

ADOPTED AMENDMENTS, NEW RULE, AND REPEALS
7 TAC CHAPTERS 151 AND 153
Page 1 of 15

Title 7. Banking and Securities
Part 8. Joint Financial Regulatory Agencies
Chapter 151. Home Equity Lending Procedures
Chapter 153. Home Equity Lending

7 TAC, Part 8, Chapter 151

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") adopt amendments to §151.1 (relating to Application for Interpretation); and adopt the repeal of §151.2 (relating to Review of Request), §151.3 (relating to Initiation of Interpretation Procedure), §151.4 (relating to Notice of Proposed Interpretation), §151.5 (relating to Public Comment), §151.6 (relating to Action on Proposed Interpretation), and §151.7 (relating to Adoption of Interpretation) in 7 TAC, Chapter 151, concerning Home Equity Lending Procedures.

The commissions adopt the repeal of §151.2, §151.3, §151.4, §151.5, §151.6, and §151.7 as proposed in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6202).

The commissions adopt the amendments to §151.1 with changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6202).

The commissions received no written comments on the proposed rule changes to 7 TAC Chapter 151. Comments that the commissions received on proposed amendments to 7 TAC Chapter 153 are discussed separately in this issue of the *Texas Register*.

The rules in 7 TAC Chapter 151 govern the procedures for requesting, proposing, and adopting interpretations of the home equity lending provisions of Texas Constitution,

Article XVI, Section 50 ("Section 50"). In general, the purpose of the rule changes to 7 TAC Chapter 151 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2897). The commissions received no comments in response to that notice.

The rules in 7 TAC Chapter 151 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 appreciate the thoughtful input provided by stakeholders.

Adopted amendments to §151.1 amend current procedures for stakeholders to request interpretations of Section 50 from the commissions. Amendments to §151.1 also specify that the commissions will propose and adopt interpretations in accordance with Texas Government Code, Chapter 2001.

Currently, §151.1, §151.2, and §151.3 describe a procedure for an interested person to request an interpretation. Under this procedure, a person submits a request to the general counsel of the Office of Consumer Credit Commissioner, and the request must

ADOPTED AMENDMENTS, NEW RULE, AND REPEALS
7 TAC CHAPTERS 151 AND 153
Page 2 of 15

include legal and factual information supporting the request. The request is evaluated, and the requestor is notified if the commissions initiate an interpretation.

Currently, §151.4, §151.5, §151.6, and §151.7 describe the procedure for the commissions to propose and adopt interpretations. These provisions explain that notice of the proposed interpretation will be published in the *Texas Register* including an explanation that there will be an opportunity for public comment, that the commissions may adopt or decline to adopt the interpretations at a public meeting, and that an adopted interpretation will include a reasoned justification, restatement of affected provisions, and certification of legal authority.

There are three issues with the current procedures in §151.1 through §151.7. First, the procedure for requesting interpretations in current §151.1 through §151.3 has not been commonly used by stakeholders. Instead, most feedback about interpretations has come from informal comments resulting from constitutional amendments, litigation, or rule review. Second, the commissions already have separate rules on petitions for rulemaking, in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001 ("APA"). The Finance Commission's rule on petitions for rulemaking is codified at 7 TAC §9.82 (relating to Petitions to Initiate Rulemaking Proceedings), while the Credit Union Commission's rule is codified at 7 TAC §97.500 (relating to Petitions to Initiate Rulemaking Proceedings). The request procedure in §151.1 through §151.3 contains some, but not all, of the requirements for a formal petition for rulemaking, so it is unclear whether these requests must meet the requirements for a petition for rulemaking.

Third, §151.4 through §151.7 describe some, but not all, of the APA's requirements for proposing and adopting rules.

The amendments to §151.1 address these issues and provide clear guidelines on how interpretations are requested, proposed, and adopted. The amendment to §151.1(a) explains that the commissions will propose and adopt interpretations in accordance with the rulemaking requirements of the APA. New subsection (b) explains that the agencies may recommend proposed interpretations to the commissions and may seek informal input from stakeholders. New subsection (c) explains that a person may submit an informal request to the agencies, and describes items the request should include. New subsection (d) explains that an interested person may file a petition to initiate rulemaking, and includes citations to the commissions' other rules that govern these petitions. The adoption removes current subsection (b) as unnecessary because of the new guidelines described in subsections (b) through (d). The title of §151.1 is amended to state "Interpretation Procedures," to properly identify the scope of the rule.

