

By: Carona

S.J.R. No. 42

A JOINT RESOLUTION

1 proposing a constitutional amendment authorizing a home equity line
2 of credit, providing for administrative interpretation of home
3 equity lending law, and otherwise relating to the making,
4 refinancing, repayment, and enforcement of home equity loans.

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

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

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

11 (1) the purchase money thereof, or a part of such
12 purchase money;

13 (2) the taxes due thereon;

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

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

23 (5) work and material used in constructing new
24 improvements thereon, if contracted for in writing, or work and

1 material used to repair or renovate existing improvements thereon
2 if:

3 (A) the work and material are contracted for in
4 writing, with the consent of both spouses, in the case of a family
5 homestead, given in the same manner as is required in making a sale
6 and conveyance of the homestead;

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

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

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

27 (6) an extension of credit that:

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

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

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

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

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

20 (F) may be [~~is not~~] a form of open-end account
21 that may be debited from time to time or under which credit may be
22 extended from time to time;

23 (G) is payable in advance without penalty or
24 other charge;

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

27 (I) is not secured by homestead property

1 designated for agricultural use as provided by statutes governing
2 property tax, unless such homestead property is used primarily for
3 the production of milk;

4 (J) may not be accelerated because of a decrease
5 in the market value of the homestead or because of the owner's
6 default under other indebtedness not secured by a prior valid
7 encumbrance against the homestead;

8 (K) is the only debt secured by the homestead at
9 the time the extension of credit is made unless the other debt was
10 made for a purpose described by Subsections (a)(1)-(a)(5) or
11 Subsection (a)(8) of this section;

12 (L) is scheduled to be repaid in substantially
13 equal successive periodic [~~monthly~~] installments, not less often
14 than monthly, beginning no later than two months from the date the
15 extension of credit is made, each of which equals or exceeds the
16 amount of accrued interest as of the date of the scheduled
17 installment;

18 (M) is closed not before:

19 (i) the 12th day after the later of the date
20 that the owner of the homestead submits an application to the lender
21 for the extension of credit or the date that the lender provides the
22 owner a copy of the notice prescribed by Subsection (g) of this
23 section; and

24 (ii) the first anniversary of the closing
25 date of any other extension of credit described by Subsection
26 (a)(6) of this section secured by the same homestead property;

27 (N) is closed only at the office of the lender, an

1 attorney at law, or a title company;

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

4 (P) is made by one of the following that has not
5 been found by a federal regulatory agency to have engaged in the
6 practice of refusing to make loans because the applicants for the
7 loans reside or the property proposed to secure the loans is located
8 in a certain area:

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

12 (ii) a federally chartered lending
13 instrumentality or a person approved as a mortgagee by the United
14 States government to make federally insured loans;

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

17 (iv) a person who sold the homestead
18 property to the current owner and who provided all or part of the
19 financing for the purchase; ~~or~~

20 (v) a person who is related to the homestead
21 property owner within the second degree of affinity or
22 consanguinity; or

23 (vi) a person regulated by this state as a
24 mortgage broker; and

25 (Q) is made on the condition that:

26 (i) the owner of the homestead is not
27 required to apply the proceeds of the extension of credit to repay

1 another debt except debt secured by the homestead or debt to another
2 lender;

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

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

7 (iv) the owner of the homestead not sign a
8 confession of judgment or power of attorney to the lender or to a
9 third person to confess judgment or to appear for the owner in a
10 judicial proceeding;

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

14 (vi) the security instruments securing the
15 extension of credit contain a disclosure that the extension of
16 credit is the type of credit defined by Section 50(a)(6), Article
17 XVI, Texas Constitution;

18 (vii) within a reasonable time after
19 termination and full payment of the extension of credit, the lender
20 cancel and return the promissory note to the owner of the homestead
21 and give the owner, in recordable form, a release of the lien
22 securing the extension of credit or a copy of an endorsement and
23 assignment of the lien to a lender that is refinancing the extension
24 of credit;

25 (viii) the owner of the homestead and any
26 spouse of the owner may, within three days after the extension of
27 credit is made, rescind the extension of credit without penalty or

1 charge;

2 (ix) the owner of the homestead and the
3 lender sign a written acknowledgment as to the fair market value of
4 the homestead property on the date the extension of credit is made;
5 and

6 (x) the lender or any holder of the note for
7 the extension of credit shall forfeit all principal and interest of
8 the extension of credit if the lender or holder fails to comply with
9 the lender's or holder's obligations under the extension of credit
10 unless within a reasonable time after the lender or holder is
11 notified by the borrower of the lender's failure to comply the
12 lender:

