

BILL ANALYSIS

S.J.R. 42
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Financial Institutions
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Constitution prohibits the forced sale of a homestead except for very limited purposes, including the non-payment of taxes or a valid lien secured by the homestead. Texans have been able to borrow against the equity in their homes and use the funds for any purpose since 1998, when a constitutional amendment authorizing home equity loans took effect. Unlike a first lien, a home equity loan:

- May not be foreclosed upon except by a court order;
- Is without recourse for personal liability unless it was fraudulently obtained;
- May not be refinanced within one year;
- May not have a principal in excess of 80 percent of the value of the home less any outstanding principal balances of any other valid liens on the homestead;
- May not be accelerated because of a decrease in the homestead's market value or the owner's default on another debt; and
- May not contain fees, over any interest, in excess of 3 percent of the principal.

Currently, a home equity loan must be a closed-end debt, which is repaid in substantially equal monthly payments over a specific length of time. A home equity loan may be refinanced only as a home equity loan. In other words, any refinancing of debts secured by the homestead which include a home equity loan must be a home equity loan, not a first lien, under the Constitution.

The Constitution provides that the lender forfeits all principal and interest if a failure to comply with all the lender's obligations is not corrected in a reasonable time. The "cure process" is not otherwise described, either in the Constitution or in statute. Furthermore, no state agency has the authority to interpret home equity law, leaving the resolution of questions over the meaning of the law exclusively to the judiciary. This and other limitations placed on home equity lending in Texas may result in fewer choices and higher interest costs for homeowners.

S.J.R. 42 addresses these issues by authorizing home equity lines of credit, allowing payments to be made on a biweekly basis, clarifying the cure process, and permitting the Legislature to authorize state agencies to interpret constitutional provisions related to home equity lending.

RULEMAKING AUTHORITY

It is the committee's opinion that this joint resolution does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.J.R. 42 amends Sections 50(a), Article XVI, Texas Constitution to establish a home equity line of credit. The measure adds new Section 50(t) to Article XVI, Texas Constitution, to define a home equity line of credit as a form of open-end account which may be extended from time to time under certain conditions. A home equity line of credit is limited to a total principal amount of up to 50 percent of the fair market value of the homestead. A lender must charge all fees related to a home equity line of credit at the time credit is extended and may not charge any fees to the homeowner in connection with any debit or advance. No single debits or advances may be less than \$4,000, and no debit or advance is permitted through the use of a credit card, debit card, preprinted solicitation check, or similar device. The lender may not unilaterally

amend a home equity line of credit. The measure provides for the periodic repayment and reborrowing of a home equity line of credit.

The measure permits a borrower to make regularly scheduled payments on a home equity loan every two weeks, but not less often than monthly. The measure deletes the current requirement that repayments be made on a monthly basis.

S.J.R. 42 establishes a specific series of provisions through which a lender may cure most failures to comply with the lender's obligations under the home equity provisions of the Constitution. The lender shall forfeit all principal and interest of a home equity loan if the lender fails to correct its failure to comply within 60 days of being notified by:

- Paying the owner an amount equal to any overcharge paid by the owner, if the owner paid an amount in excess of those authorized by law;
- Sending the owner an acknowledgment that the lien is valid only in an amount that does not exceed the 80 percent cap;
- Sending the owner an acknowledgment that the accrual of interest and all of the owner's obligations under the home equity loan are abated while any prior lien, the presence of which prevents a home equity loan from being made, remains secured by the homestead;
- Sending the owner an acknowledgment that the lien is not secured by real or personal property that is not the homestead or by real property used for most agricultural uses;
- Sending the owner a written notice modifying any other prohibited amount, percentage, term, or other provision to a permitted term and adjusting the owner's account accordingly;
- Providing the owner with required documents, if the lender failed to provide the owner with all signed copies;
- Obtaining required signatures, if the lender failed to obtain a signature on a statement of the fair market value of the homestead; or
- If the failure to comply cannot be cured by any of the above means, offering a refund or credit to the homeowner equal to \$1,000 and offering the homeowner the right to refinance at no cost to the homeowner with any modifications necessary to cure the failure to comply.

However, the lender or any holder of the note shall forfeit all principal and interest for the home equity loan if it was made by an unauthorized person or if it was not created under a written agreement with the consent of each owner and each owner's spouse, unless such individuals subsequently consent. The measure deletes the current requirement that the failure be cured in a reasonable period of time.

The measure permits a home equity loan to be refinanced before the first anniversary of its closing date in order to satisfy the lender's ability to cure a defect in the loan. The measure adds a person regulated by this state as a mortgage broker to the list of persons who are permitted to make a home equity loan. The measure permits a home equity loan to be secured by a manufactured home which has been converted to real property.

S.J.R. 42 amends Section 50(f), Article XVI, Texas Constitution to permit the refinancing of a home equity loan as a reverse mortgage.

The measure amends Section 50(g), Article XVI, Texas Constitution to make conforming changes to the notice that must be provided to a borrower 12 days before a home equity loan must be closed. The measure adds a statement to the notice declaring that the notice is only a summary of the homeowner's rights under the Texas Constitution.

S.J.R. 42 adds new Section 50(u) to Article XVI, Texas Constitution to permit the Legislature by statute to delegate to one or more state agencies the power to interpret certain constitutional provisions relating to home equity lending. An act or omission does not violate such a provision if the act or omission conforms to an interpretation that is in effect at the time of the act or omission and made by a state agency to which the power of interpretation is so delegated or by an appellate court of this state or the United States.

FOR ELECTION

The proposed constitutional amendment would be submitted to the voters at an election to be held November 4, 2003.