Changes have been made in §151.1(d)(1) and (2) to remove a comma in each of these paragraphs, based on input from staff of the *Texas Register*.

The adoption repeals §151.2 and §151.3. As discussed earlier, these sections currently describe the process used when a stakeholder requests an interpretation, and are unnecessary because of the new guidelines described in the amendments to §151.1. The commissions believe that these amendments provide a balanced approach, enabling stakeholders to use informal requests, while also preserving the important statutory right

ADOPTED AMENDMENTS, NEW RULE, AND REPEALS
7 TAC CHAPTERS 151 AND 153
Page 3 of 15

for an interested person to file a petition for rulemaking under the APA.

The adoption repeals §151.4, §151.5, §151.6, and §151.7. As discussed earlier, these sections currently describe some, but not all, of the requirements for proposing and adopting rules under the APA. These sections are unnecessary because of the updated language in the amendments to §151.1(a). The commissions believe that these changes simplify Chapter 151 to refer to the APA in a more straightforward manner, and ensure that it is not necessary to update Chapter 151 each time the Texas Legislature amends the APA's rulemaking requirements.

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 and statutory provisions affected by the adoption are contained in Texas Constitution, Article XVI, §50, and Texas Finance Code, Chapters 11 and 15.

7 TAC, Part 8, Chapter 153

The Finance Commission of Texas and the Texas Credit Union Commission ("commissions") adopt amendments to §153.8 (relating to Security of the Equity Loan: Section 50(a)(6)(H)), §153.11 (relating to Repayment Schedule: Section 50(a)(6)(L)(i)), §153.14 (relating to One Year Prohibition: Section 50(a)(6)(M)(iii)), §153.15 (relating to Location of Closing: Section 50(a)(6)(N)), §153.22 (relating to Copies of Documents: Section 50(a)(6)(Q)(v)), and §153.41 (relating to

Refinance of a Debt Secured by a Homestead: Section 50(e)); and adopt new §153.26 (relating to Acknowledgment of Fair Market Value: Section 50(a)(6)(Q)(ix)) in 7 TAC, Chapter 153, concerning Home Equity Lending.

The commissions adopt the amendments to §153.8, §153.11, §153.14, §153.15, and §153.22 without changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6204). The text of these sections will not be republished.

The commissions adopt the amendments to §153.41, and adopt new §153.26, with changes to the proposed text as published in the September 4, 2020, issue of the *Texas Register* (45 TexReg 6204).

The commissions received six official comments on the proposal. Two comments were from Black, Mann & Graham, LLP. One comment was from Cornerstone Credit Union League, Independent Bankers Association of Texas, Texas Bankers Association, and Texas Mortgage Bankers Association. One comment was from the Independent Bankers Association of Texas. One comment was from the Texas Mortgage Bankers Association. One comment was from an individual.

The comment from Cornerstone Credit Union League, Independent Bankers Association of Texas, Texas Bankers Association, and Texas Mortgage Bankers Association expressed general support for the proposal, stating that the proposed changes "will provide some extremely helpful clarity to lenders, particularly as to issues that have arisen during this time of pandemic." Each of the six comments recommended changes to certain sections of the proposal. The commissions' responses to these comments

ADOPTED AMENDMENTS, NEW RULE, AND REPEALS
7 TAC CHAPTERS 151 AND 153
Page 4 of 15

are included following the discussion of each applicable section.

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 purpose of the proposed rule changes to 7 TAC Chapter 153 is to implement changes resulting from the commissions' review of the chapter under Texas Government Code, §2001.039. Notice of the review of 7 TAC Chapter 151 was published in the May 1, 2020, issue of the *Texas Register* (45 TexReg 2897). The commissions received no comments in response to that notice.

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 three informal precomments on the rule text draft. The agencies appreciate the thoughtful input provided by stakeholders.

An amendment to §153.8(1)(C) removes the word "or" to correct a list that unnecessarily includes the word "or" twice.

