

By: Villarreal

H.J.R. No. 118

A JOINT RESOLUTION

1 proposing a constitutional amendment providing for an exception
2 from the limitation on the maximum principal amount of home equity
3 loans for the refinancing of certain loans secured by the
4 homestead.

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

6 SECTION 1. Sections 50(f) and (g), Article XVI, Texas
7 Constitution, are amended to read as follows:

8 (f) A refinance of debt secured by the homestead, any
9 portion of which is an extension of credit described by Subsection
10 (a)(6) of this section, may not be secured by a valid lien against
11 the homestead unless the refinance of the debt is an extension of
12 credit described by Subsection (a)(6) or (a)(7) of this section.
13 The principal loan amount to fair market value limitation provided
14 by Subsection (a)(6)(B) of this section does not apply to the
15 refinance of debt secured by a homestead and described by
16 Subsection (a)(6) of this section if no additional funds are
17 advanced to the borrower, or if no additional funds are advanced for
18 the benefit of the borrower, other than the costs and fees incurred
19 in connection with the refinance of such debt.

20 (g) An extension of credit described by Subsection (a)(6) of
21 day after the lender provides the owner with the following written
22 notice on a separate instrument:

23 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
24 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

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

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

8 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
9 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES
10 OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE
11 FAIR MARKET VALUE OF YOUR HOME. HOWEVER, THIS LIMITATION AMOUNT
12 DOES NOT APPLY TO A REFINANCE OF DEBT THAT IS A HOME EQUITY LOAN IF
13 NO ADDITIONAL FUNDS ARE ADVANCED TO YOU OR FOR YOUR BENEFIT OTHER
14 THAN THE COSTS AND FEES INCURRED IN CONNECTION WITH THE REFINANCE;

15 "(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL
16 LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE
17 OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

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

20 "(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE
21 DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM
22 TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

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

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

25 "(I) THE LOAN MAY NOT BE SECURED BY HOMESTEAD PROPERTY THAT
26 IS DESIGNATED FOR AGRICULTURAL USE AS OF THE DATE OF CLOSING, UNLESS
27 THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE

1 PRODUCTION OF MILK;

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

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

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

12 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
13 LOAN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE
14 RECEIVE A COPY OF YOUR LOAN APPLICATION IF NOT PREVIOUSLY PROVIDED
15 AND A FINAL ITEMIZED DISCLOSURE OF THE ACTUAL FEES, POINTS,
16 INTEREST, COSTS, AND CHARGES THAT WILL BE CHARGED AT CLOSING; AND IF
17 YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST
18 YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE
19 ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN, UNLESS
20 ON OATH YOU REQUEST AN EARLIER CLOSING DUE TO A DECLARED STATE OF
21 EMERGENCY;

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

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

26 "(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS
27 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS

1 CONSTITUTION;

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

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

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

8 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE
9 BLANKS FOR SUBSTANTIVE TERMS OF AGREEMENT LEFT TO BE FILLED IN;
10 IN A LEGAL PROCEEDING ON YOUR BEHALF;

11 "(5) PROVIDE THAT YOU RECEIVE A COPY OF YOUR FINAL LOAN
12 APPLICATION AND ALL EXECUTED DOCUMENTS YOU SIGN AT CLOSING;

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

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

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

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

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

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

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

4 "(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN
5 AMOUNT OF AT LEAST \$4,000;

6 ADVANCES UNDER THE LINE OF CREDIT;

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

10 "(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN
11 ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80
12 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF
13 CREDIT IS ESTABLISHED;

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

19 "(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE
20 LINE OF CREDIT.

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

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

1 SECTION 2. This proposed constitutional amendment shall be
2 the proposition: "The constitutional amendment providing for an
3 exception from the limitation on the maximum principal amount of
4 home equity loans for the refinancing of certain loans secured by
5 the homestead."