

By: Toth

H.J.R. No. 104

A JOINT RESOLUTION

1 proposing a constitutional amendment authorizing the legislature
2 to provide for exceptions to the requirement that a home equity loan
3 be closed only at the office of the lender, an attorney at law, or a
4 title company.

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

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

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

11 (1) the purchase money thereof, or a part of such
12 purchase money;

13 (2) the taxes due thereon;

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

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

23 (5) work and material used in constructing new
24 improvements thereon, if contracted for in writing, or work and

1 material used to repair or renovate existing improvements thereon
2 if:

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

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

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

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

27 (6) an extension of credit that:

1 (A) is secured by a voluntary lien on the
2 homestead created under a written agreement with the consent of
3 each owner and each owner's spouse;

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

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

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

14 (E) does not require the owner or the owner's
15 spouse to pay, in addition to any interest or any bona fide discount
16 points used to buy down the interest rate, any fees to any person
17 that are necessary to originate, evaluate, maintain, record,
18 insure, or service the extension of credit that exceed, in the
19 aggregate, two percent of the original principal amount of the
20 extension of credit, excluding fees for:

21 (i) an appraisal performed by a third party
22 appraiser;

23 (ii) a property survey performed by a state
24 registered or licensed surveyor;

25 (iii) a state base premium for a mortgagee
26 policy of title insurance with endorsements established in
27 accordance with state law; or

1 (iv) a title examination report if its cost
2 is less than the state base premium for a mortgagee policy of title
3 insurance without endorsements established in accordance with
4 state law;

5 (F) is not a form of open-end account that may be
6 debited from time to time or under which credit may be extended from
7 time to time unless the open-end account is a home equity line of
8 credit;

9 (G) is payable in advance without penalty or
10 other charge;

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

13 (I) (repealed);

14 (J) may not be accelerated because of a decrease
15 in the market value of the homestead or because of the owner's
16 default under other indebtedness not secured by a prior valid
17 encumbrance against the homestead;

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

22 (L) is scheduled to be repaid:

23 (i) in substantially equal successive
24 periodic installments, not more often than every 14 days and not
25 less often than monthly, beginning no later than two months from the
26 date the extension of credit is made, each of which equals or
27 exceeds the amount of accrued interest as of the date of the

1 scheduled installment; or

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

5 (M) is closed not before:

6 (i) the 12th day after the later of the date
7 that the owner of the homestead submits a loan application to the
8 lender for the extension of credit or the date that the lender
9 provides the owner a copy of the notice prescribed by Subsection (g)
10 of this section;

11 (ii) one business day after the date that
12 the owner of the homestead receives a copy of the loan application
13 if not previously provided and a final itemized disclosure of the
14 actual fees, points, interest, costs, and charges that will be
15 charged at closing. If a bona fide emergency or another good cause
16 exists and the lender obtains the written consent of the owner, the
17 lender may provide the documentation to the owner or the lender may
18 modify previously provided documentation on the date of closing;
19 and

20 (iii) the first anniversary of the closing
21 date of any other extension of credit described by Subsection
22 (a)(6) of this section secured by the same homestead property,
23 except a refinance described by Paragraph (Q)(x)(f) of this
24 subdivision, unless the owner on oath requests an earlier closing
25 due to a state of emergency that:

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

1 (b) applies to the area where the
2 homestead is located;

3 (N) is closed only at the office of the lender, an
4 attorney at law, or a title company, except as otherwise provided by
5 statute;

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

8 (P) is made by one of the following that has not
9 been found by a federal regulatory agency to have engaged in the
10 practice of refusing to make loans because the applicants for the
11 loans reside or the property proposed to secure the loans is located
12 in a certain area:

13 (i) a bank, savings and loan association,
14 savings bank, or credit union doing business under the laws of this
15 state or the United States, including a subsidiary of a bank,
16 savings and loan association, savings bank, or credit union
17 described by this subparagraph;

18 (ii) a federally chartered lending
19 instrumentality or a person approved as a mortgagee by the United
20 States government to make federally insured loans;

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

23 (iv) a person who sold the homestead
24 property to the current owner and who provided all or part of the
25 financing for the purchase;

26 (v) a person who is related to the homestead
27 property owner within the second degree of affinity or

1 consanguinity; or

2 (vi) a person regulated by this state as a
3 mortgage banker or mortgage company; and

4 (Q) is made on the condition that:

5 (i) the owner of the homestead is not
6 required to apply the proceeds of the extension of credit to repay
7 another debt except debt secured by the homestead or debt to another
8 lender;

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

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

14 (iv) the owner of the homestead not sign a
15 confession of judgment or power of attorney to the lender or to a
16 third person to confess judgment or to appear for the owner in a
17 judicial proceeding;

18 (v) at the time the extension of credit is
19 made, the owner of the homestead shall receive a copy of the final
20 loan application and all executed documents signed by the owner at
21 closing related to the extension of credit;

22 (vi) the security instruments securing the
23 extension of credit contain a disclosure that the extension of
24 credit is the type of credit defined by Subsection (a)(6) of this
25 section;

26 (vii) within a reasonable time after
27 termination and full payment of the extension of credit, the lender

1 cancel and return the promissory note to the owner of the homestead
2 and give the owner, in recordable form, a release of the lien
3 securing the extension of credit or a copy of an endorsement and
4 assignment of the lien to a lender that is refinancing the extension
5 of credit;