In an official comment, one commenter recommended deleting the statement in current §153.8(2) that a "guaranty or surety of an equity loan is not permitted." The commenter argued that this provision leads to an absurd result, and that parties other than the owner or owner's spouse should be able

to enter a surety or guaranty to be held personally liable for a home equity loan.

The commissions originally adopted §153.8(2) on the rationale that a guaranty or surety constitutes additional property that would secure the home equity loan, in violation of Section 50(a)(6)(H). *Cf. Smith v. Cash Store Mgmt.*, 195 F.3d 325, 331 (7th Cir. 1999) (holding that a postdated check is "security" for a loan because it creates additional value to the lender). This is a long-standing interpretation going back to the agencies' original 1998 commentary on Section 50, and has not been superseded by subsequent constitutional amendments or court rulings. *See* Joint Financial Regulatory Agencies, *Regulatory Commentary on Equity Lending Procedures*, p. 6 (Oct. 7, 1998). The commissions believe that this rationale is still correct. For this reason, the commissions disagree with the comment and decline to amend current §153.8(2).

Amendments to §153.11 explain that the repayment schedule requirements in Section 50(a)(6)(L)(i) of the Texas Constitution apply at closing. New paragraph (1) explains that this constitutional provision does not prohibit a lender from agreeing with the borrower to certain modifications, and explains that a modification may include a deferment of the original obligation. An amendment at §153.11(2) explains that the modification does not affect the two-month time period described by Section 50(a)(6)(L)(i).

These amendments to §153.11 are based on the Texas Supreme Court's decision in *Sims v. Carrington Mortg. Servs., LLC*, 440 S.W.3d 10 (Tex. 2014). In *Sims*, the Texas Supreme Court analyzed a modification of a home equity loan where the borrower and lender agreed to capitalize past-due interest,

fees, property taxes, and insurance premiums into the principal, and where the modification did not involve the satisfaction or replacement of the original note, an advancement of new funds, or an increase in the obligations created by the original note. The court held that because the modification was not a new extension of credit, it did not trigger reapplication of the constitutional requirements of Section 50. *Sims*, 440 S.W.3d at 18.

In its first official comment, Black, Mann & Graham, LLP recommended adding the new text on modifications to §153.14 instead of §153.11. Section 153.14 deals primarily with the one-year requirement in Section 50(a)(6)(M)(iii), while §153.11 deals primarily with the repayment schedule requirement in Section 50(a)(6)(L)(i). The commissions believe that the new text on modifications relates primarily to the repayment schedule requirement, and therefore appropriately belongs in §153.11. For this reason, the commissions disagree with the comment and have maintained the new text in §153.11.

Another commenter recommended adding the following two sentences to §153.11 regarding which modifications are permissible: "Any deferment may include no payments or monthly payments in an amount that is less than the amount of accrued interest during the deferment period." and "No more than six (6) months of payments may be deferred in any twelve (12) month period." The commissions decline to include this text in the adoption, because the text appears to go beyond interpreting Section 50 of the Texas Constitution, and could be misunderstood to allow actions that are prohibited by other law. For example, for high-cost home loans, Texas Finance Code, §343.203 generally prohibits negative

amortization (i.e., a payment schedule that causes the principal balance to increase). In addition, the first sentence recommended by the commenter is unnecessary, because this concept is sufficiently addressed by the existing text on deferments.

In an informal precomment, one precommenter suggested amending §153.11(1) to state that the two-month time period described by Section 50(a)(6)(L)(i) begins "on the day the loan is funded." Section 50(a)(6)(L)(i) provides that the payments must begin "no later than two months from the date the extension of credit is made." Currently, §153.11(1) explains that the two-month period begins "on the date of closing." The commissions believe that the current text appropriately interprets the word "made" in the context of Section 50(a)(6)(L)(i), and have not included this suggested change in the proposal. *Cf.* Black's Law Dictionary, "make" (11th ed. 2019) (defining "make" to include "caus[ing] (something) to exist" and "legally perform[ing], as by executing, signing, or delivering (a document)").

