

By: Goolsby

H.B. No. 637

A BILL TO BE ENTITLED

AN ACT

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

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

SECTION 1. Subpart F, Part 5, Chapter XIII, Texas Probate Code, is amended by adding Sections 889A and 890A to read as follows:

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

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

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

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

(1) make improvements to the homestead;

(2) pay for education or medical expenses of the

1 minor; or

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

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

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

9 (2) a legal description of the property constituting
10 the homestead;

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

13 (4) the name of the minor and the fair market value of
14 the property constituting the homestead;

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

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

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

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

25 (d) On receipt of the application, the court shall set the
26 application for hearing at a date not earlier than the fifth day
27 after the date the application is filed. If the court considers it

1 necessary, the court may cause citation to be issued.

2 (e) Before the hearing, the parent or managing conservator
3 shall file with the county clerk a surety bond in an amount at least
4 equal to two times the amount of the proposed home equity loan. The
5 bond must be:

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

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

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

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

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

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

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

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

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

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

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

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

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

22 Sec. 890A. MORTGAGE OF RESIDENTIAL HOMESTEAD INTEREST OF A
23 WARD. (a) In this section:

24 (1) "Home equity loan" means a loan made under Section
25 50(a)(6), Article XVI, Texas Constitution.

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

1 (b) 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 estate 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 (c) 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 (d) 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 (e) Unless the guardian of the estate has furnished a bond
21 under Section 703 of this code, the guardian of the estate, before
22 the hearing, shall file a surety bond with the county clerk to the
23 same extent and in the same manner as a parent or managing
24 conservator of a minor is required to provide a security bond under
25 Section 889A of this code.

26 (f) The procedures and evidentiary requirements for a
27 hearing of an application filed under this section are the same as

1 the procedures and evidentiary requirements for a hearing of an
2 application filed under Section 889A of this code.

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

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

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

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

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

23 (j) A minor ward may not disaffirm a home equity loan
24 authorized by the court under this section.

25 SECTION 2. This Act takes effect September 1, 2005.