

AN ACT

relating to authorizing an extension of credit secured by a residence homestead in which a minor or ward has an ownership interest.

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

SECTION 1. Section 781, Texas Probate Code, is amended by adding Subsections (a-1) and (a-2) and amending Subsection (b) to read as follows:

(a-1) The guardian of the estate may also receive an extension of credit on the ward's behalf that is secured, wholly or partly, by a lien on real property that is the homestead of the ward, under court order, when necessary to:

(1) make improvements or repairs to the homestead; or

(2) pay for education or medical expenses of the ward.

(a-2) Proceeds of a home equity loan described by Subsection (a-1) of this section may be used only for the purposes authorized under Subsection (a-1) of this section and to pay the outstanding balance of the loan.

(b) When it is necessary to borrow money for any of the purposes authorized under Subsection (a) or (a-1) of this section, or to create or extend a lien on property of the estate as security, a sworn application for the authority to borrow money shall be filed with the court, stating fully and in detail the circumstances that the guardian of the estate believes make necessary the granting of

1 the authority. On the filing of an application under this  
2 subsection, the clerk shall issue and cause to be posted a citation  
3 to all interested persons, stating the nature of the application  
4 and requiring the interested persons to appear and show cause why  
5 the application should not be granted.

6 SECTION 2. Subpart F, Part 5, Chapter XIII, Texas Probate  
7 Code, is amended by adding Sections 889A and 890A to read as  
8 follows:

9 Sec. 889A. MORTGAGE OF RESIDENTIAL HOMESTEAD INTEREST OF A  
10 MINOR WITHOUT GUARDIANSHIP. (a) In this section:

11 (1) "Home equity loan" means a loan made under Section  
12 50(a)(6), Article XVI, Texas Constitution.

13 (2) "Residence homestead" has the meaning assigned by  
14 Section 11.13, Tax Code.

15 (b) When a minor has an interest in a residence homestead  
16 and the net value of the interest does not exceed \$100,000, a  
17 natural or adoptive parent, subject to Subsection (j) of this  
18 section, or the managing conservator, of a minor who is not a ward  
19 may apply to the court for an order authorizing the parent or  
20 managing conservator to receive, without being appointed guardian,  
21 an extension of credit on the minor's behalf that is secured, wholly  
22 or partly, by a lien on the homestead. Proceeds of the home equity  
23 loan attributable to the minor's interest may be used only to:

24 (1) make improvements to the homestead;

25 (2) pay for education or medical expenses of the  
26 minor; or

27 (3) pay the outstanding balance of the loan.

1       (c) The parent or managing conservator shall apply to the  
2 court under oath for the authority to encumber the residence  
3 homestead as provided by this section. Venue for the application is  
4 the same as venue for an application for the appointment of a  
5 guardian for a minor. The application must contain:

6               (1) the name and address of the minor;

7               (2) a legal description of the property constituting  
8 the homestead;

9               (3) a description of the minor's ownership interest in  
10 the property constituting the homestead;

11               (4) the name of the minor and the fair market value of  
12 the property constituting the homestead;

13               (5) the amount of the home equity loan;

14               (6) the purpose or purposes for which the home equity  
15 loan is being sought;

16               (7) a detailed description of the proposed expenditure  
17 of the loan proceeds to be received by the parent or managing  
18 conservator on the minor's behalf; and

19               (8) a statement that all loan proceeds received by the  
20 parent or managing conservator on the minor's behalf through a home  
21 equity loan authorized under this section shall be used in a manner  
22 that is for the minor's benefit.

23       (d) On receipt of the application, the court shall set the  
24 application for hearing at a date not earlier than the fifth day  
25 after the date the application is filed. If the court considers it  
26 necessary, the court may cause citation to be issued.

27       (e) Before the hearing, the parent or managing conservator

1 shall file with the county clerk a surety bond in an amount at least  
2 equal to two times the amount of the proposed home equity loan. The  
3 bond must be:

4 (1) payable to and approved by the court; and

5 (2) conditioned on the parent or managing conservator:

6 (A) using the proceeds of the home equity loan  
7 attributable to the minor's interest solely for the purposes  
8 authorized by this section; and

9 (B) making payments on the minor's behalf toward  
10 the outstanding balance of the home equity loan.

11 (f) At the time of the hearing of the application filed  
12 under this section, the court, on approval of the bond required by  
13 Subsection (e) of this section, shall authorize the parent or  
14 managing conservator to receive the extension of credit sought in  
15 the application if the court is satisfied from a preponderance of  
16 the evidence that the encumbrance is for a purpose described by  
17 Subsection (b)(1) or (2) of this section and is in the minor's best  
18 interests.

