1)(A)-(D) that is chartered under the laws of another state and does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102. The financial institutions described by Texas Finance Code, §201.101(1)(A)-(D) are banks (including savings banks), savings and loan associations, and credit unions.

The amendment to §153.17 responds to a request that the agencies received from an out-of-state bank in March 2021. The request asks whether a bank organized under the laws of another state may make a home equity loan under the Texas Constitution. The commissions believe that new §153.17(2) appropriately answers this question by referring to provisions of the Texas Finance Code that govern out-of-state financial institutions in Texas.

In an informal precomment, a stakeholder recommended deleting the phrase "or the United States" and adding an exception for institutions doing business under the laws of the United States. The stakeholder argued that this text creates an inconsistency because institutions doing business under the laws of the United States are not chartered under the laws of a state. The commissions do not believe that the adopted amendment to §153.17 creates an inconsistency. The amendment uses the word "includes," and does not suggest that the listed state-

chartered institutions are the entire population of financial institutions encompassed by Section 50(a)(6)(P). The commissions do not believe that the stakeholder's recommended change would clarify the text, and have not included it in the current adoption. However, for clarity, the adopted amendment to §153.17 includes the phrase "state-chartered" before "financial institution."

An amendment to §153.22 revises references to the UETA and the E-Sign Act, to refer to these statutes consistently with other sections in this adoption.

An amendment to §153.26 describes requirements for electronically signing the acknowledgment of fair market value. Section 50(a)(6)(Q)(ix) of the Texas Constitution requires the lender and the owner to sign a written acknowledgment of the fair market value of the homestead property. New §153.26(4) explains that the owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this adoption.

An amendment to §153.45 describes requirements for providing an electronic copy of the refinance disclosure. Section 50(f)(2)(D) of the Texas Constitution requires the lender to provide a refinance disclosure to the owner if the owner applies for a refinance of a home equity loan to a non-home-equity loan. New §153.45(4)(E) explains that the lender may provide the refinance disclosure electronically in accordance with state and federal law governing electronic signatures and delivery

of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this adoption.

An amendment to §153.51 describes requirements for providing an electronic copy of the consumer disclosure. Section 50(g) of the Texas Constitution requires the lender to provide a consumer disclosure to the owner at least 12 days before closing a home equity loan. New §153.51(2) explains that the lender may provide the consumer disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. This amendment responds to the same September 2020 stakeholder request on electronic disclosures described earlier in this adoption.

The rule changes are adopted under Texas Finance Code, §11.308 and §15.413, which authorize the commissions to issue interpretations of Texas Constitution, Article XVI, §50(a)(5) - (7), (e) - (p), (t), and (u), subject to Texas Government Code, Chapter 2001.

The constitutional provisions affected by the adoption are contained in Texas Constitution, Article XVI, §50. No statute is affected by this adoption.

Chapter 153. Home Equity Lending

§153.1. Definitions

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter, unless the context indicates otherwise:

(1) - (6) (No change.)

(7) E-Sign Act--the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§7001-7006.

(8) [~~(7)~~] Equity loan--An extension of credit as defined and authorized under the provisions of Section 50(a)(6).

(9) [~~(8)~~] Equity loan agreement--the documents evidencing the agreement between the parties of an equity loan.

(10) [~~(9)~~] Fair market value [~~Market Value~~]-the fair market value of the homestead as determined on the date that the loan is closed.

(11) [~~(10)~~] Force-placed insurance--insurance purchased by the lender on the homestead when required insurance on the homestead is not maintained in accordance with the equity loan agreement.

(12) [~~(11)~~] Interest--As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time.

(13) [~~(12)~~] Lockout provision--a provision in a loan agreement that prohibits a borrower from paying the loan early.

(14) [~~(13)~~] Owner--A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(15) [~~(14)~~] Preclosing disclosure [~~Disclosure~~]-The written itemized disclosure required by Section 50(a)(6)(M)(ii).

(16) [(15)] Two percent limitation--the limitation on fees in Section 50(a)(6)(E).

(17) UETA--the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322

§153.5. Two Percent Fee Limitation [percent fee limitation]: Section 50(a)(6)(E)

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two percent of the original principal amount of the extension of credit, excluding fees for an appraisal performed by a third party appraiser, a property survey performed by a state registered or licensed surveyor, a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law, or a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(1) - (2) (No change.)

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(12) [~~§153.1(11)~~] of this title (relating to Definitions) are not fees subject to the two percent limitation.

(A) - (B) (No change.)

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest under

§153.1(12) [~~§153.1(11)~~] of this title are fees subject to the two percent limitation.

(5) (No change.)

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest under §153.1(12) [~~§153.1(11)~~] of this title are fees subject to the two percent limitation.

(7) (No change.)

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(12) [~~§153.1(11)~~] of this title, are fees subject to the two percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, flood zone determination, tax certificate, inspection, or appraisal management services.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse to maintain an equity loan that are not interest under §153.1(12) [~~§153.1(11)~~] of this title are fees subject to the two percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(10) - (11) (No change.)