13 (a) cures the failure to comply by
14 changing any amount, percentage, term, or other provision
15 prohibited by this section to a permitted amount, percentage, term,
16 or other provision and adjusts the account of the borrower to ensure
17 that the borrower is not required to pay more than an amount
18 permitted by this section and is not subject to any other term or
19 provision prohibited by this section; or

20 (b) if the failure to comply cannot be
21 cured by a modification and adjustment described by Subparagraph
22 (x)(a), cures the failure to comply by a refund or credit to the
23 borrower of all fees and charges, other than interest, paid to any
24 person by the borrower in connection with the extension of credit;

25 (7) a reverse mortgage; or

26 (8) the conversion and refinance of a personal
27 property lien secured by a manufactured home to a lien on real

1 property, including the refinance of the purchase price of the
2 manufactured home, the cost of installing the manufactured home on
3 the real property, and the refinance of the purchase price of the
4 real property.

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

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

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

13 (2) the new loan resulting from the refinance of the
14 debt meets all of the following conditions:

15 (A) no valid and enforceable contractual liens or
16 security interests have priority over the lien securing the new
17 loan;

18 (B) the new loan is not closed before the first
19 anniversary of the date the extension of credit described by
20 Subsection (a)(6) of this section was closed; and

21 (C) the new loan does not include the advance of
22 any additional funds other than actual costs and reserves required
23 by the lender in order to make the new loan.

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

26 (g) An extension of credit described by Subsection (a)(6) of
27 this section may be secured by a valid lien against homestead

1 property if the extension of credit is not closed before the 12th
2 day after the lender provides the owner with the following written
3 notice on a separate instrument:

4 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
5 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

6 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION
7 ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME.
8 SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY
9 THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY
10 FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

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

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

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

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

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

24 "(F) THE LOAN MAY [~~NOT~~] BE AN OPEN-END ACCOUNT THAT MAY BE
25 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM
26 TIME TO TIME;

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

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

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

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

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

12 "(L) THE LOAN MUST BE SCHEDULED TO BE REPAYED IN PAYMENTS
13 THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT
14 PERIOD;

15 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
16 WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU
17 RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS
18 SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN
19 SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
20 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

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

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

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

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

3 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
4 DEBT EXCEPT A DEBT THAT IS [~~NOT~~] SECURED BY YOUR HOME OR OWED TO
5 ANOTHER [~~DEBT TO THE SAME~~] LENDER;

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

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

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

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

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

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

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

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

24 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL
25 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
26 LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY
27 AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, TEXAS

1 CONSTITUTION. ["]

2 "THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS
3 CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI,
4 TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

5 If the discussions with the borrower are conducted primarily
6 in a language other than English, the lender shall, before closing,
7 provide an additional copy of the notice translated into the
8 written language in which the discussions were conducted.

9 SECTION 4. Section 50, Article XVI, Texas Constitution, is
10 amended by adding Subsections (t)-(v) to read as follows:

11 (t) An extension of credit under Subsection (a)(6) that
12 permits an owner to request advances, repay, and reborrow subject
13 to a limit on total principal amount outstanding at one time, is a
14 home equity line of credit and the period during which the owner may
15 request advances is the advance period. For purposes of Subsection
16 (a)(6), the principal amount under a home equity line of credit is
17 the maximum principal amount that may be outstanding at one time and
18 the extension of credit is considered made on the date the credit
19 agreement is executed. A home equity line of credit complies with
20 Subsection (a)(6)(L) if all required periodic payments equal or
21 exceed the amount of accrued interest and required periodic
22 payments after the advance period ends are substantially equal. A
23 lender may not unilaterally amend a home equity line of credit.

24 (u) A refinance of debt under Subsection (f)(2) of this
25 section is considered to be a refinance of a lien against a
26 homestead under Subsection (a)(4) of this section and is not
27 governed by the law specifically applicable to a debt described by

1 Subsection (a)(6) of this section.

2 (v) The legislature may by statute delegate to one or more
3 state agencies the power to interpret Subsections (a)(5)-(a)(7),
4 (e)-(p), (t), and (u) of this section. An act or omission does not
5 violate a provision included in those subsections if the act or
6 omission conforms to an interpretation of the provision that is:

- 7 (1) in effect at the time of the act or omission; and
8 (2) made by a state agency to which the power of
9 interpretation is delegated as provided by this subsection or by an
10 appellate court of this state or the United States.

11 SECTION 5. This proposed constitutional amendment shall be
12 submitted to the voters at an election to be held November 4, 2003.
13 The ballot shall be printed to permit voting for or against the
14 proposition: "The constitutional amendment authorizing a home
15 equity line of credit, providing for administrative interpretation
16 of home equity lending law, and otherwise relating to the making,
17 refinancing, repayment, and enforcement of home equity loans."