S.J.R. No. 18

SENATE JOINT RESOLUTION

proposing a constitutional amendment to authorize the making of a reverse mortgage loan for the purchase of homestead property and to amend certain requirements in connection with a reverse mortgage loan.

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

SECTION 1. Subsection (k), Section 50, Article XVI, Texas Constitution, is amended to read as follows:

(k) "Reverse mortgage" means an extension of credit:

(1) that is secured by a voluntary lien on homestead property created by a written agreement with the consent of each owner and each owner’s spouse;

(2) that is made to a person who is or whose spouse is 62 years or older;

(3) that is made without recourse for personal liability against each owner and the spouse of each owner;

(4) under which advances are provided to a borrower:

(A) based on the equity in a borrower’s homestead; or

(B) for the purchase of homestead property that the borrower will occupy as a principal residence;

(5) that does not permit the lender to reduce the amount or number of advances because of an adjustment in the interest rate if periodic advances are to be made;
that requires no payment of principal or interest
until:
(A) all borrowers have died;
(B) the homestead property securing the loan is
sold or otherwise transferred;
(C) all borrowers cease occupying the homestead
property for a period of longer than 12 consecutive months without
prior written approval from the lender;
(C-1) if the extension of credit is used for the
purchase of homestead property, the borrower fails to timely occupy
the homestead property as the borrower's principal residence within
a specified period after the date the extension of credit is made
that is stipulated in the written agreement creating the lien on the
property; or
(D) the borrower:
(i) defaults on an obligation specified in
the loan documents to repair and maintain, pay taxes and
assessments on, or insure the homestead property;
(ii) commits actual fraud in connection
with the loan; or
(iii) fails to maintain the priority of the
lender's lien on the homestead property, after the lender gives
notice to the borrower, by promptly discharging any lien that has
priority or may obtain priority over the lender's lien within 10
days after the date the borrower receives the notice, unless the
borrower:
(a) agrees in writing to the payment
of the obligation secured by the lien in a manner acceptable to the
lender;

(b) contests in good faith the lien
by, or defends against enforcement of the lien in, legal
proceedings so as to prevent the enforcement of the lien or
forfeiture of any part of the homestead property; or

(c) secures from the holder of the
lien an agreement satisfactory to the lender subordinating the lien
to all amounts secured by the lender's lien on the homestead
property;

(7) that provides that if the lender fails to make loan
advances as required in the loan documents and if the lender fails
to cure the default as required in the loan documents after notice
from the borrower, the lender forfeits all principal and interest
of the reverse mortgage, provided, however, that this subdivision
does not apply when a governmental agency or instrumentality takes
an assignment of the loan in order to cure the default;

(8) that is not made unless the prospective borrower
and the spouse of the prospective borrower attest [owner of the
homestead attests] in writing that the prospective borrower and the
prospective borrower's spouse [owner] received counseling
regarding the advisability and availability of reverse mortgages
and other financial alternatives that was completed not earlier
than the 180th day nor later than the 5th day before the date the
extension of credit is closed;

(9) that is not closed before the 12th day after the
date the lender provides to the prospective borrower the following
written notice on a separate instrument, which the lender or
originator and the borrower must sign for the notice to take effect:

"IMPORTANT NOTICE TO BORROWERS

RELATED TO YOUR REVERSE MORTGAGE

"UNDER THE TEXAS TAX CODE, CERTAIN ELDERLY PERSONS MAY DEFER THE
COLLECTION OF PROPERTY TAXES ON THEIR RESIDENCE HOMESTEAD. BY
RECEIVING THIS REVERSE MORTGAGE YOU MAY BE REQUIRED TO FORGO ANY
PREVIOUSLY APPROVED DEFERRAL OF PROPERTY TAX COLLECTION AND YOU MAY
BE REQUIRED TO PAY PROPERTY TAXES ON AN ANNUAL BASIS ON THIS
PROPERTY.

"THE LENDER MAY FORECLOSE THE REVERSE MORTGAGE AND YOU MAY LOSE
YOUR HOME IF:

"(A) YOU DO NOT PAY THE TAXES OR OTHER ASSESSMENTS ON THE
HOME EVEN IF YOU ARE ELIGIBLE TO DEFER PAYMENT OF PROPERTY TAXES;

"(B) YOU DO NOT MAINTAIN AND PAY FOR PROPERTY INSURANCE ON
THE HOME AS REQUIRED BY THE LOAN DOCUMENTS;

"(C) YOU FAIL TO MAINTAIN THE HOME IN A STATE OF GOOD
CONDITION AND REPAIR;

"(D) YOU CEASE OCCUPYING THE HOME FOR A PERIOD LONGER THAN
12 CONSECUTIVE MONTHS WITHOUT THE PRIOR WRITTEN APPROVAL FROM THE
LENDER OR, IF THE EXTENSION OF CREDIT IS USED FOR THE PURCHASE OF
THE HOME, YOU FAIL TO TIMELY OCCUPY THE HOME AS YOUR PRINCIPAL
RESIDENCE WITHIN A PERIOD OF TIME AFTER THE EXTENSION OF CREDIT IS
MADE THAT IS STIPULATED IN THE WRITTEN AGREEMENT CREATING THE LIEN
ON THE HOME;

