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MEMORANDUM

TO: Clients and Friends of the Firm

FROM: Al Alsup

DATE: July 25, 2003

SUBJECT: Significant Home Equity Loan Reform Measures in the Offing: SJR 42 Proposes Constitutional Amendment for Approval by Voters on September 13, 2003

INTRODUCTION

SJR 42 WOULD AMEND TEXAS CONSTITUTION TO DEFANG DRACONIAN FORFEITURE PROVISION AND AUTHORIZE OPEN-END LINES OF CREDIT

Voters at a public referendum to be held September 13, 2003, are expected to approve significant home equity loan reform measures proposed by SJR 42, a joint resolution passed by a required super-majority (2/3) vote of both houses of the 78th Texas Legislature and filed with the Secretary of State on June 3, 2003. SJR 42 proposes to amend Section 50(a), Article XVI, Texas Constitution, to reform some of the overly restrictive constitutional conditions complained of by creditors ever since home equity loans were first authorized in Texas effective January 1, 1998.

These reform measures when approved by voters would:

- *Define New Cure Procedures:* Recast the dreaded constitutional "forfeiture provision" as a definitive "cure provision" that should virtually eliminate the risk to creditors that unintended deficiencies in documentation or closing procedures could have the consequence of forfeiture of loan principal and interest;

- *Authorize HELOCs*: Authorize a form of revolving home equity line of credit that for the first time would allow Texas homeowners to borrow money secured by their homes in draws from time to time when a need arises, subject to minimum draw, maximum loan, and other limitations;

- *Authorize Delegated Rulemaking Power:* Authorize the legislature to delegate the power to one or more state agencies to interpret the complex and often ambiguous constitutional home equity provisions and provide legal protections to lenders relying on those interpretations;

- *Require New Disclosure of Actual Costs*: Require that a final itemized disclosure of actual fees, points, interest and costs that will be charged to the borrower at closing be given the borrower at least one business day before the date of closing;

- *Authorize Bi-Weekly Payments*: Amend the constitutional provision requiring installment payments on home equity loans to be made monthly to provide the flexibility for homeowners to repay home equity loans in substantially equal successive periodic installments scheduled no more often than every 14 days and no less often than monthly;

- *Authorize Refinance of a Home Equity with a Reverse Mortgage Loan*: Amend the "Once a home equity, always a home equity" constitutional provision to permit refinancing of a home equity loan by senior homeowners with the proceeds of a reverse mortgage;

- *Amend Defective 12-Day Notice*: Amend the promulgated notice concerning home equity extensions of credit (which must be given homeowners to commence the 12-day "cooling off" period before a home equity loan may be closed) to correct defective language, add new disclosures regarding HELOCs, and clarify that actual constitutional language prevails over inconsistent summaries of consumer rights in the promulgated notice; and

- *Authorize Mortgage Brokers to Make Home Equity Loans*: Amend the constitutional provision enumerating the categories of authorized lenders to include Texas licensed mortgage brokers and thereby clarify their uncertain authority to originate home equity loans.

SJR 42 will appear on the ballot as Proposition 16 and be captioned as follows: "The constitutional amendment authorizing a home equity line of credit, providing for administrative interpretation of home equity lending law, and otherwise relating to the making, refinancing, repayment, and enforcement of home equity loans." If approved by a simple majority of qualified voters on September 13, these constitutional amendments would be effective on the date of the official canvass of the election returns. By law, the canvass date may not be earlier than the 15th or later than the 30th day after the September 13th election day. The home equity loan amendments proposed by SJR 42 therefore could be effective as early as September 28, 2003 or as late as October 13, 2003.

This memorandum summarizes the key home equity loan reform measures proposed by SJR 42. The full text of the bill itself may be retrieved from the Texas Legislature Online Web site at www.capitol.state.tx.us (type "SJR 42" in Quick Bill Status box, click "Go", and then click "Text.").

SUMMARY OF PROPOSED HOME EQUITY REFORM AMENDMENTS

A. *FORFEITURE* PROVISION WOULD BE AMENDED TO PROVIDE CLEAR GUIDELINES FOR LENDERS TO CURE (a)(6) ERRORS AND DEFICIENCIES

Section 50(a)(6)(Q)(x) provides that the lender or any holder of a promissory note made in connection with an (a)(6) equity loan shall forfeit all principal and interest of the loan "if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit within a reasonable time after the lender or holder is notified by the borrower of the lender's failure to comply."

