

By: Raymond

H.J.R. No. 128

A JOINT RESOLUTION

1 proposing a constitutional amendment relating to the limitation of
2 fees that may be charged for a home equity loan.

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

4 SECTION 1. Sections 50(a)(6)(E) and (g), Article XVI, Texas
5 Constitution, are amended to read as follows:

6 (E) does not require the owner or the owner's spouse to pay, in
7 addition to any interest, fees to ~~any person~~ the lender or
8 originator that are necessary to originate, evaluate, maintain,
9 record, insure, or service the extension of credit that exceed, in
10 the aggregate, three percent of the original principal amount of
11 the extension of credit;

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

17 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
18 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

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

24 "(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT

1 OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

2 "(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE
3 MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES
4 OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE
5 FAIR MARKET VALUE OF YOUR HOME"(C) THE LOAN MUST BE WITHOUT RECOURSE
6 FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR
7 YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

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

10 "(E) FEES AND CHARGES PAID TO THE LENDER OR ORIGINATOR TO
11 MAKE THE LOAN MAY NOT EXCEED 3 PERCENT OF THE LOAN AMOUNT;

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

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

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

17 "(I) THE LOAN MAY NOT BE SECURED BY HOMESTEAD PROPERTY THAT
18 IS DESIGNATED FOR AGRICULTURAL USE AS OF THE DATE OF CLOSING, UNLESS
19 THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE
20 PRODUCTION OF MILK;

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

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

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

4 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
5 LOAN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE
6 THIS NOTICE, WHICHEVER DATE IS LATER; AND MAY NOT WITHOUT YOUR
7 CONSENT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH YOU
8 RECEIVE A COPY OF YOUR LOAN APPLICATION IF NOT PREVIOUSLY PROVIDED
9 AND A FINAL ITEMIZED DISCLOSURE OF THE ACTUAL FEES, POINTS,
10 INTEREST, COSTS, AND CHARGES THAT WILL BE CHARGED AT CLOSING; AND IF
11 YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST
12 YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE
13 ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN, UNLESS
14 ON OATH YOU REQUEST AN EARLIER CLOSING DUE TO A DECLARED STATE OF
15 EMERGENCY;

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

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

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

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

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

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

2 "(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE
3 BLANKS FOR SUBSTANTIVE TERMS OF AGREEMENT LEFT TO BE FILLED IN;

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

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

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

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

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

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

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

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

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

27 "(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN

1 AMOUNT OF AT LEAST \$4,000;

2 "(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, OR SIMILAR
3 DEVICE, OR PREPRINTED CHECK THAT YOU DID NOT SOLICIT, TO OBTAIN
4 ADVANCES UNDER THE LINE OF CREDIT;

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

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

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

17 "(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE
18 LINE OF CREDIT.

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

22 the lender shall, before closing, provide an additional copy
23 of the notice translated into the written language in which the
24 discussions were conducted.

25 SECTION 2. This proposed constitutional amendment shall be
26 submitted to the voters at an election to be held November 5, 2013.
27 The ballot shall be printed to provide for voting for or against the

1 proposition: "The constitutional amendment to facilitate the
2 making of smaller dollar home equity loans by amending the
3 limitation of fees that may be charged in making a home equity
4 loan."