"(E) YOU SELL THE HOME OR OTHERWISE TRANSFER THE HOME
WITHOUT PAYING OFF THE LOAN;
"(F) ALL BORROWERS HAVE DIED AND THE LOAN IS NOT REPAYED;

"(G) YOU COMMIT ACTUAL FRAUD IN CONNECTION WITH THE LOAN; OR

"(H) YOU FAIL TO MAINTAIN THE PRIORITY OF THE LENDER'S LIEN ON THE HOME, AFTER THE LENDER GIVES NOTICE TO YOU, BY PROMPTLY DISCHARGING ANY LIEN THAT HAS PRIORITY OR MAY OBTAIN PRIORITY OVER THE LENDER'S LIEN WITHIN 10 DAYS AFTER THE DATE YOU RECEIVE THE NOTICE, UNLESS YOU:

"(1) AGREE IN WRITING TO THE PAYMENT OF THE OBLIGATION SECURED BY THE LIEN IN A MANNER ACCEPTABLE TO THE LENDER;

"(2) CONTEST IN GOOD FAITH THE LIEN BY, OR DEFEND AGAINST ENFORCEMENT OF THE LIEN IN, LEGAL PROCEEDINGS SO AS TO PREVENT THE ENFORCEMENT OF THE LIEN OR FORFEITURE OF ANY PART OF THE HOME; OR

"(3) SECURE FROM THE HOLDER OF THE LIEN AN AGREEMENT SATISFACTORY TO THE LENDER SUBORDINATING THE LIEN TO ALL AMOUNTS SECURED BY THE LENDER'S LIEN ON THE HOME.

"IF A GROUND FOR FORECLOSURE EXISTS, THE LENDER MAY NOT COMMENCE FORECLOSURE UNTIL THE LENDER GIVES YOU WRITTEN NOTICE BY MAIL THAT A GROUND FOR FORECLOSURE EXISTS AND GIVES YOU AN OPPORTUNITY TO REMEDY THE CONDITION CREATING THE GROUND FOR FORECLOSURE OR TO PAY THE REVERSE MORTGAGE DEBT WITHIN THE TIME PERMITTED BY SECTION 50(k)(10), ARTICLE XVI, OF THE TEXAS CONSTITUTION. THE LENDER MUST OBTAIN A COURT ORDER FOR FORECLOSURE EXCEPT THAT A COURT ORDER IS NOT REQUIRED IF THE FORECLOSURE OCCURS BECAUSE:

"(1) ALL BORROWERS HAVE DIED; OR

"(2) THE HOMESTEAD PROPERTY SECURING THE LOAN IS SOLD OR OTHERWISE TRANSFERRED."
"YOU SHOULD CONSULT WITH YOUR HOME COUNSELOR OR AN ATTORNEY IF YOU
HAVE ANY CONCERNS ABOUT THESE OBLIGATIONS BEFORE YOU CLOSE YOUR
REVERSE MORTGAGE LOAN. TO LOCATE AN ATTORNEY IN YOUR AREA, YOU MAY
WISH TO CONTACT THE STATE BAR OF TEXAS."

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

[that requires the lender, at the time the loan is made, to disclose
to the borrower by written notice the specific provisions contained
in Subdivision (6) of this subsection under which the borrower is
required to repay the loan];

(10) that does not permit the lender to commence
foreclosure until the lender gives notice to the borrower, in the
manner provided for a notice by mail related to the foreclosure of
liens under Subsection (a)(6) of this section, that a ground for
foreclosure exists and gives the borrower at least 30 days, or at
least 20 days in the event of a default under Subdivision
(6)(D)(iii) of this subsection, to:

(A) remedy the condition creating the ground for
foreclosure;

(B) pay the debt secured by the homestead
property from proceeds of the sale of the homestead property by the
borrower or from any other sources; or

(C) convey the homestead property to the lender
by a deed in lieu of foreclosure; and
(11) that is secured by a lien that may be foreclosed
upon only by a court order, if the foreclosure is for a ground other
than a ground stated by Subdivision (6)(A) or (B) of this
subsection.

SECTION 2. This proposed constitutional amendment shall be
submitted to the voters at an election to be held November 5, 2013.
The ballot shall be printed to permit voting for or against the
proposition: "The constitutional amendment to authorize the making
of a reverse mortgage loan for the purchase of homestead property
and to amend lender disclosures and other requirements in
connection with a reverse mortgage loan."

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President of the Senate Speaker of the House

I hereby certify that S.J.R. No. 18 passed the Senate on March 12, 2013, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

I hereby certify that S.J.R. No. 18 passed the House on May 16, 2013, by the following vote: Yeas 139, Nays 1, two present not voting.

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Chief Clerk of the House