

By: Solomons

H.J.R. No. 70

A JOINT RESOLUTION

1 proposing a constitutional amendment relating to home equity loans.

2 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

3 SECTION 1. Section 50(a), Article XVI, Texas Constitution,
4 is amended to read as follows:

5 (a) The homestead of a family, or of a single adult person,
6 shall be, and is hereby protected from forced sale, for the payment
7 of all debts except for:

8 (1) the purchase money thereof, or a part of such
9 purchase money;

10 (2) the taxes due thereon;

11 (3) an owelty of partition imposed against the
12 entirety of the property by a court order or by a written agreement
13 of the parties to the partition, including a debt of one spouse in
14 favor of the other spouse resulting from a division or an award of a
15 family homestead in a divorce proceeding;

16 (4) the refinance of a lien against a homestead,
17 including a federal tax lien resulting from the tax debt of both
18 spouses, if the homestead is a family homestead, or from the tax
19 debt of the owner;

20 (5) work and material used in constructing new
21 improvements thereon, if contracted for in writing, or work and
22 material used to repair or renovate existing improvements thereon
23 if:

24 (A) the work and material are contracted for in

1 writing, with the consent of both spouses, in the case of a family
2 homestead, given in the same manner as is required in making a sale
3 and conveyance of the homestead;

4 (B) the contract for the work and material is not
5 executed by the owner or the owner's spouse before the fifth day
6 after the owner makes written application for any extension of
7 credit for the work and material, unless the work and material are
8 necessary to complete immediate repairs to conditions on the
9 homestead property that materially affect the health or safety of
10 the owner or person residing in the homestead and the owner of the
11 homestead acknowledges such in writing;

12 (C) the contract for the work and material
13 expressly provides that the owner may rescind the contract without
14 penalty or charge within three days after the execution of the
15 contract by all parties, unless the work and material are necessary
16 to complete immediate repairs to conditions on the homestead
17 property that materially affect the health or safety of the owner or
18 person residing in the homestead and the owner of the homestead
19 acknowledges such in writing; and

20 (D) the contract for the work and material is
21 executed by the owner and the owner's spouse only at the office of a
22 third-party lender making an extension of credit for the work and
23 material, an attorney at law, or a title company;

24 (6) an extension of credit that:

25 (A) is secured by a voluntary lien on the
26 homestead created under a written agreement with the consent of
27 each owner and each owner's spouse;

1 (B) is of a principal amount that when added to
2 the aggregate total of the outstanding principal balances of all
3 other indebtedness secured by valid encumbrances of record against
4 the homestead does not exceed 80 percent of the fair market value of
5 the homestead on the date the extension of credit is made;

6 (C) is without recourse for personal liability
7 against each owner and the spouse of each owner, unless the owner or
8 spouse obtained the extension of credit by actual fraud;

9 (D) is secured by a lien that may be foreclosed
10 upon only by a court order;

11 (E) does not require the owner or the owner's
12 spouse to pay, in addition to any interest, fees to any person that
13 are necessary to originate, evaluate, maintain, record, insure, or
14 service the extension of credit that exceed, in the aggregate,
15 three percent of the original principal amount of the extension of
16 credit;

17 (F) is not a form of open-end account that may be
18 debited from time to time or under which credit may be extended from
19 time to time unless it is an open-end account under which:

20 (i) all fees described by Subsection
21 (a)(6)(E) of this section in connection with or related to the
22 open-end account are charged to the owner at the time of closing;

23 (ii) no fees are charged to the owner in
24 connection with any debit from the open-end account;

25 (iii) no debit from the open-end account
26 may be less than \$5,000; and

27 (iv) no debit from the open-end account may

1 be made after the fifth anniversary of the date of the loan;

2 (G) is payable in advance without penalty or
3 other charge;

4 (H) is not secured by any additional real or
5 personal property other than the homestead;

6 (I) is not secured by homestead property
7 designated for agricultural use as provided by statutes governing
8 property tax, unless such homestead property is used primarily for
9 the production of milk;

10 (J) may not be accelerated because of a decrease
11 in the market value of the homestead or because of the owner's
12 default under other indebtedness not secured by a prior valid
13 encumbrance against the homestead;

14 (K) is the only debt secured by the homestead at
15 the time the extension of credit is made unless the other debt was
16 made for a purpose described by Subsections (a)(1)-(a)(5) of this
17 section;

18 (L) is scheduled to be repaid in substantially
19 equal successive [~~monthly~~] periodic installments, not less often
20 than monthly, beginning no later than two months from the date the
21 extension of credit is made, each of which equals or exceeds the
22 amount of accrued interest as of the date of the scheduled
23 installment;

24 (M) is closed not before:

25 (i) the 12th day after the later of the date
26 that the owner of the homestead submits an application to the lender
27 for the extension of credit or the date that the lender provides the