Amendments to §153.14 describe states of emergency. Section 50(a)(6)(M)(iii) of the Texas Constitution generally prohibits a home equity loan from being closed within one year after another home equity loan on the same property, but includes an exception for a state of emergency declared by the president of the United States or the governor of Texas. Amendments to §153.14 would describe this exception and explain that a state of emergency includes a national emergency declared by the president of the United States under the National Emergencies Act, 50 U.S.C. §§1601-1651, and a state of disaster declared by the governor of Texas under Texas Government Code, Chapter 418. The commissions believe

ADOPTED AMENDMENTS, NEW RULE, AND REPEALS
7 TAC CHAPTERS 151 AND 153
Page 6 of 15

that these federal and state statutes describe states of emergency within the meaning of Section 50(a)(6)(M)(iii).

Amendments to §153.15 describe permissible closing locations. Section 50(a)(6)(N) of the Texas Constitution provides that a home equity loan must be closed only at the office of a lender, an attorney at law, or a title company. Because of the pandemic resulting from the coronavirus and the disease COVID-19, lenders have expressed interest in closing loans in places where they can maintain social distancing, such as an office parking lot. An amendment to §153.15(1) explains that the closing may occur in any area located at the permanent physical address of the lender, attorney, or title company. Amendments to paragraphs (2) and (3) add references to the permanent physical address. The commissions believe that these amendments are consistent with the closing location requirement of Section 50(a)(6)(N), and clarify that lenders have this option to maintain social distancing while closing loans at their offices.

In its first official comment, Black, Mann & Graham, LLP recommended adding the phrase "or branch office" after "office" in §153.15(2) and (3). The commissions believe that this change is unnecessary because the general term "office" encompasses branch offices and existing §153.15(1) already makes clear that a branch office is included. For this reason, the change is not included in this adoption.

An amendment to §153.22 describes requirements for electronic copies of loan documents. Section 50(a)(6)(Q)(v) of the Texas Constitution requires the lender to provide the owner with a copy of the loan application and all documents signed by the

owner at closing. New §153.22(3) explains that the lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents, and would include references to the Texas Uniform Electronic Transactions Act, Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006.

In its second official comment, Black, Mann & Graham, LLP recommended that proposed §153.22(3) be renumbered as a new and separate section and then revised to apply to all notices, disclosures and documents required to be delivered to the owner. In addition to the deliveries described by §153.22, the new section would apply to those described by §153.13 (relating to Preclosing Disclosures: Section 50(a)(6)(M)(ii)), §153.51 (relating to Consumer Disclosure: Section 50(g)), and §153.45 (relating to Refinance of an Equity Loan: Section 50(f)). Alternatively, the commenter recommended that each of the cited sections be separately amended to permit the same type of electronic delivery as would be permitted by proposed §153.22(3). The comment from the Independent Bankers Association of Texas and the comment from the Texas Mortgage Bankers Association also expressed support for this recommendation. In general, the agencies do not object to the concept of providing required disclosures electronically in accordance with state and federal law. However, the suggested changes go significantly beyond the scope of the current proposal and cannot be accomplished within this rulemaking. In the future, the agencies and the commissions will consider whether a new consolidated section or amendments to other sections in Chapter 153 might be appropriate to address this issue.

ADOPTED AMENDMENTS, NEW RULE, AND REPEALS
7 TAC CHAPTERS 151 AND 153
Page 7 of 15

New §153.26 describes the acknowledgment of fair market value. Under Section 50(a)(6)(Q)(ix) of the Texas Constitution, 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. New §153.26(2) explains that the lender may sign the written acknowledgment before or at closing. New §153.26(3) explains that an authorized agent may sign the written acknowledgment on behalf of the lender.

Three of the official comments discussed §153.26 and the written acknowledgment of fair market value. Two of these comments, including the first comment from Black, Mann & Gramm, LLP, referred to the doctrine of last antecedent. Under the doctrine of last antecedent, "a qualifying phrase in a statute or the Texas Constitution must be confined to the words and phrases immediately preceding it to which it may, without impairing the meaning of the sentence, be applied." *Spradlin v. Jim Walter Homes, Inc.*, 34 S.W.3d 578, 581 (Tex. 2000) (applying the doctrine of last antecedent to Texas Constitution, Article XVI, Section 50(a)(5)). Two commenters argue that the doctrine of last antecedent should be applied to Section 50(a)(6)(Q)(ix), and that the phrase "on the date the extension of credit is made" should be read to modify only the immediately preceding phrase "the fair market value of the homestead property." The third official comment, from Cornerstone Credit Union League, Independent Bankers Association of Texas, Texas Bankers Association, and Texas Mortgage Bankers Association, expressed general support for the analysis of §153.26 in the first two comments.