6 (viii) the owner of the homestead and any
7 spouse of the owner may, within three days after the extension of
8 credit is made, rescind the extension of credit without penalty or
9 charge;

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

13 (x) except as provided by Subparagraph (xi)
14 of this paragraph, the lender or any holder of the note for the
15 extension of credit shall forfeit all principal and interest of the
16 extension of credit if the lender or holder fails to comply with the
17 lender's or holder's obligations under the extension of credit and
18 fails to correct the failure to comply not later than the 60th day
19 after the date the lender or holder is notified by the borrower of
20 the lender's failure to comply by:

21 (a) paying to the owner an amount
22 equal to any overcharge paid by the owner under or related to the
23 extension of credit if the owner has paid an amount that exceeds an
24 amount stated in the applicable Paragraph (E), (G), or (O) of this
25 subdivision;

26 (b) sending the owner a written
27 acknowledgement that the lien is valid only in the amount that the

1 extension of credit does not exceed the percentage described by
2 Paragraph (B) of this subdivision, if applicable, or is not secured
3 by property described under Paragraph (H) of this subdivision, if
4 applicable;

5 (c) sending the owner a written notice
6 modifying any other amount, percentage, term, or other provision
7 prohibited by this section to a permitted amount, percentage, term,
8 or other provision and adjusting the account of the borrower to
9 ensure that the borrower is not required to pay more than an amount
10 permitted by this section and is not subject to any other term or
11 provision prohibited by this section;

12 (d) delivering the required documents
13 to the borrower if the lender fails to comply with Subparagraph (v)
14 of this paragraph or obtaining the appropriate signatures if the
15 lender fails to comply with Subparagraph (ix) of this paragraph;

16 (e) sending the owner a written
17 acknowledgement, if the failure to comply is prohibited by
18 Paragraph (K) of this subdivision, that the accrual of interest and
19 all of the owner's obligations under the extension of credit are
20 abated while any prior lien prohibited under Paragraph (K) remains
21 secured by the homestead; or

22 (f) if the failure to comply cannot be
23 cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the
24 failure to comply by a refund or credit to the owner of \$1,000 and
25 offering the owner the right to refinance the extension of credit
26 with the lender or holder for the remaining term of the loan at no
27 cost to the owner on the same terms, including interest, as the

1 original extension of credit with any modifications necessary to
2 comply with this section or on terms on which the owner and the
3 lender or holder otherwise agree that comply with this section; and

4 (xi) the lender or any holder of the note
5 for the extension of credit shall forfeit all principal and
6 interest of the extension of credit if the extension of credit is
7 made by a person other than a person described under Paragraph (P)
8 of this subdivision or if the lien was not created under a written
9 agreement with the consent of each owner and each owner's spouse,
10 unless each owner and each owner's spouse who did not initially
11 consent subsequently consents;

12 (7) a reverse mortgage; or

13 (8) the conversion and refinance of a personal
14 property lien secured by a manufactured home to a lien on real
15 property, including the refinance of the purchase price of the
16 manufactured home, the cost of installing the manufactured home on
17 the real property, and the refinance of the purchase price of the
18 real property.

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

24 "NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION
25 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

26 "SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION
27 ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME.

1 SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY
2 THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY
3 FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

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

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

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

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

15 "(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 2
16 PERCENT OF THE LOAN AMOUNT, EXCEPT FOR A FEE OR CHARGE FOR AN
17 APPRAISAL PERFORMED BY A THIRD PARTY APPRAISER, A PROPERTY SURVEY
18 PERFORMED BY A STATE REGISTERED OR LICENSED SURVEYOR, A STATE BASE
19 PREMIUM FOR A MORTGAGEE POLICY OF TITLE INSURANCE WITH
20 ENDORSEMENTS, OR A TITLE EXAMINATION REPORT;

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

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

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

26 "(I) (repealed);

27 "(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN

1 AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES
2 OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR
3 HOME ;

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

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

10 "(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A
11 LOAN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE
12 THIS NOTICE, WHICHEVER DATE IS LATER; AND MAY NOT WITHOUT YOUR
13 CONSENT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH YOU
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, UNLESS YOU QUALIFY FOR AN
24 EXCEPTION PROVIDED BY LAW ;

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

27 "(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS

1 DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS
2 CONSTITUTION;

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

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

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

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

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

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

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

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

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

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

26 "(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND
27 INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S

1 OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS
2 PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS
3 CONSTITUTION; AND

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

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

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

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

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

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

19 "(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY
20 TIME EXCEEDS 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS
21 DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY
22 NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE
23 BALANCE IS LESS THAN 80 PERCENT OF THE FAIR MARKET VALUE; AND

24 "(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE
25 LINE OF CREDIT.

26 "THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS
27 CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI,

1 OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

2 If the discussions with the borrower are conducted primarily
3 in a language other than English, the lender shall, before closing,
4 provide an additional copy of the notice translated into the
5 written language in which the discussions were conducted.

6 SECTION 2. This proposed constitutional amendment shall be
7 submitted to the voters at an election to be held November 2, 2021.
8 The ballot shall be printed to permit voting for or against the
9 proposition: "The constitutional amendment authorizing the
10 legislature to provide for exceptions to the requirement that a
11 home equity loan be closed only at the office of the lender, an
12 attorney at law, or a title company."