(12) Charges to Service. Charges paid by an owner or an owner's spouse for a party to service an equity loan that are not interest under §153.1(12) [~~§153.1(11)~~] of this title are fees subject to the two percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(13) - (20) (No change.)

§153.12. *Closing Date:* Section 50(a)(6)(M)(i)

An equity loan may not be closed before the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure. One copy of the required consumer disclosure may be provided to married owners. For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure is the first day of the 12-day waiting period. The equity loan may be closed at any time on or after the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure.

(1) (No change.)

(2) A loan application may be submitted [~~given~~] orally [~~or electronically~~].

(3) A loan application may be submitted electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

§153.13. *Preclosing Disclosures:* Section 50(a)(6)(M)(ii)

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the preclosing disclosure to the owner or the lender may modify the previously provided preclosing disclosure on the date of closing.

(1) - (3) (No change.)

(4) The lender may provide the preclosing disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

(5) [(4)] Bona fide emergency.

(A) - (B) (No change.)

(6) [(5)] Good cause. An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists.

(A) - (C) (No change.)

(7) [(6)] An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

(8) [(7)] The owner maintains the right of rescission under Section

50(a)(6)(Q)(viii) even if the owner exercises an emergency or good cause modification of the preclosing disclosure.

§153.17. Authorized Lenders: Section 50(a)(6)(P)

An equity loan must 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: a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this section; a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; a person licensed to make regulated loans, as provided by statute of this state; a person who sold the homestead property to the current owner and 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 and consanguinity; or a person regulated by this state as a mortgage banker or mortgage company.

(1) An authorized lender under Texas Finance Code, Chapter 341 must meet both constitutional and statutory qualifications to make an equity loan.

(2) For purposes of Section 50(a)(6)(P), a "bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States" includes a state-chartered financial institution described by Texas Finance Code, §201.101(1)(A)-(D) that:

(A) is chartered under the laws of another state; and

(B) does business in Texas in accordance with applicable state law, including the requirements of Texas Finance Code, §201.102.

(3) [(2)] A HUD-approved mortgagee is a person approved as a mortgagee by the United States government to make federally insured loans for purposes of Section 50(a)(6)(P)(ii). Loan correspondents to a HUD-approved mortgagee are not authorized lenders of equity loans unless qualifying under another provision of Section 50(a)(6)(P).

(4) [(3)] A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage company for purposes of Section 50(a)(6)(P)(vi). A person who is registered under Texas Finance Code, Chapter 157 is a person regulated by this state as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

(5) [(4)] A person who is licensed under Texas Finance Code, Chapter 342 is a person licensed to make regulated loans for purposes of Section 50(a)(6)(P)(iii). If a person is not described by Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), then the person must obtain a license under Texas Finance Code, Chapter 342 in order to be authorized to make an equity loan under Section 50(a)(6)(P)(iii).

§153.22. Copies of Documents: Section 50(a)(6)(Q)(v)

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.

(1) - (2) (No change.)

(3) A lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA [~~Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322,~~] and the [~~federal~~] E-Sign Act [~~, 15 U.S.C. §§7001-7006,~~] include requirements for electronic signatures and delivery.

§153.26. Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)

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 the extension of credit is made.

(1) - (3) (No change.)

(4) The owner and lender may sign the written acknowledgment electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

§153.45. Refinance of an Equity Loan: Section 50(f)

A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of Section 50, may not be secured by a valid lien against the homestead unless either the refinance of the debt is an extension of

credit described by Subsection (a)(6) or (a)(7) of Section 50, or all of the conditions in Section 50(f)(2) are met.

(1) - (3) (No change.)

(4) Refinance Disclosure. To meet the condition in Section 50(f)(2)(D), the lender must provide the refinance disclosure described in Section 50(f)(2)(D) to the owner 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.

(A) - (D) (No change.)

(E) The lender may provide the refinance disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

(F) [(E)] One copy of the required refinance disclosure may be provided to married owners.

(G) [(F)] The refinance disclosure is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan or refinance. A lender may supplement the refinance disclosure to clarify any discrepancies or inconsistencies.

(H) [(G)] A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph.

(1) [~~(H)~~] The Finance Commission will publish a Spanish translation of the refinance disclosure on its website. A lender whose discussions with the owner are conducted primarily in Spanish may provide the Finance Commission's Spanish translation to the owner, although the Spanish translation is not required by Section 50(f)(2).

§153.51. Consumer Disclosure: Section 50(g)

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) (No change.)

(2) The lender may provide the consumer disclosure electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The UETA and the E-Sign Act include requirements for electronic signatures and delivery.

(3) [~~(2)~~] Certain provisions of the consumer disclosure 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 consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(4) [~~(3)~~] A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

(5) [~~(4)~~] A lender whose discussions with the borrower are conducted primarily in Spanish for a closed-end loan may rely on the translation of the consumer notice developed under the requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

(6) [~~(5)~~] If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

Certification

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Issued in Austin, Texas on November 5, 2021, and December 17, 2021.

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