The commissions agree that it is appropriate to apply the doctrine of last antecedent to Section 50(a)(6)(Q)(ix), and that the phrase "on the date the extension of credit is made" modifies only the immediately preceding phrase "the fair market value of the homestead property." In response to these comments, adopted paragraph (1) has been added to §153.26 to explain this concept.

One of the commenters, after discussing the doctrine of last antecedent, recommended including a statement in §153.26 that the lender may sign the written acknowledgment "before, at or after closing." The commenter cited Section 50(a)(6)(Q)(x)(d), which allows a lender to correct a failure to comply with Section 50(a)(6)(Q)(ix) by "obtaining the appropriate signatures" within 60 days after being notified of the failure to comply. The commenter raised questions about whether lenders can rely on the information contained in an appraisal. The commenter also explained that there may be factual questions, not addressed in the interpretations, regarding who is an "authorized agent" of the lender for purposes of §153.26.

The commissions agree that the acknowledgment may be signed before or at closing. The commissions also agree that Section 50(a)(6)(x)(d) allows a lender to correct a failure to comply with Section 50(a)(6)(Q)(ix) by obtaining the appropriate signatures. However, the language suggested by the commenter gives the impression that the lender complies with Section 50(a)(6)(Q)(ix) by signing the acknowledgment at any time after closing. Under Section 50(a)(6)(Q)(ix), a home equity loan must be "made on the condition that . . . the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on

the date the extension of credit is made." Generally, a lender should have the information it needs to complete and sign the acknowledgment before or at closing. *See* Regulation B Valuations Rule, 12 C.F.R. §1002.14(a)(1) (requiring a creditor, for certain first-lien mortgages, to provide a copy of any appraisal at least three business days before consummation). For this reason, the commissions believe that the proposed text is inappropriate and decline to make the change suggested by the commenter. Regarding the commenter's questions about a lender's ability to rely on an appraisal, this issue is addressed by Section 50(h), which generally allows a lender to "conclusively rely on the written acknowledgment as to the fair market value . . . if . . . the value acknowledged to is the value estimate in an appraisal or evaluation prepared in accordance with a state or federal requirement applicable to [home equity loans]." Regarding the commenter's statement on factual questions about who is an "authorized agent," §153.26 does not require the lender to use an authorized agent, and if a lender is concerned about factual questions that arise from using an authorized agent, then the lender can sign the acknowledgment itself.

In its first comment, Black, Mann & Gramm, LLP recommended removing the word "must" from the introductory paragraph of §153.26. The comment makes this recommendation in connection with the discussion of the doctrine of last antecedent, as discussed earlier. The comment does not explain what the word "must" should be replaced with. The use of the word "must" in §153.26 is consistent with the introductory paragraphs of several other sections currently located throughout 7 TAC Chapter 153, including §153.8, §153.11, and §153.22. The word "must" appropriately reflects that certain conditions must be satisfied in order

for the lender to have a valid lien under Section 50(a)(6). For this reason, the commissions decline to remove the word "must" from this provision.

An amendment to §153.41 removes the phrase "or (a)(7)" in the introductory paragraph. Section 50(e) of the Texas Constitution generally provides that if a refinance of debt against the homestead includes additional funds, the refinance must be described by Section 50(a)(6) (i.e., must be a home equity loan). Section 50(e) does not refer to Section 50(a)(7). The phrase "or (a)(7)" in the introductory paragraph of §153.41 appears to be a typographical error. For this reason, the amendment removes this phrase.

A change has been made to the introductory paragraph of §153.41 to remove the numbers "(1)" and "(2)" within this paragraph, based on input from staff of the *Texas Register*.

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

Chapter 151. Home Equity Lending Procedures

§151.1. [~~Application for~~] Interpretation Procedures

(a) Issuing interpretations. The Finance Commission and Credit Union Commission may on their own motion issue interpretations of Section 50(a)(5) - (7), (e) - (p), and (t), Article XVI of the Texas Constitution. The commissions will propose and adopt interpretations in accordance with the rulemaking requirements of Texas

ADOPTED AMENDMENTS, NEW RULE, AND REPEALS
7 TAC CHAPTERS 151 AND 153
Page 9 of 15

Government Code, Chapter 2001, Subchapter B.

(b) Agency recommendations. The Office of Consumer Credit Commissioner, Department of Banking, or Department of Savings and Mortgage Lending may recommend proposed interpretations to the Finance Commission. The Credit Union Department may recommend proposed interpretations to the Credit Union Commission. The four agencies may seek informal input from stakeholders and the other agencies before recommending a proposed interpretation to the commissions.

(c) Informal request for interpretation. A person may submit an informal request for an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution. An informal request may be submitted to the Office of Consumer Credit Commissioner, Department of Banking, Department of Savings and Mortgage Lending, or Credit Union Department. A request should:

(1) cite the specific provision of the Texas Constitution to be interpreted;

(2) explain the factual and legal context for the request; and

(3) explain the requestor's opinion of how the request should be resolved.

(d) Petition for rulemaking. An interested person may formally request an interpretation of Section 50(a)(5) - (7), (e) - (p), or (t), Article XVI of the Texas Constitution by submitting a petition to initiate rulemaking.

(1) Any petition for the Finance Commission to issue an interpretation must be submitted to the Office of Consumer

Credit Commissioner and must include the information required by §9.82 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

(2) Any petition for the Credit Union Commission to issue an interpretation must be submitted to the Credit Union Department and must include the information required by §97.500 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

~~[(b) An interested person may submit a request for an interpretation of Section 50(a)(5) - (7), (e) - (p), and (t), Article XVI of the Texas Constitution. All requests must:]~~

~~[(1) be directed to the general counsel for the Office of Consumer Credit Commissioner who will promptly distribute it to the general counsels for the Department of Banking, the Department of Savings and Mortgage Lending, and the Credit Union Department;]~~

~~[(2) contain an explicit statement that an interpretation approved by the Finance Commission and Credit Union Commission is desired;]~~

~~[(3) contain the reference to the specific applicable section, subsection and paragraph of the Texas Constitution of which the interpretation is requested;]~~

~~[(4) state with sufficient particularity the factual and legal context to which the application of the provision is vague or ambiguous; and]~~

~~[(5) indicate the requestor's opinion of how the legal issue should be resolved, the basis for that opinion, an analysis of any relevant court decisions, and all prior interpretations to which the request relates.]~~

ADOPTED AMENDMENTS, NEW RULE, AND REPEALS
7 TAC CHAPTERS 151 AND 153
Page 10 of 15

{{Section 151.2 will be repealed.}}

~~[\$151.2. Review of Request]~~

~~[(a) The request for interpretation shall be evaluated to determine:]~~

~~[(1) whether the requestor has complied with the requirements of §151.1(b);]~~

~~[(2) the significance and general application of the interpretation; and]~~

~~[(3) the ambiguity of the constitutional provision.]~~

~~[(b) Reasons for a denial of a request for interpretation will be stated in writing.]~~

{{Section 151.3 will be repealed.}}

~~[\$151.3. Initiation of Interpretation Procedure]~~

~~[(a) If an interpretation is initiated, the requestor shall be notified in writing.]~~

~~[(b) To ensure that clear and concise formal interpretations are made, it may be necessary to rephrase the original interpretation request. A requestor will be notified in writing if a request is rephrased and a copy of the rephrased request shall be provided to the requestor.]~~

~~[(c) Copies of the request for interpretation will be sent to parties requesting advance notice for their input.]~~

~~[(d) The parties requesting advance notice may provide their input indicating an opinion of how the legal issue should be resolved, the basis for that opinion, an~~

~~analysis of any relevant court decisions and all prior interpretations to which the request relates.]~~

~~[(e) The input of the parties requesting advance notice will be considered.]~~

{{Section 151.4 will be repealed.}}

~~[\$151.4. Notice of Proposed Interpretation]~~

~~[If the Finance Commission and the Credit Union Commission propose an interpretation, notice of the proposed interpretation will be published in the Texas Register. The notice of the proposed interpretation shall contain:]~~

~~[(1) A brief explanation of the proposed interpretation;]~~

~~[(2) The text of the proposed interpretation, except any portion omitted under Section 2002.014, Government Code, prepared in a manner to indicate any words to be added or deleted from the current text;]~~

