

By: Toth

H.B. No. 2284

A BILL TO BE ENTITLED

AN ACT

relating to the physical presence of a borrower at the closing of a home equity loan.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 343.002(b), Finance Code, is amended to read as follows:

(b) Except as provided by Subchapter D, this ~~[This]~~ chapter does not apply to:

(1) a reverse mortgage; or

(2) an open-end account, as defined by Section 301.002.

SECTION 2. Chapter 343, Finance Code, is amended by adding Subchapter D to read as follows:

SUBCHAPTER D. HOME EQUITY LOANS

Sec. 343.301. DEFINITION. In this subchapter, "home equity loan" means an extension of credit described by Section 50(a)(6), Article XVI, Texas Constitution.

Sec. 343.302. PHYSICAL PRESENCE OF CERTAIN BORROWERS AT CLOSING NOT REQUIRED. (a) This section applies to the closing of a home equity loan by a borrower who:

(1) is located outside of this state at the time of the closing and is:

(A) a member of the armed forces of the United States who is on active duty;

1 (B) an officer of the Commissioned Corps of the
2 United States Public Health Service who is on active duty;

3 (C) a member of reserve components of the armed
4 forces of the United States not described by Paragraph (A) who is on
5 active duty;

6 (D) the spouse or surviving spouse of a person
7 described by Paragraph (A), (B), or (C); or

8 (E) a civilian employee of the federal government
9 employed by, serving with, or accompanying the armed forces of the
10 United States, if assigned to a foreign country or a vessel or unit
11 of the armed forces of the United States;

12 (2) has a disability that prohibits travel or is
13 quarantined to protect the borrower's health or the health of
14 others, as verified by a written letter from a physician; or

15 (3) is unable to travel to the closing because the
16 borrower is incarcerated or under house arrest.

17 (b) In lieu of closing a home equity loan in person at the
18 office of the lender, an attorney, or a title company, a borrower
19 described by Subsection (a) may close the loan:

20 (1) from a remote location using remote online
21 notarization; or

22 (2) through an agent who:

23 (A) is acting under a durable power of attorney
24 that expressly grants the agent the authority to engage in a home
25 equity loan transaction on behalf of the borrower, regardless of
26 where the borrower signed the power of attorney; and

27 (B) appears in person for the closing at the

1 office of the lender, attorney, or title company on behalf of the
2 borrower.

3 SECTION 3. Section 752.051, Estates Code, is amended to
4 read as follows:

5 Sec. 752.051. FORM. The following form is known as a
6 "statutory durable power of attorney":

7 STATUTORY DURABLE POWER OF ATTORNEY

8 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING.
9 THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P,
10 TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS,
11 OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE
12 ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU
13 MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO. IF YOU
14 WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME EQUITY LOAN
15 DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE SIGNED BY
16 YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A TITLE
17 COMPANY, UNLESS YOU QUALIFY FOR AN EXCEPTION UNDER SECTION 343.302,
18 FINANCE CODE.

19 You should select someone you trust to serve as your agent.
20 Unless you specify otherwise, generally the agent's authority will
21 continue until:

- 22 (1) you die or revoke the power of attorney;
23 (2) your agent resigns, is removed by court order, or
24 is unable to act for you; or
25 (3) a guardian is appointed for your estate.

26 I, _____ (insert your name and address), appoint
27 _____ (insert the name and address of the person appointed) as

1 my agent to act for me in any lawful way with respect to all of the
2 following powers that I have initialed below. (YOU MAY APPOINT
3 CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MAY ACT
4 INDEPENDENTLY.)

5 TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN
6 FRONT OF (O) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS
7 LISTED IN (A) THROUGH (N).

8 TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE
9 POWER YOU ARE GRANTING.

10 TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE
11 POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

12 _____ (A) Real property transactions, including home equity
13 loan transactions;

14 _____ (B) Tangible personal property transactions;

15 _____ (C) Stock and bond transactions;

16 _____ (D) Commodity and option transactions;

17 _____ (E) Banking and other financial institution
18 transactions;

19 _____ (F) Business operating transactions;

20 _____ (G) Insurance and annuity transactions;

21 _____ (H) Estate, trust, and other beneficiary transactions;

22 _____ (I) Claims and litigation;

23 _____ (J) Personal and family maintenance;

24 _____ (K) Benefits from social security, Medicare, Medicaid,
25 or other governmental programs or civil or military service;

26 _____ (L) Retirement plan transactions;

27 _____ (M) Tax matters;

1 ___ (N) Digital assets and the content of an electronic
2 communication;

3 ___ (O) ALL OF THE POWERS LISTED IN (A) THROUGH (N). YOU DO
4 NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU
5 INITIAL LINE (O).

