

By: Flynn

H.J.R. No. 52

A JOINT RESOLUTION

1 proposing a constitutional amendment lowering the minimum amount of
2 a debit or advance allowed under a home equity line of credit.

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

4 SECTION 1. Section 50(g), Article XVI, Texas Constitution,
5 is amended to read as follows:

6 (g) An extension of credit described by Subsection (a)(6) of
7 this section may be secured by a valid lien against homestead
8 property if the extension of credit is not closed before the 12th
9 day after the lender provides the owner with the following written
10 notice on a separate instrument:

11 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
12 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

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

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

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

24 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL

1 LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE
2 OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

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

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

7 "(F) THE LOAN MAY NOT BE AN OPENEND ACCOUNT THAT MAY BE
8 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM
9 TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

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

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

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

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

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

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

27 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU

1 SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER
2 YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME
3 WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW
4 LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS
5 PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

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

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

10 "(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
11 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
12 CONSTITUTION;

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

15 "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO
16 ANOTHER DEBT EXCEPT A DEBT THAT IS SECURED BY YOUR HOME OR OWED TO
17 ANOTHER LENDER;

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

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

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

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

27 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS

1 CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION
2 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

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

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

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

10 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL
11 PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE
12 LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY
13 AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS
14 CONSTITUTION; AND

15 "(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

16 "(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND
17 REBORROW MONEY UNDER THE LINE OF CREDIT;

18 "(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST
19 BE IN AN AMOUNT OF AT LEAST \$1,000 [~~\$4,000~~];

20 "(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD,
21 SOLICITATION CHECK, OR SIMILAR DEVICE TO OBTAIN ADVANCES UNDER THE
22 LINE OF CREDIT;

23 "(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED
24 AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND
25 THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

26 "(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE
27 EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY

1 NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE
2 DATE THE LINE OF CREDIT IS ESTABLISHED;

3 "(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF
4 CREDIT AT ANY TIME EXCEEDS 50 PERCENT OF THE FAIR MARKET VALUE OF
5 YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS
6 ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE
7 LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 50 PERCENT OF THE FAIR
8 MARKET VALUE; AND

9 "(7) THE LENDER MAY NOT UNILATERALLY AMEND THE
10 TERMS OF THE LINE OF CREDIT.

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

14 If the discussions with the borrower are conducted primarily
15 in a language other than English, the lender shall, before closing,
16 provide an additional copy of the notice translated into the
17 written language in which the discussions were conducted.

18 SECTION 2. Section 50(t), Article XVI, Texas Constitution,
19 is amended to read as follows:

20 (t) A home equity line of credit is a form of an open-end
21 account that may be debited from time to time, under which credit
22 may be extended from time to time and under which:

23 (1) the owner requests advances, repays money, and
24 reborrows money;

25 (2) any single debit or advance is not less than \$1,000
26 [~~\$4,000~~];

27 (3) the owner does not use a credit card, debit card,

1 preprinted solicitation check, or similar device to obtain an
2 advance;

3 (4) any fees described by Subsection (a)(6)(E) of this
4 section are charged and collected only at the time the extension of
5 credit is established and no fee is charged or collected in
6 connection with any debit or advance;

7 (5) the maximum principal amount that may be extended
8 under the account, when added to the aggregate total of the
9 outstanding principal balances of all indebtedness secured by the
10 homestead on the date the extension of credit is established, does
11 not exceed an amount described under Subsection (a)(6)(B) of this
12 section;

13 (6) no additional debits or advances are made if the
14 total principal amount outstanding exceeds an amount equal to 50
15 percent of the fair market value of the homestead as determined on
16 the date the account is established;

17 (7) the lender or holder may not unilaterally amend
18 the extension of credit; and

19 (8) repayment is to be made in regular periodic
20 installments, not more often than every 14 days and not less often
21 than monthly, beginning not later than two months from the date the
22 extension of credit is established, and:

23 (A) during the period during which the owner may
24 request advances, each installment equals or exceeds the amount of
25 accrued interest; and

26 (B) after the period during which the owner may
27 request advances, installments are substantially equal.

1 SECTION 3. This proposed constitutional amendment shall be
2 submitted to the voters at an election to be held November 8, 2005.
3 The ballot shall be printed to permit voting for or against the
4 proposition: "The constitutional amendment lowering the minimum
5 amount of a debit or advance allowed under a home equity line of
6 credit."