1 owner a copy of the notice prescribed by Subsection (g) of this
2 section; and

3 (ii) the first anniversary of the closing
4 date of any other extension of credit described by Subsection
5 (a)(6) of this section secured by the same homestead property,
6 unless the new extension of credit is made for the sole purpose of
7 refinancing only the existing indebtedness secured by the homestead
8 property and no fees as described under Subsection (a)(6)(E) of
9 this section are charged to the owner of the homestead;

10 (N) is closed only at the office of the lender, an
11 attorney at law, or a title company;

12 (O) permits a lender to contract for and receive
13 any fixed or variable rate of interest authorized under statute;

14 (P) is made by one of the following that has not
15 been found by a federal regulatory agency to have engaged in the
16 practice of refusing to make loans because the applicants for the
17 loans reside or the property proposed to secure the loans is located
18 in a certain area:

19 (i) a bank, savings and loan association,
20 savings bank, or credit union doing business under the laws of this
21 state or the United States;

22 (ii) a federally chartered lending
23 instrumentality or a person approved as a mortgagee by the United
24 States government to make federally insured loans;

25 (iii) a person licensed to make regulated
26 loans, as provided by statute of this state;

27 (iv) a person who sold the homestead

1 property to the current owner and who provided all or part of the
2 financing for the purchase; or

3 (v) a person who is related to the homestead
4 property owner within the second degree of affinity or
5 consanguinity; and

6 (Q) is made on the condition that:

7 (i) the owner of the homestead is not
8 required to apply the proceeds of the extension of credit to repay
9 another debt except debt secured by the homestead or debt to another
10 lender;

11 (ii) the owner of the homestead not assign
12 wages as security for the extension of credit;

13 (iii) the owner of the homestead not sign
14 any instrument in which blanks are left to be filled in;

15 (iv) the owner of the homestead not sign a
16 confession of judgment or power of attorney to the lender or to a
17 third person to confess judgment or to appear for the owner in a
18 judicial proceeding;

19 (v) the lender, at the time the extension of
20 credit is made, provide the owner of the homestead a copy of all
21 documents signed by the owner related to the extension of credit;

22 (vi) the security instruments securing the
23 extension of credit contain a disclosure that the extension of
24 credit is the type of credit defined by Section 50(a)(6), Article
25 XVI, Texas Constitution;

26 (vii) within a reasonable time after
27 termination and full payment of the extension of credit, the lender

1 cancel and return the promissory note to the owner of the homestead
2 and give the owner, in recordable form, a release of the lien
3 securing the extension of credit or a copy of an endorsement and
4 assignment of the lien to a lender that is refinancing the extension
5 of credit;

6 (viii) the owner of the homestead and any
7 spouse of the owner may, within three days after the extension of
8 credit is made, rescind the extension of credit without penalty or
9 charge;

10 (ix) the owner of the homestead and the
11 lender sign a written acknowledgment as to the fair market value of
12 the homestead property on the date the extension of credit is made;
13 and

14 (x) the lender or any holder of the note for
15 the extension of credit shall forfeit all principal and interest of
16 the extension of credit if the lender or holder fails to comply with
17 the lender's or holder's obligations under the extension of credit
18 and fails to correct the failure to comply not later than the 60th
19 day after the lender or holder knows or receives notice of the
20 failure to comply by:

21 (a) paying to the owner an amount
22 equal to the greater of:

23 (1) one hundred fifty percent of
24 any overcharge imposed on the owner under or related to the
25 extension of credit; or

26 (2) \$1,000; or

27 (b) offering the owner, if the failure

1 to comply is not an overcharge, the right to elect to:

2 (1) refinance the extension of
3 credit with the lender or holder at no cost to the owner on the same
4 terms, including interest, as the original extension of credit with
5 any modifications necessary to comply with this section or on terms
6 on which the owner and the lender or holder otherwise agree; or

7 (2) receive \$1,000 from the
8 lender or holder; [~~within a reasonable time after the lender or~~
9 holder is notified by the borrower of the lender's failure to
10 comply.]

11 (7) a reverse mortgage; or

12 (8) the conversion and refinance of a personal
13 property lien secured by a manufactured home to a lien on real
14 property, including the refinance of the purchase price of the
15 manufactured home, the cost of installing the manufactured home on
16 the real property, and the refinance of the purchase price of the
17 real property.

18 SECTION 2. Section 50(f), Article XVI, Texas Constitution,
19 is amended to read as follows:

20 (f) A refinance of debt secured by the homestead, any
21 portion of which is an extension of credit described by Subsection
22 (a)(6) of this section, may not be secured by a valid lien against
23 the homestead unless:

24 (1) the refinance of the debt is an extension of credit
25 described by Subsection (a)(6) or (a)(7) of this section; or

26 (2) the refinance of the debt meets all of the
27 following conditions:

1 (A) property securing the refinanced debt is not
2 subject to one or more valid and enforceable prior contractual
3 liens or security interests;

4 (B) the refinance is not closed before one year
5 after the date that the extension of credit describe by Subsection
6 (a)(6) of this section was closed;

7 (C) the lender also offered the borrower a
8 refinance of debt under Subsection (f)(1) of this section;

9 (D) the borrower twice consented in writing to a
10 waiver of the borrower's rights applicable to an extension of
11 credit described by Subsection (a)(6) of this section; and

12 (E) the extension of credit does not include the
13 advance of any additional funds except for actual costs and
14 reserves required by the lender to refinance such debt.