6 SPECIAL INSTRUCTIONS:

7 Special instructions applicable to agent compensation
8 (initial in front of one of the following sentences to have it
9 apply; if no selection is made, each agent will be entitled to
10 compensation that is reasonable under the circumstances):

11 ___ My agent is entitled to reimbursement of reasonable
12 expenses incurred on my behalf and to compensation that is
13 reasonable under the circumstances.

14 ___ My agent is entitled to reimbursement of reasonable
15 expenses incurred on my behalf but shall receive no compensation
16 for serving as my agent.

17 Special instructions applicable to co-agents (if you have
18 appointed co-agents to act, initial in front of one of the following
19 sentences to have it apply; if no selection is made, each agent will
20 be entitled to act independently):

21 ___ Each of my co-agents may act independently for me.

22 ___ My co-agents may act for me only if the co-agents act
23 jointly.

24 ___ My co-agents may act for me only if a majority of the
25 co-agents act jointly.

26 Special instructions applicable to gifts (initial in front of
27 the following sentence to have it apply):

1 ____ I grant my agent the power to apply my property to make gifts
2 outright to or for the benefit of a person, including by the
3 exercise of a presently exercisable general power of appointment
4 held by me, except that the amount of a gift to an individual may not
5 exceed the amount of annual exclusions allowed from the federal
6 gift tax for the calendar year of the gift.

7 ON THE FOLLOWING LINES YOU MAY GIVE SPECIAL INSTRUCTIONS
8 LIMITING OR EXTENDING THE POWERS GRANTED TO YOUR AGENT.

9 _____
10 _____
11 _____
12 _____
13 _____
14 _____
15 _____
16 _____
17 _____

18 UNLESS YOU DIRECT OTHERWISE BELOW, THIS POWER OF ATTORNEY IS
19 EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT TERMINATES.

20 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE
21 ALTERNATIVE NOT CHOSEN:

22 (A) This power of attorney is not affected by my subsequent
23 disability or incapacity.

24 (B) This power of attorney becomes effective upon my
25 disability or incapacity.

26 YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY
27 IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

1 IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT
2 YOU CHOSE ALTERNATIVE (A).

3 If Alternative (B) is chosen and a definition of my
4 disability or incapacity is not contained in this power of
5 attorney, I shall be considered disabled or incapacitated for
6 purposes of this power of attorney if a physician certifies in
7 writing at a date later than the date this power of attorney is
8 executed that, based on the physician's medical examination of me,
9 I am mentally incapable of managing my financial affairs. I
10 authorize the physician who examines me for this purpose to
11 disclose my physical or mental condition to another person for
12 purposes of this power of attorney. A third party who accepts this
13 power of attorney is fully protected from any action taken under
14 this power of attorney that is based on the determination made by a
15 physician of my disability or incapacity.

16 I agree that any third party who receives a copy of this
17 document may act under it. Termination of this durable power of
18 attorney is not effective as to a third party until the third party
19 has actual knowledge of the termination. I agree to indemnify the
20 third party for any claims that arise against the third party
21 because of reliance on this power of attorney. The meaning and
22 effect of this durable power of attorney is determined by Texas law.

23 If any agent named by me dies, becomes incapacitated,
24 resigns, refuses to act, or is removed by court order, or if my
25 marriage to an agent named by me is dissolved by a court decree of
26 divorce or annulment or is declared void by a court (unless I
27 provided in this document that the dissolution or declaration does

1 not terminate the agent's authority to act under this power of
2 attorney), I name the following (each to act alone and
3 successively, in the order named) as successor(s) to that agent:
4 _____.

5 Signed this _____ day of _____,
6 _____

7 (your signature)

8 State of _____

9 County of _____

10 This document was acknowledged before me on _____(date) by
11 _____

12 (name of principal)

13 _____

14 (signature of notarial officer)

15 (Seal, if any, of notary) _____

16 (printed name)

17 My commission expires: _____

18 IMPORTANT INFORMATION FOR AGENT

19 Agent's Duties

20 When you accept the authority granted under this power of
21 attorney, you establish a "fiduciary" relationship with the
22 principal. This is a special legal relationship that imposes on you
23 legal duties that continue until you resign or the power of attorney
24 is terminated, suspended, or revoked by the principal or by
25 operation of law. A fiduciary duty generally includes the duty to:

26 (1) act in good faith;

27 (2) do nothing beyond the authority granted in this

1 power of attorney;

2 (3) act loyally for the principal's benefit;

3 (4) avoid conflicts that would impair your ability to
4 act in the principal's best interest; and

5 (5) disclose your identity as an agent when you act for
6 the principal by writing or printing the name of the principal and
7 signing your own name as "agent" in the following manner:

8 (Principal's Name) by (Your Signature) as Agent

9 In addition, the Durable Power of Attorney Act (Subtitle P,
10 Title 2, Estates Code) requires you to:

11 (1) maintain records of each action taken or decision
12 made on behalf of the principal;

13 (2) maintain all records until delivered to the
14 principal, released by the principal, or discharged by a court; and

15 (3) if requested by the principal, provide an
16 accounting to the principal that, unless otherwise directed by the
17 principal or otherwise provided in the Special Instructions, must
18 include:

19 (A) the property belonging to the principal that
20 has come to your knowledge or into your possession;

21 (B) each action taken or decision made by you as
22 agent;

23 (C) a complete account of receipts,
24 disbursements, and other actions of you as agent that includes the
25 source and nature of each receipt, disbursement, or action, with
26 receipts of principal and income shown separately;

27 (D) a listing of all property over which you have

1 exercised control that includes an adequate description of each
2 asset and the asset's current value, if known to you;

3 (E) the cash balance on hand and the name and
4 location of the depository at which the cash balance is kept;

5 (F) each known liability;

6 (G) any other information and facts known to you
7 as necessary for a full and definite understanding of the exact
8 condition of the property belonging to the principal; and

9 (H) all documentation regarding the principal's
10 property.

11 Termination of Agent's Authority

12 You must stop acting on behalf of the principal if you learn
13 of any event that terminates or suspends this power of attorney or
14 your authority under this power of attorney. An event that
15 terminates this power of attorney or your authority to act under
16 this power of attorney includes:

17 (1) the principal's death;

18 (2) the principal's revocation of this power of
19 attorney or your authority;

20 (3) the occurrence of a termination event stated in
21 this power of attorney;

22 (4) if you are married to the principal, the
23 dissolution of your marriage by a court decree of divorce or
24 annulment or declaration that your marriage is void, unless
25 otherwise provided in this power of attorney;

26 (5) the appointment and qualification of a permanent
27 guardian of the principal's estate unless a court order provides

1 otherwise; or

2 (6) if ordered by a court, your removal as agent
3 (attorney in fact) under this power of attorney. An event that
4 suspends this power of attorney or your authority to act under this
5 power of attorney is the appointment and qualification of a
6 temporary guardian unless a court order provides otherwise.

7 Liability of Agent

8 The authority granted to you under this power of attorney is
9 specified in the Durable Power of Attorney Act (Subtitle P, Title 2,
10 Estates Code). If you violate the Durable Power of Attorney Act or
11 act beyond the authority granted, you may be liable for any damages
12 caused by the violation or subject to prosecution for
13 misapplication of property by a fiduciary under Chapter 32 of the
14 Texas Penal Code.

15 THE AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT,
16 ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

17 SECTION 4. The changes in law made by this Act apply only to
18 a home equity loan closed on or after the effective date of this
19 Act. A home equity loan closed before the effective date of this Act
20 is governed by the law in effect on the date the loan was closed, and
21 the former law is continued in effect for that purpose.

22 SECTION 5. This Act takes effect January 1, 2022, but only
23 if the constitutional amendment proposed by the 87th Legislature,
24 Regular Session, 2021, authorizing the legislature to provide for
25 exceptions to the requirement that a home equity loan be closed only
26 at the office of the lender, an attorney at law, or a title company
27 is approved by the voters. If that proposed constitutional

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1 amendment is not approved by the voters, this Act has no effect.