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H.B. No. 264

A BILL TO BE ENTITLED

1 AN ACT

2 relating to requirements for the physical presence of a borrower
3 for signing certain documents related to a home equity loan.

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

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

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

9 (1) a reverse mortgage; or

10 (2) an open-end account, as defined by Section
11 301.002.

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

14 SUBCHAPTER D. HOME EQUITY LOANS

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

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

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

23 (A) a member of the armed forces of the United
24 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 751.203(b), Estates Code, is amended to
4 read as follows:

5 (b) A certification described by Subsection (a) may be in
6 the following form:

7 CERTIFICATION OF DURABLE POWER OF ATTORNEY BY AGENT

8 I, _____ (agent), certify under penalty of perjury
9 that:

10 1. I am the agent named in the power of attorney validly
11 executed by _____ (principal) ("principal") on _____
12 (date), and the power of attorney is now in full force and effect.

13 2. The principal is not deceased and is presently domiciled
14 in _____ (city and state/territory or foreign country).

15 3. To the best of my knowledge after diligent search and
16 inquiry:

17 a. The power of attorney has not been revoked by the
18 principal or suspended or terminated by the occurrence of any
19 event, whether or not referenced in the power of attorney;

20 b. At the time the power of attorney was executed, the
21 principal was mentally competent to transact legal matters and was
22 not acting under the undue influence of any other person;

23 c. A permanent guardian of the estate of the principal
24 has not qualified to serve in that capacity;

25 d. My powers under the power of attorney have not been
26 suspended by a court in a temporary guardianship or other
27 proceeding;

1 e. If I am (or was) the principal's spouse, my marriage
2 to the principal has not been dissolved by court decree of divorce
3 or annulment or declared void by a court, or the power of attorney
4 provides specifically that my appointment as the agent for the
5 principal does not terminate if my marriage to the principal has
6 been dissolved by court decree of divorce or annulment or declared
7 void by a court;

8 f. No proceeding has been commenced for a temporary or
9 permanent guardianship of the person or estate, or both, of the
10 principal; and

11 g. The exercise of my authority is not prohibited by
12 another agreement or instrument.

13 4. If under its terms the power of attorney becomes
14 effective on the disability or incapacity of the principal or at a
15 future time or on the occurrence of a contingency, the principal now
16 has a disability or is incapacitated or the specified future time or
17 contingency has occurred.

18 5. I am acting within the scope of my authority under the
19 power of attorney, and my authority has not been altered or
20 terminated.

21 6. If applicable, I am the successor to _____
22 (predecessor agent), who has resigned, died, or become
23 incapacitated, is not qualified to serve or has declined to serve as
24 agent, or is otherwise unable to act. There are no unsatisfied
25 conditions remaining under the power of attorney that preclude my
26 acting as successor agent.

27 7. I agree not to:

1 a. Exercise any powers granted by the power of
2 attorney if I attain knowledge that the power of attorney has been
3 revoked, suspended, or terminated; or

4 b. Exercise any specific powers that have been
5 revoked, suspended, or terminated.

6 8. A true and correct copy of the power of attorney is
7 attached to this document.

8 9. If applicable and if used in connection with an extension
9 of credit under Section 50(a)(6), Article XVI, Texas Constitution,
10 the power of attorney was executed in the office of the lender, the
11 office of a title company, or the law office of
12 _____.

13 Date: _____, 20__.

14 _____ (signature of agent)

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

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

19 STATUTORY DURABLE POWER OF ATTORNEY
20 NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING.
21 THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P,
22 TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS,
23 OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE
24 ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU
25 MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO. IF YOU
26 WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME EQUITY LOAN
27 DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE SIGNED BY

1 YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A TITLE
2 COMPANY, UNLESS YOU QUALIFY FOR AN EXCEPTION UNDER SECTION 343.302,
3 FINANCE CODE.

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

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

11 I, _____ (insert your name and address), appoint
12 _____ (insert the name and address of the person appointed) as
13 my agent to act for me in any lawful way with respect to all of the
14 following powers that I have initialed below. (YOU MAY APPOINT
15 CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MAY ACT
16 INDEPENDENTLY.)

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

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

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

24 ____ (A) Real property transactions, including home equity
25 loan transactions;

26 ____ (B) Tangible personal property transactions;

27 ____ (C) Stock and bond transactions;

1 for serving as my agent.

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

6 _____ Each of my co-agents may act independently for me.

7 _____ My co-agents may act for me only if the co-agents act
8 jointly.

9 _____ My co-agents may act for me only if a majority of the
10 co-agents act jointly.

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

13 _____ I grant my agent the power to apply my property to make gifts
14 outright to or for the benefit of a person, including by the
15 exercise of a presently exercisable general power of appointment
16 held by me, except that the amount of a gift to an individual may not
17 exceed the amount of annual exclusions allowed from the federal
18 gift tax for the calendar year of the gift.