19 (g) A parent or managing conservator executing a home equity  
20 loan on a minor's behalf under this section shall file an annual  
21 report with the court regarding the transaction. When the parent or  
22 managing conservator has expended the proceeds of a home equity  
23 loan authorized under this section, the parent or managing  
24 conservator, in addition, shall file with the county clerk a sworn  
25 report accounting for the proceeds.

26 (h) The court may not discharge the person's sureties from  
27 all further liability under the bond until the court:

1           (1) has approved the filing of the parent's or managing  
2 conservator's reports required under Subsection (g) of this  
3 section;

4           (2) finds that the parent or managing conservator used  
5 loan proceeds resulting from the minor's interest solely for the  
6 purposes authorized by this section; and

7           (3) has been presented with satisfactory evidence that  
8 the home equity loan has been repaid and is no longer considered an  
9 outstanding obligation.

10          (i) After the first anniversary of the date a parent or  
11 managing conservator executes a home equity loan authorized under  
12 this section, the court may, on motion of the borrower, reduce the  
13 amount of the surety bond required under this section to an amount  
14 that is not less than the outstanding balance of the loan.

15          (j) A parent of a minor may file an application under this  
16 section only if the parent has a homestead interest in the property  
17 that is the subject of the application.

18          (k) A minor may not disaffirm a home equity loan authorized  
19 by the court under this section.

20          Sec. 890A. MORTGAGE OF RESIDENTIAL HOMESTEAD INTEREST OF A  
21 MINOR WARD. (a) In this section:

22           (1) "Home equity loan" means a loan made under Section  
23 50(a)(6), Article XVI, Texas Constitution.

24           (2) "Residence homestead" has the meaning assigned by  
25 Section 11.13, Tax Code.

26          (b) This section applies only to a minor ward who has a  
27 guardian of the person but does not have a guardian of the estate.

1       (c) When a minor ward has an interest in a residence  
2 homestead and the net value of the interest does not exceed  
3 \$100,000, the guardian of the person of the ward may apply to the  
4 court for an order authorizing the guardian to receive an extension  
5 of credit on the ward's behalf that is secured, wholly or partly, by  
6 a lien on the homestead. Proceeds of the home equity loan  
7 attributable to the minor's interest may be used only to:

8               (1) make improvements to the homestead;

9               (2) pay for the education or maintenance expenses of  
10 the ward; or

11               (3) pay the outstanding balance of the loan.

12       (d) Venue for the application is the same as venue for an  
13 application for the appointment of a guardian for a ward. The  
14 application must contain the same information required by Section  
15 889A of this code.

16       (e) On receipt of the application, the court shall set the  
17 application for hearing at a date not earlier than the fifth day  
18 after the date the application is filed. If the court considers it  
19 necessary, the court may cause citation to be issued.

20       (f) The guardian of the person, before the hearing, shall  
21 file a surety bond with the county clerk to the same extent and in  
22 the same manner as a parent or managing conservator of a minor is  
23 required to provide a surety bond under Section 889A of this code.

24       (g) The procedures and evidentiary requirements for a  
25 hearing of an application filed under this section are the same as  
26 the procedures and evidentiary requirements for a hearing of an  
27 application filed under Section 889A of this code.

1       (h) At the time of the hearing of the application filed  
2 under this section, the court, on approval of a bond required by  
3 Subsection (f) of this section, shall authorize the guardian to  
4 receive the extension of credit sought in the application if the  
5 court is satisfied from a preponderance of the evidence that the  
6 encumbrance is for a purpose described by Subsection (c)(1) or (2)  
7 of this section and is in the ward's best interests.

8       (i) A guardian of the person executing a home equity loan on  
9 a ward's behalf must account for the transaction, including the  
10 expenditure of the loan proceeds, in the annual accounting required  
11 by Section 741 of this code.

12       (j) The court may not discharge a guardian's sureties from  
13 all further liability under a bond required by this section or  
14 another provision of this code until the court:

15               (1) finds that the guardian used loan proceeds  
16 resulting from the ward's interest solely for the purposes  
17 authorized by this section; and

18               (2) has been presented with satisfactory evidence that  
19 the home equity loan has been repaid and is no longer considered an  
20 outstanding obligation.

21       (k) A minor ward may not disaffirm a home equity loan  
22 authorized by the court under this section.

23       SECTION 3. This Act takes effect September 1, 2005.

H.B. No. 637

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President of the Senate

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Speaker of the House

I certify that H.B. No. 637 was passed by the House on May 13, 2005, by a non-record vote.

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Chief Clerk of the House

I certify that H.B. No. 637 was passed by the Senate on May 25, 2005, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor