

By: Raymond

H.J.R. No. 131

A JOINT RESOLUTION

1 proposing a constitutional amendment concerning fees that are
2 subject to the maximum allowable limit to obtain a home equity loan.

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

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

6 (a) The homestead of a family, or of a single adult person,
7 shall be, and is hereby protected from forced sale, for the payment
8 of all debts except for:

9 (1) the purchase money thereof, or a part of such
10 purchase money;

11 (2) the taxes due thereon;

12 (3) an owelty of partition imposed against the
13 entirety of the property by a court order or by a written agreement
14 of the parties to the partition, including a debt of one spouse in
15 favor of the other spouse resulting from a division or an award of a
16 family homestead in a divorce proceeding;

17 (4) the refinance of a lien against a homestead,
18 including a federal tax lien resulting from the tax debt of both
19 spouses, if the homestead is a family homestead, or from the tax
20 debt of the owner;

21 (5) work and material used in constructing new
22 improvements thereon, if contracted for in writing, or work and
23 material used to repair or renovate existing improvements thereon
24 if:

1 (A) the work and material are contracted for in
2 writing, with the consent of both spouses, in the case of a family
3 homestead, given in the same manner as is required in making a sale
4 and conveyance of the homestead;

5 (B) the contract for the work and material is not
6 executed by the owner or the owner's spouse before the fifth day
7 after the owner makes written application for any extension of
8 credit for the work and material, unless the work and material are
9 necessary to complete immediate repairs to conditions on the
10 homestead property that materially affect the health or safety of
11 the owner or person residing in the homestead and the owner of the
12 homestead acknowledges such in writing;

13 (C) the contract for the work and material
14 expressly provides that the owner may rescind the contract without
15 penalty or charge within three days after the execution of the
16 contract by all parties, unless the work and material are necessary
17 to complete immediate repairs to conditions on the homestead
18 property that materially affect the health or safety of the owner or
19 person residing in the homestead and the owner of the homestead
20 acknowledges such in writing; and

21 (D) the contract for the work and material is
22 executed by the owner and the owner's spouse only at the office of a
23 third-party lender making an extension of credit for the work and
24 material, an attorney at law, or a title company;

25 (6) an extension of credit that:

26 (A) is secured by a voluntary lien on the
27 homestead created under a written agreement with the consent of

1 each owner and each owner's spouse;

2 (B) is of a principal amount that when added to
3 the aggregate total of the outstanding principal balances of all
4 other indebtedness secured by valid encumbrances of record against
5 the homestead does not exceed 80 percent of the fair market value of
6 the homestead on the date the extension of credit is made;

7 (C) is without recourse for personal liability
8 against each owner and the spouse of each owner, unless the owner or
9 spouse obtained the extension of credit by actual fraud;

10 (D) is secured by a lien that may be foreclosed
11 upon only by a court order;

12 (E) does not require the owner or the owner's
13 spouse to pay, in addition to any interest, fees to the lender or
14 originator [~~any person~~] that are necessary to originate, evaluate,
15 maintain, record, insure, or service the extension of credit that
16 exceed, in the aggregate, three percent of the original principal
17 amount of the extension of credit;

18 (F) is not a form of open-end account that may be
19 debited from time to time or under which credit may be extended from
20 time to time unless the open-end account is a home equity line of
21 credit;

22 (G) is payable in advance without penalty or
23 other charge;

24 (H) is not secured by any additional real or
25 personal property other than the homestead;

26 (I) is not secured by homestead property that on
27 the date of closing is designated for agricultural use as provided

1 by statutes governing property tax, unless such homestead property
2 is used primarily for the production of milk;

3 (J) may not be accelerated because of a decrease
4 in the market value of the homestead or because of the owner's
5 default under other indebtedness not secured by a prior valid
6 encumbrance against the homestead;

7 (K) is the only debt secured by the homestead at
8 the time the extension of credit is made unless the other debt was
9 made for a purpose described by Subsections (a)(1)-(a)(5) or
10 Subsection (a)(8) of this section;

11 (L) is scheduled to be repaid:

12 (i) in substantially equal successive
13 periodic installments, not more often than every 14 days and not
14 less often than monthly, beginning no later than two months from the
15 date the extension of credit is made, each of which equals or
16 exceeds the amount of accrued interest as of the date of the
17 scheduled installment; or

18 (ii) if the extension of credit is a home
19 equity line of credit, in periodic payments described under
20 Subsection (t)(8) of this section;

21 (M) is closed not before:

22 (i) the 12th day after the later of the date
23 that the owner of the homestead submits a loan application to the
24 lender for the extension of credit or the date that the lender
25 provides the owner a copy of the notice prescribed by Subsection (g)
26 of this section;

27 (ii) one business day after the date that

1 the owner of the homestead receives a copy of the loan application
2 if not previously provided and a final itemized disclosure of the
3 actual fees, points, interest, costs, and charges that will be
4 charged at closing. If a bona fide emergency or another good cause
5 exists and the lender obtains the written consent of the owner, the
6 lender may provide the documentation to the owner or the lender may
7 modify previously provided documentation on the date of closing;
8 and

9 (iii) the first anniversary of the closing
10 date of any other extension of credit described by Subsection
11 (a)(6) of this section secured by the same homestead property,
12 except a refinance described by Paragraph (Q)(x)(f) of this
13 subdivision, unless the owner on oath requests an earlier closing
14 due to a state of emergency that:

15 (a) has been declared by the president
16 of the United States or the governor as provided by law; and

17 (b) applies to the area where the
18 homestead is located;

19 (N) is closed only at the office of the lender, an
20 attorney at law, or a title company;

21 (O) permits a lender to contract for and receive
22 any fixed or variable rate of interest authorized under statute;

23 (P) is made by one of the following that has not
24 been found by a federal regulatory agency to have engaged in the
25 practice of refusing to make loans because the applicants for the
26 loans reside or the property proposed to secure the loans is located
27 in a certain area:

1 (i) a bank, savings and loan association,
2 savings bank, or credit union doing business under the laws of this
3 state or the United States;

4 (ii) a federally chartered lending
5 instrumentality or a person approved as a mortgagee by the United
6 States government to make federally insured loans;

7 (iii) a person licensed to make regulated
8 loans, as provided by statute of this state;

9 (iv) a person who sold the homestead
10 property to the current owner and who provided all or part of the
11 financing for the purchase;

12 (v) a person who is related to the homestead
13 property owner within the second degree of affinity or
14 consanguinity; or

15 (vi) a person regulated by this state as a
16 mortgage broker; and

17 (Q) is made on the condition that:

18 (i) the owner of the homestead is not
19 required to apply the proceeds of the extension of credit to repay
20 another debt except debt secured by the homestead or debt to another
21 lender;

22 (ii) the owner of the homestead not assign
23 wages as security for the extension of credit;

24 (iii) the owner of the homestead not sign
25 any instrument in which blanks relating to substantive terms of
26 agreement are left to be filled in;

27 (iv) the owner of the homestead not sign a

1 confession of judgment or power of attorney to the lender or to a
2 third person to confess judgment or to appear for the owner in a
3 judicial proceeding;

4 (v) at the time the extension of credit is
5 made, the owner of the homestead shall receive a copy of the final
6 loan application and all executed documents signed by the owner at
7 closing related to the extension of credit;

8 (vi) the security instruments securing the
9 extension of credit contain a disclosure that the extension of
10 credit is the type of credit defined by Section 50(a)(6), Article
11 XVI, Texas Constitution;

12 (vii) within a reasonable time after
13 termination and full payment of the extension of credit, the lender
14 cancel and return the promissory note to the owner of the homestead
15 and give the owner, in recordable form, a release of the lien
16 securing the extension of credit or a copy of an endorsement and
17 assignment of the lien to a lender that is refinancing the extension
18 of credit;

19 (viii) the owner of the homestead and any
20 spouse of the owner may, within three days after the extension of
21 credit is made, rescind the extension of credit without penalty or
22 charge;

23 (ix) the owner of the homestead and the
24 lender sign a written acknowledgment as to the fair market value of
25 the homestead property on the date the extension of credit is made;

26 (x) except as provided by Subparagraph (xi)
27 of this paragraph, the lender or any holder of the note for the

1 extension of credit shall forfeit all principal and interest of the
2 extension of credit if the lender or holder fails to comply with the
3 lender's or holder's obligations under the extension of credit and
4 fails to correct the failure to comply not later than the 60th day
5 after the date the lender or holder is notified by the borrower of
6 the lender's failure to comply by:

7 (a) paying to the owner an amount
8 equal to any overcharge paid by the owner under or related to the
9 extension of credit if the owner has paid an amount that exceeds an
10 amount stated in the applicable Paragraph (E), (G), or (O) of this
11 subdivision;

12 (b) sending the owner a written
13 acknowledgement that the lien is valid only in the amount that the
14 extension of credit does not exceed the percentage described by
15 Paragraph (B) of this subdivision, if applicable, or is not secured
16 by property described under Paragraph (H) or (I) of this
17 subdivision, if applicable;

18 (c) sending the owner a written notice
19 modifying any other amount, percentage, term, or other provision
20 prohibited by this section to a permitted amount, percentage, term,
21 or other provision and adjusting the account of the borrower to
22 ensure that the borrower is not required to pay more than an amount
23 permitted by this section and is not subject to any other term or
24 provision prohibited by this section;

25 (d) delivering the required documents
26 to the borrower if the lender fails to comply with Subparagraph (v)
27 of this paragraph or obtaining the appropriate signatures if the

1 lender fails to comply with Subparagraph (ix) of this paragraph;

2 (e) sending the owner a written
3 acknowledgement, if the failure to comply is prohibited by
4 Paragraph (K) of this subdivision, that the accrual of interest and
5 all of the owner's obligations under the extension of credit are
6 abated while any prior lien prohibited under Paragraph (K) remains
7 secured by the homestead; or

8 (f) if the failure to comply cannot be
9 cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the
10 failure to comply by a refund or credit to the owner of \$1,000 and
11 offering the owner the right to refinance the extension of credit
12 with the lender or holder for the remaining term of the loan at no
13 cost to the owner on the same terms, including interest, as the
14 original extension of credit with any modifications necessary to
15 comply with this section or on terms on which the owner and the
16 lender or holder otherwise agree that comply with this section; and

17 (xi) the lender or any holder of the note
18 for the extension of credit shall forfeit all principal and
19 interest of the extension of credit if the extension of credit is
20 made by a person other than a person described under Paragraph (P)
21 of this subdivision or if the lien was not created under a written
22 agreement with the consent of each owner and each owner's spouse,
23 unless each owner and each owner's spouse who did not initially
24 consent subsequently consents;

25 (7) a reverse mortgage; or

26 (8) the conversion and refinance of a personal
27 property lien secured by a manufactured home to a lien on real

1 property, including the refinance of the purchase price of the
2 manufactured home, the cost of installing the manufactured home on
3 the real property, and the refinance of the purchase price of the
4 real property.

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

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

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

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

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

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

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

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

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

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

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

8 "(I) THE LOAN MAY NOT BE SECURED BY HOMESTEAD PROPERTY THAT
9 IS DESIGNATED FOR AGRICULTURAL USE AS OF THE DATE OF CLOSING, UNLESS
10 THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE
11 PRODUCTION OF MILK;

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

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

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

22 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
23 LOAN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE
24 THIS NOTICE, WHICHEVER DATE IS LATER; AND MAY NOT WITHOUT YOUR
25 CONSENT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH YOU
26 RECEIVE A COPY OF YOUR LOAN APPLICATION IF NOT PREVIOUSLY PROVIDED
27 AND A FINAL ITEMIZED DISCLOSURE OF THE ACTUAL FEES, POINTS,

1 INTEREST, COSTS, AND CHARGES THAT WILL BE CHARGED AT CLOSING; AND IF
2 YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST
3 YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE
4 ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN, UNLESS
5 ON OATH YOU REQUEST AN EARLIER CLOSING DUE TO A DECLARED STATE OF
6 EMERGENCY;

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

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

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

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

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

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

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

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

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

27 "(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A

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

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

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

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

10 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND
11 INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S
12 OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS
13 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 REBORROW
17 MONEY UNDER THE LINE OF CREDIT;

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

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

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

26 "(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN
27 ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80

1 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF
2 CREDIT IS ESTABLISHED;

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

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

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

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

17 SECTION 2. This proposed constitutional amendment shall be
18 submitted to the voters at an election to be held November 3, 2015.
19 The ballot shall be printed to provide for voting for or against the
20 proposition: "The constitutional amendment concerning fees that
21 are subject to the maximum allowable limit to obtain a home equity
22 loan."