

BILL ANALYSIS

H.B. 264
By: Toth
Pensions, Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The Texas Constitution considers a home equity loan to be a valid lien on Texas homestead property, but with many conditions. One of those conditions is that a home equity loan be closed at the office of the lender, an attorney at law, or a title company. Further, the Texas Supreme Court has ruled that a power of attorney used for a home equity loan must also be executed in one of those prescribed locations. Constituents concerned by these constraints requested legislation to allow for virtual closings for a limited number of individuals who cannot attend an in-person closing due to military duties, verified disability or quarantine needs, or incarceration. H.B. 264 seeks to address this issue by providing for virtual closings for certain borrowers.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 264 amends the Finance Code to authorize an eligible borrower of a home equity loan, in lieu of closing the loan in person at the office of the lender, an attorney, or a title company, to close the loan as follows:

- from a remote location using remote online notarization; or
- through an agent who meets the following criteria:
 - the agent is acting under a durable power of attorney that expressly grants the agent the authority to engage in a home equity loan transaction on behalf of the borrower, regardless of where the borrower signed the power of attorney; and
 - the agent appears in person for the closing at the office of the lender, attorney, or title company on behalf of the borrower.

This authorization applies to the closing of a home equity loan by a borrower who meets the following criteria:

- the borrower is located outside of Texas at the time of the closing and is:
 - a member of the U.S. armed forces who is on active duty or the spouse or surviving spouse of the member;
 - an officer of the Commissioned Corps of the U.S. Public Health Service who is on active duty or the spouse or surviving spouse of the member;
 - a member of reserve components of the U.S. armed forces who is on active duty or the spouse or surviving spouse of the member; or

- a civilian employee of the federal government employed by, serving with, or accompanying the U.S. armed forces, if assigned to a foreign country or a vessel or unit of the U.S. armed forces;
- the borrower has a disability that prohibits travel or is quarantined to protect the borrower's health or the health of others, as verified by a written letter from a physician; or
- the borrower is unable to travel to the closing because the borrower is incarcerated or under house arrest.

H.B. 264 amends the Estates Code to make conforming changes to the statutory durable power of attorney form and the form for certification of durable power of attorney by an agent. The bill also clarifies in the statutory durable power of attorney form that home equity loan transactions fall under the category of real property transactions for purposes of granting agent powers.

H.B. 264 applies only to a durable power of attorney executed on or after the bill's effective date.

EFFECTIVE DATE

January 1, 2024, if the constitutional amendment authorizing the legislature to provide for exceptions to the requirement that a home equity loan be closed only at the office of the lender, an attorney at law, or a title company is approved by the voters.