15 SECTION 3. Section 50(g), Article XVI, Texas Constitution,
16 is amended to read as follows:

17 (g) An extension of credit described by Subsection (a)(6) of
18 this section may be secured by a valid lien against homestead
19 property if the extension of credit is not closed before the 12th
20 day after the lender provides the owner with the following written
21 notice on a separate instrument:

22 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
23 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

24 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS
25 CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH
26 LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE
27 LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY

1 FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

2 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT
3 OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

4 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
5 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES
6 OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE
7 FAIR MARKET VALUE OF YOUR HOME;

8 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL
9 LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE
10 OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

11 "(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY
12 WITH A COURT ORDER;

13 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3
14 PERCENT OF THE LOAN AMOUNT;

15 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE
16 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM
17 TIME TO TIME UNLESS IT IS AN OPEN-END ACCOUNT UNDER WHICH ALL FEES
18 ARE PAID AT CLOSING, NO SINGLE DEBIT IS LESS THAN \$5,000, AND NO
19 ADDITIONAL FEES MAY BE CHARGED TO ACCESS THE OPEN-END ACCOUNT;

20 "(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

21 "(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

22 "(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD
23 PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED
24 PRIMARILY FOR THE PRODUCTION OF MILK;

25 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN
26 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
27 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR

1 HOME ;

2 "(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE
3 XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY
4 GIVEN TIME ;

5 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN
6 SUBSTANTIALLY EQUAL SUCCESSIVE PERIODIC PAYMENTS THAT EQUAL OR
7 EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD, AND
8 YOU MAY CHOOSE A PAYMENT PERIOD THAT IS LESS THAN ONE MONTH;

9 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
10 WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
11 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
12 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
13 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
14 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN UNLESS THE NEW LOAN
15 IS A REFINANCE ONLY OF EXISTING DEBT SECURED BY THE PROPERTY AND THE
16 LENDER DOES NOT CHARGE YOU ANY FEES FOR THE NEW LOAN;

17 "(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER,
18 TITLE COMPANY, OR AN ATTORNEY AT LAW;

19 "(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF
20 INTEREST AUTHORIZED BY STATUTE;

21 "(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
22 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
23 CONSTITUTION; AND

24 "(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF
25 THE TEXAS CONSTITUTION MUST:

26 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
27 DEBT, EXCEPT A DEBT THAT IS [~~NOT~~] SECURED BY YOUR HOME OR OWED TO

1 ANOTHER [~~DEBT TO THE SAME~~] LENDER;

2 "(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

3 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH
4 HAVE BLANKS LEFT TO BE FILLED IN;

5 "(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF
6 JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT
7 OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

8 "(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS
9 YOU SIGN AT CLOSING;

10 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A
11 DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6),
12 ARTICLE XVI, OF THE TEXAS CONSTITUTION;

13 "(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE
14 LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF
15 THE LIEN, WHICHEVER IS APPROPRIATE;

16 "(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER
17 CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

18 "(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE
19 FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

20 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL
21 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
22 LENDER'S OBLIGATIONS UNLESS THE LENDER CORRECTS THE FAILURE TO
23 COMPLY AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, TEXAS

24 CONSTITUTION." If the discussions with the borrower are conducted
25 primarily in a language other than English, the lender shall,
26 before closing, provide an additional copy of the notice translated
27 into the written language in which the discussions were conducted.

1 SECTION 4. Section 50, Article XVI, Texas Constitution, is
2 amended by adding Subsections (t) and (u) to read as follows:

3 (t) A refinance of debt under Subsection (f)(2) of this
4 section is considered to be a refinance of a lien against a
5 homestead described by Subsection (a)(4) of this section.

6 (u) The legislature may be general law authorize the Finance
7 Commission of Texas and the Texas Real Estate Commission to issue
8 interpretations of Subsections (a)(5)-(7), (e)-(p), and (t) of this
9 section. An act or omission does not violate a provision included
10 in those subsections if the act or omission conforms to an
11 interpretation of the provision that is:

12 (1) in effect at the time of the act or omission; and

13 (2) issued by:

14 (A) the Finance Commission of Texas and the Texas
15 Real Estate Commission; or

16 (B) an appellate court of this state or the
17 United States.

18 SECTION 5. This proposed constitutional amendment shall be
19 submitted to the voters at an election to be held November 4, 2003.
20 The ballot shall be printed to permit voting for or against the
21 proposition: "The constitutional amendment expanding the
22 permissible uses, types, and refinancing options of home equity
23 loans."