

By: Carona

S.J.R. No. 56

JOINT RESOLUTION

proposing a constitutional amendment simplifying home equity borrowing.

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), (f), and (g), and adding Subsections (f-1) and (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 (E) ~~[(F)] is not a form of open-end account that~~  
21 ~~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 (F) ~~[(H)]~~ is not secured by any additional real  
26 or personal property other than the homestead;

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

18           (K) [~~(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 subdivision [~~section~~] secured by the same homestead  
27 property;

1                    (L) [~~(N)~~] is closed only at the office of the  
2 lender, an attorney at law, or a title company;

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

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

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

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

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

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

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

25                    (O) [~~(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  
6 any 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 be subject to such penalties as the  
8 legislature may provide by statute [~~forfeit all principal and~~  
9 ~~interest of the extension of credit~~] if the lender or holder fails  
10 to comply with the lender's or holder's obligations under this  
11 subdivision or Subsection (g) of this section [~~the extension of~~  
12 ~~credit~~] within a reasonable time after the lender or holder is  
13 notified by the borrower of the lender's failure to comply;

14 (7) a reverse mortgage; or

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

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

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

27 (2) the new loan resulting from the refinance meets

1 all of the following conditions:

2 (A) no valid and enforceable contractual liens or  
3 security interests have priority over the lien securing the new  
4 loan;

5 (B) the new loan is closed one year or more after  
6 the date that the extension of credit described by Subsection  
7 (a)(6) of this section was closed; and

8 (C) no additional funds are advanced as part of  
9 the new loan except for actual costs and reserves required by the  
10 lender in order to make the new loan.

11 (f)(1) A lien securing a refinance made under the authority  
12 of Subsection (f)(2) of this section will be deemed to be a lien  
13 made under Subsection (a)(4) of this subsection for purposes of  
14 this section.

15 (g) The lender of an [An] extension of credit described by  
16 Subsection (a)(6) of this section may be secured by a valid lien  
17 against homestead property if the extension of credit is not closed  
18 before the 12th day after the lender provides the owner with the  
19 following written notice on a separate instrument at the time of  
20 application or within three days thereafter, but in any event  
21 before closing of the extension of credit:

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  
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 [~~"(F)~~] FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3  
14 PERCENT OF THE LOAN AMOUNT;

15 "(E) [~~(F)~~ ~~THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY~~  
16 ~~BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED~~  
17 ~~FROM TIME TO TIME,~~

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

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

21 "(G) [~~(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 "(H) [~~(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       "(I) [~~(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       "(J) [~~(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       "(K) [~~(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       "(L) [~~(N)~~] THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE  
14 LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

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

17       "(N) [~~(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       "(O) [~~(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, EXCEPT A DEBT THAT IS [~~NOT~~] SECURED BY YOUR HOME OR A [~~TO~~  
24 ~~ANOTHER~~] DEBT OWED TO ANOTHER [~~TO THE SAME~~] 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 BE SUBJECT TO STATUTORY  
17 PENALTIES [~~FORFEIT ALL PRINCIPAL AND INTEREST~~] IF THE LENDER FAILS  
18 TO COMPLY WITH THE LENDER'S OBLIGATIONS.

19           "THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS  
20 CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50(a)(6),  
21 ARTICLE XVI, OF THE TEXAS CONSTITUTION, NOT BY THIS NOTICE."

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

26           (t) If an extension of credit under Subsection (a)(6) of  
27 this section permits a borrower to receive advances and repay and

1 reborrow subject to a limit on total principal outstanding at one  
2 time, the extension of credit is a home equity line of credit and  
3 the period during which the borrower may request advances is the  
4 advance period. Under a home equity line of credit, for purposes of  
5 Subsection (a)(6) of this section, the principal amount is the  
6 maximum principal amount that may be outstanding at one time and the  
7 extension of credit is made on the date the credit agreement is  
8 executed. A home equity line of credit complies with Subsection  
9 (a)(6)(J) of this section if all required periodic payments equal  
10 or exceed the amount of accrued interest and the required periodic  
11 payments after the advance period ends are substantially equal. A  
12 creditor may not unilaterally amend a home equity line of credit.

13         SECTION 2. The following temporary provision is added to  
14 the Texas Constitution:

15         TEMPORARY PROVISION. (a) This temporary provision applies  
16 to the constitutional amendment proposed by the 78th Legislature,  
17 Regular Session, 2003, simplifying home equity borrowing.

18         (b) The constitutional amendment takes effect January 1,  
19 2004, except that a lender may take an application or give any  
20 required notices for a loan or line of credit made under the  
21 constitutional amendment at any time after the adoption of the  
22 constitutional amendment.

23         (c) This temporary provision expires January 2, 2004.

24         SECTION 3. This proposed constitutional amendment shall be  
25 submitted to the voters at an election to be held November 4, 2003.  
26 The ballot shall be printed to permit voting for or against the  
27 proposition: "The constitutional amendment simplifying home

1 equity borrowing."