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

21 _____
22 _____
23 _____
24 _____
25 _____
26 _____
27 _____

1 _____
2 _____

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

5 CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE
6 ALTERNATIVE NOT CHOSEN:

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

9 (B) This power of attorney becomes effective upon my
10 disability or incapacity.

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

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

15 If Alternative (B) is chosen and a definition of my
16 disability or incapacity is not contained in this power of
17 attorney, I shall be considered disabled or incapacitated for
18 purposes of this power of attorney if a physician certifies in
19 writing at a date later than the date this power of attorney is
20 executed that, based on the physician's medical examination of me,
21 I am mentally incapable of managing my financial affairs. I
22 authorize the physician who examines me for this purpose to
23 disclose my physical or mental condition to another person for
24 purposes of this power of attorney. A third party who accepts this
25 power of attorney is fully protected from any action taken under
26 this power of attorney that is based on the determination made by a
27 physician of my disability or incapacity.

1 I agree that any third party who receives a copy of this
2 document may act under it. Termination of this durable power of
3 attorney is not effective as to a third party until the third party
4 has actual knowledge of the termination. I agree to indemnify the
5 third party for any claims that arise against the third party
6 because of reliance on this power of attorney. The meaning and
7 effect of this durable power of attorney is determined by Texas law.

8 If any agent named by me dies, becomes incapacitated,
9 resigns, refuses to act, or is removed by court order, or if my
10 marriage to an agent named by me is dissolved by a court decree of
11 divorce or annulment or is declared void by a court (unless I
12 provided in this document that the dissolution or declaration does
13 not terminate the agent's authority to act under this power of
14 attorney), I name the following (each to act alone and
15 successively, in the order named) as successor(s) to that agent:
16 _____.

17 Signed this _____ day of _____, _____
18 _____

19 (your signature)

20 State of _____

21 County of _____

22 This document was acknowledged before me on _____(date) by
23 _____

24 (name of principal)

25 _____

26 (signature of notarial officer)

27 (Seal, if any, of notary) _____

1 (printed name)

2 My commission expires: _____

3 IMPORTANT INFORMATION FOR AGENT

4 Agent's Duties

5 When you accept the authority granted under this power of
6 attorney, you establish a "fiduciary" relationship with the
7 principal. This is a special legal relationship that imposes on you
8 legal duties that continue until you resign or the power of attorney
9 is terminated, suspended, or revoked by the principal or by
10 operation of law. A fiduciary duty generally includes the duty to:

11 (1) act in good faith;

12 (2) do nothing beyond the authority granted in this
13 power of attorney;

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

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

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

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

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

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

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

27 (3) if requested by the principal, provide an

1 accounting to the principal that, unless otherwise directed by the
2 principal or otherwise provided in the Special Instructions, must
3 include:

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

6 (B) each action taken or decision made by you as
7 agent;

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

12 (D) a listing of all property over which you have
13 exercised control that includes an adequate description of each
14 asset and the asset's current value, if known to you;

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

17 (F) each known liability;

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

21 (H) all documentation regarding the principal's
22 property.

23 Termination of Agent's Authority

24 You must stop acting on behalf of the principal if you learn
25 of any event that terminates or suspends this power of attorney or
26 your authority under this power of attorney. An event that
27 terminates this power of attorney or your authority to act under

1 this power of attorney includes:

2 (1) the principal's death;

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

5 (3) the occurrence of a termination event stated in
6 this power of attorney;

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

11 (5) the appointment and qualification of a permanent
12 guardian of the principal's estate unless a court order provides
13 otherwise; or

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

19 Liability of Agent

20 The authority granted to you under this power of attorney is
21 specified in the Durable Power of Attorney Act (Subtitle P, Title 2,
22 Estates Code). If you violate the Durable Power of Attorney Act or
23 act beyond the authority granted, you may be liable for any damages
24 caused by the violation or subject to prosecution for
25 misapplication of property by a fiduciary under Chapter 32 of the
26 Texas Penal Code.

27 THE AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT,

1 ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

2 SECTION 5. The changes in law made by this Act apply only to
3 a durable power of attorney executed on or after the effective date
4 of this Act. A durable power of attorney executed before the
5 effective date of this Act is governed by the law in effect on the
6 date the power of attorney was executed, and that law continues in
7 effect for that purpose.

8 SECTION 6. This Act takes effect January 1, 2024, but only
9 if the constitutional amendment proposed by the 88th Legislature,
10 Regular Session, 2023, authorizing the legislature to provide for
11 exceptions to the requirement that a home equity loan be closed only
12 at the office of the lender, an attorney at law, or a title company
13 is approved by the voters. If that proposed constitutional
14 amendment is not approved by the voters, this Act has no effect.