

By: Fraser

S.J.R. No. 47

JOINT RESOLUTION

proposing a constitutional amendment authorizing home equity lines of credit.

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

SECTION 1. Section 50, Article XVI, Texas Constitution, is amended by amending Subsections (a), (g), and (h) and adding Subsection (t) to read as follows:

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

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

(2) the taxes due thereon;

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

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

(5) work and material used in constructing new 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) ~~[is not a form of open-end account that may be~~
21 ~~debited from time to time or under which credit may be extended from~~
22 ~~time to time;~~

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

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

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

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

12 (K) [~~(L)~~] is scheduled to be repaid in
13 substantially equal successive monthly installments beginning no
14 later than two months from the date the extension of credit is made,
15 each of which equals or exceeds the amount of accrued interest as of
16 the date of the scheduled installment;

17 (L) [~~(M)~~] is closed not before:

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

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

26 (M) [~~(N)~~] is closed only at the office of the
27 lender, an attorney at law, or a title company;

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

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

23 (P) [~~(O)~~] is made on the condition that:

24 (i) the owner of the homestead is not
25 required to apply the proceeds of the extension of credit to repay
26 another debt except debt secured by the homestead or debt to another
27 lender;

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

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

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

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

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

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

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

27 (ix) the owner of the homestead and the

1 lender sign a written acknowledgment as to the fair market value of
2 the homestead property on the date the extension of credit is made;
3 and

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

10 (7) a reverse mortgage; or

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

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

23 SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

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

18 ["~~(G)~~] YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

19 "(G) [~~(H)~~] NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE
20 LOAN;

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

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

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

4 "(K) [~~(L)~~] THE LOAN MUST BE SCHEDULED TO BE REPAYED IN
5 PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR
6 EACH PAYMENT PERIOD;

7 "(L) [~~(M)~~] THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU
8 SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER
9 YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME
10 WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW
11 LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
12 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

13 "(M) [~~(N)~~] THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE
14 LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

15 "(N) [~~(O)~~] THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE
16 OF INTEREST AUTHORIZED BY STATUTE;

17 "(O) [~~(P)~~] ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
18 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
19 CONSTITUTION; AND

20 "(P) [~~(Q)~~] LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE
21 XVI, OF THE TEXAS CONSTITUTION MUST:

22 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER
23 DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE SAME
24 LENDER;

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

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

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

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

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

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

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

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

16 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL
17 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
18 LENDER'S OBLIGATIONS."

19 If the discussions with the borrower are conducted primarily
20 in a language other than English, the lender shall, before closing,
21 provide an additional copy of the notice translated into the
22 written language in which the discussions were conducted.

23 (h) A lender or assignee for value may conclusively rely on
24 the written acknowledgment as to the fair market value of the
25 homestead property made in accordance with Subsection
26 (a)(6)(P)(ix) [~~(a)(6)(Q)(ix)~~] of this section if:

27 (1) the value acknowledged to is the value estimate in

1 an appraisal or evaluation prepared in accordance with a state or
2 federal requirement applicable to an extension of credit under
3 Subsection (a)(6); and

4 (2) the lender or assignee does not have actual
5 knowledge at the time of the payment of value or advance of funds by
6 the lender or assignee that the fair market value stated in the
7 written acknowledgment was incorrect.

8 (t) If an extension of credit under Subsection (a)(6) of
9 this section permits a borrower to request advances, repay, and
10 reborrow subject to a limit on total principal outstanding at one
11 time, the extension of credit is a "home equity line of credit" and
12 the period during which the borrower may request advances is called
13 the "advance period." Under a home equity line of credit, for
14 purposes of Subsection (a)(6) of this section, the "principal
15 amount" is the maximum principal amount that may be outstanding at
16 one time and the extension of credit is considered to be made on the
17 date the credit agreement is executed. A home equity line of credit
18 complies with Subsection (a)(6)(K) of this section if all periodic
19 payments required during the advance period equal or exceed the
20 amount of accrued interest and the required periodic payments after
21 the advance period ends are substantially equal. A creditor may not
22 unilaterally amend a home equity line of credit in a manner that is
23 adverse to the borrower's interest except as required to comply
24 with applicable laws.

25 SECTION 2. This proposed constitutional amendment shall be
26 submitted to the voters at an election to be held November 4, 2003.
27 The ballot shall be printed to permit voting for or against the

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1 proposition: "The constitutional amendment authorizing home
2 equity lines of credit."