~~[(3) A reference to the section of the constitution interpreted; and]~~

~~[(4) A statement of whether the interpretation is inconsistent with any other interpretations and an explanation of the justification for any inconsistency.]~~

{{Section 151.5 will be repealed.}}

~~[\$151.5. Public Comment]~~

~~[Any person may submit comments, briefs or proposals pertaining to the proposed interpretation not later than 30 days following the publication of the proposed interpretation in the Texas Register. The Finance Commission and Credit Union~~

ADOPTED AMENDMENTS, NEW RULE, AND REPEALS
7 TAC CHAPTERS 151 AND 153
Page 11 of 15

~~Commission will allow the opportunity for public comment and public hearing as required by Section 2001.029, Government Code.]~~

{{Section 151.6 will be repealed.}}

~~[§151.6. *Action on Proposed Interpretation*]~~

~~[The Finance Commission and the Credit Union Commission may adopt or decline to adopt the proposed interpretation or remand the proposed interpretation for modification, revision, or additional comment. This action will be conducted at a public meeting.]~~

{{Section 151.7 will be repealed.}}

~~[§151.7. *Adoption of Interpretation*]~~

~~[The interpretation as finally adopted by the Finance Commission and Credit Union Commission, will include:]~~

~~[(1) a reasoned justification for the interpretation as adopted consisting solely of:]~~

~~[(A) a summary of comments received from parties interested in the interpretation that shows the names of interested parties or associations offering comment on the interpretation and whether they were for or against its adoption;]~~

~~[(B) a summary of the factual basis for the interpretation as adopted which demonstrates a rational connection between the factual basis for the interpretation and the interpretation as adopted; and]~~

~~[(C) the reasons why the Finance Commission and Credit Union Commission disagree with party submissions and proposals;]~~

~~[(2) a concise restatement of the particular constitutional provisions under which the interpretation is adopted and of how the Finance Commission and Credit Union Commission interpret the provisions as authorizing or requiring the interpretation; and]~~

~~[(3) a certification that the interpretation, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the Finance Commission's and Credit Union Commission's legal authority.]~~

Chapter 153. Home Equity Lending

§153.8. Security of the Equity Loan: Section 50(a)(6)(H)

An equity loan must not be secured by any additional real or personal property other than the homestead. The definition of "homestead" is located at Section 51 of Article XVI, Texas Constitution, and Chapter 41 of the Texas Property Code.

(1) A lender and an owner or an owner's spouse may enter into an agreement whereby a lender may acquire an interest in items incidental to the homestead. An equity loan secured by the following items is not considered to be secured by additional real or personal property:

(A) escrow reserves for the payment of taxes and insurance;

(B) 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;

(C) insurance proceeds related to the homestead; [øø]

(D) condemnation proceeds;

(E) fixtures; or

(F) easements necessary or beneficial to the use of the homestead, including access easements for ingress and egress.

(2) A guaranty or surety of an equity loan is not permitted. A guaranty or surety is considered additional property for purposes of Section 50(a)(6)(H). Prohibiting a guaranty or surety is consistent with the prohibition against personal liability in Section 50(a)(6)(C). An equity loan with a guaranty or surety would create indirect liability against the owner. The constitutional home equity lending provisions clearly provide that the homestead is the only allowable collateral for an equity loan. The constitutional home equity provisions prohibit the lender from contracting for recourse of any kind against the owner or owner's spouse, except for provisions providing for recourse against the owner or spouse when the extension of credit is obtained by actual fraud.

(3) A contractual right of offset in an equity loan agreement is prohibited.

(4) A contractual cross-collateralization clause in an equity loan agreement is prohibited.

(5) Any equity loan on an urban homestead that is secured by more than ten acres is secured by additional real property in violation of Section 50(a)(6)(H).

§153.11. Repayment Schedule: Section 50(a)(6)(L)(i)

Unless an equity loan is a home equity line of credit under Section 50(t), the loan must be scheduled at closing to be repaid in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment.

(1) Section 50(a)(6)(L)(i) does not prohibit a lender from agreeing with a borrower to modify an equity loan if the modification does not satisfy and replace the original equity loan and does not create a new extension of credit. The modification may include a deferment of the borrower's original obligation, and may include amounts that are past due under the equity loan (e.g., accrued but unpaid interest, taxes and insurance).

(2) [(4)] The two month time period contained in Section 50(a)(6)(L)(i) begins on the date of closing. A modification described by paragraph (1) of this subsection does not affect the two month time period.

(3) [(2)] For purposes of Section 50(a)(6)(L)(i), a month is the period from a date in a month to the corresponding date in the succeeding month. For example, if a home equity loan closes on March 1, the first installment must be due no later than May 1. If the succeeding month does not have a corresponding date, the period ends on the last day of the succeeding month. For example, if a home equity loan closes on July 31, the first installment must be due no later than September 30.

(4) [~~(3)~~] For a closed-end equity loan to have substantially equal successive periodic installments, some amount of principal must be reduced with each installment. This requirement prohibits balloon payments.

(5) [~~(4)~~] Section 50(a)(6)(L)(i) 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.

§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii)

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, unless the owner on oath requests an earlier closing due to a state of emergency that has been declared by the president of the United States or the governor as provided by law, and applies to the area where the homestead is located.

(1) Section 50(a)(6)(M)(iii) prohibits an owner who has obtained an equity loan from:

(A) refinancing the equity loan before one year has elapsed since the loan's closing date; or

(B) obtaining a new equity loan on the same homestead property before one year has elapsed since the previous equity loan's closing date, regardless of whether the previous equity loan has been paid in full.

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home equity loan occurs when one or more terms of an existing

equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

(A) A modification of an equity loan must be agreed to in writing by the borrower and lender, unless otherwise required by law. An example of a modification that is not required to be in writing is the modification required under the Servicemembers Civil Relief Act, 50 U.S.C. app. §§501-597b.

(B) The advance of additional funds to a borrower is not permitted by modification of an equity loan.

(C) A modification of an equity loan may not provide for new terms that would not have been permitted by applicable law at the date of closing of the extension of credit.

(D) The two percent limitation required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction.

(3) For purposes of Section 50(a)(6)(M)(iii), a state of emergency includes:

(A) a national emergency declared by the president of the United States under the National Emergencies Act, 50 U.S.C. §§1601-1651; and

(B) a state of disaster declared by the governor of Texas under Texas Government Code, Chapter 418.

§153.15. Location of Closing: Section 50(a)(6)(N)

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) An equity loan must be closed at the permanent physical address of the office or branch office of the lender, attorney, or title company. The closing office must be a permanent physical address so that the closing occurs at an authorized physical location other than the homestead. The closing may occur in any area located at the permanent physical address of the lender, attorney, or title company (e.g., indoor office, parking lot).

(2) Any power of attorney allowing an attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at the permanent physical address of an office of the lender, an attorney at law, or a title company. A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph. For example, this system may include one or more of the following:

(A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed;

(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.

(3) The consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at the permanent physical address of an office of the lender, an attorney at law, or a title company.

§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) One copy of these documents may be provided to married owners.

(2) 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.

(3) A lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The 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) For purposes of Section 50(a)(6)(Q)(ix), the phrase "on the date the extension of credit is made" modifies only the immediately preceding phrase "the fair market value of the homestead property," in accordance with the doctrine of last antecedent.

(2) A lender may sign the written acknowledgment before or at closing.

(3) An authorized agent may sign the written acknowledgment on behalf of the lender.

§153.41. Refinance of a Debt Secured by a Homestead: Section 50(e)

A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) of Section 50 of the Texas Constitution that includes the advance of additional funds may not be secured by a valid lien against the homestead unless [~~(1)~~] the refinance of the debt is an extension of credit described by Subsection (a)(6) [~~or (a)(7)~~] of Section 50 of the Texas Constitution, [~~;~~] or [~~(2)~~] the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of Section 50 of the Texas Constitution.

(1) Reasonableness and necessity of costs relate to the type and amount of the costs.

(2) In a secondary mortgage loan, reasonable costs are those costs which are lawful in light of the governing or applicable law that 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.

(3) Reasonable and necessary costs to refinance may include reserves or impounds (escrow trust accounts) for taxes and insurance, if the reserves comply with applicable law.

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 October 16, 2020, and November 6, 2020.

Matthew J. Nance
Deputy General Counsel
Office of Consumer Credit Commissioner
Joint Financial Regulatory Agencies