This express forfeiture provision and the *strict compliance* standard traditionally applied by Texas courts when determining the validity and enforceability of homestead lien claims have been particular troubling to many traditional mortgage lenders because of the perceived risk that even unintended deficiencies in home equity documentation or procedures when making an (a)(6) equity loan could result in a draconian forfeiture of all principal and interest. Texas homeowners are thought to pay a premium interest rate because of this perceived risk and the consequent reluctance of many traditional mortgage lenders to originate, and secondary mortgage investors to make an efficient market in, Texas home equity loans.

The Texas Supreme Court in a 2001 landmark decision construing subsection (Q)(x), however, found that the legislature through enactment of this provision intended for lenders to have the right and opportunity to cure unintended deficiencies without the risk of forfeiture if acting promptly after being notified of any failure to comply with the constitution. The high court in *Doody v. Ameriquest Mortgage Co.*, 49 S.W.3d 342 (Tex. 2001), departed from the traditional *strict compliance* standard and generally characterized subsection (Q)(x) as a "cure provision" that permits lenders to cure mistakes. SJR 42 takes its cue from the *Doody* decision and would now amend Subsection (Q)(x) to provide clear guidelines regarding the timing and procedural requirements that lenders must follow to invoke the protections of the (Q)(x) cure provision.

As amended, subsection (Q)(x) would provide a lender or holder of a home equity loan a 60-day period in which to cure any failure on its part to comply with its constitutional obligations after receiving notification from the borrower of a violation. Specifically, subsection (Q)(x) would provide that a lender or any holder of a promissory note made in connection with a home equity loan would be subject to forfeiture of all principal and interest of the loan for a failure to comply with its obligations under the loan only if the lender or holder "fails to correct the failure to comply not later than the 60th day after the date that the lender or holder is notified by the borrower" . . . of the violation. To correct the violation, the lender or holder must take one or more of the specific actions set out in subdivisions (Q)(x)(a) – (f), as applicable:

(a) Refund of Overcharges. If the borrower/owner has paid an amount to the lender or holder that exceeds the *3% fee cap* under Subsection (a)(6)(E) or another amount controlled by the Texas Constitution under Subsections (a)(6)(G) prohibiting *prepayment penalties* or (a)(6)(O) regulating *interest* charges, the lender or holder must pay to the borrower/owner an amount of money equal to any such overcharge.

(b) Acknowledgment of Partial Lien Invalidity. If the principal amount of the loan at closing exceeds the limitations under Subsection (a)(6)(B) of *80% of the fair market value* of the homestead property (when added to the aggregate balances of all other valid encumbrances of record), the lender or holder must send the borrower/owner a written acknowledgment that the lien securing the home equity loan is valid only in the amount and to the extent that the amount does not exceed the 80% loan-to-value limitation.

If the loan purports to be secured by any real or personal property other than the homestead property as *additional collateral* prohibited by Subsection (a)(6)(H), the lender or holder must send the borrower/owner a written acknowledgment that the loan is not secured by any such additional real or personal property.

Finally, if the loan purports to be secured by any homestead property designated for *agricultural use* prohibited by Subsection (a)(6)(I), the lender or holder must send the borrower/owner a written acknowledgment that the loan is not secured by any such

agricultural property. [Note: While avoiding a forfeiture (which arguably would require that fees, charges, and interest paid to date be disgorged), this curative action would appear to leave the hapless lender as holder of a non-recourse, unsecured loan.]

(c) Modification of Prohibited Terms. If the home equity loan contains any other amount, percentage, term, or other provision prohibited by Section 50, the lender or holder must (i) send the borrower/owner a written notice modifying the loan to conform to an amount, percentage, term, or other provision permitted by Section 50, and (ii) adjust the account of the borrower/owner to ensure that the borrower is not required to pay more than an amount permitted by the constitution and is not subject to any other term or provision prohibited by Section 50.

(d) Delivery of Signed Documents. If the lender has (i) failed to provide the borrower/owner a copy of all documents signed by the borrower/owner related to the home equity loan at the time of closing as required by Subsection (Q)(v) or (ii) failed to obtain the required signatures of the owner and/or the lender on the written acknowledgment of fair market value as required by Subsection (Q)(ix), the lender or holder must deliver the required documents to the borrower.

(e) Acknowledgment of Abatement of Interest and Obligations. If the lender has made a home equity loan on a homestead property that already has a home equity debt secured on the same property made under Subsection (a)(6) or a reverse mortgage debt secured on the same property made under Subsection (a)(7) in violation of Subsection (a)(6)(K), the lender or holder must send the borrower/owner a written acknowledgment that the accrual of interest and all of the owner's obligations under the loan are abated while any such prior (a)(6) or (a)(7) lien remains secured by the same homestead property.

(f) Payment of $1,000 Penalty and Offer of "No Cost" Refinancing. If the lender when making a home equity loan has failed to comply with any constitutional obligation that cannot be cured under any of the foregoing subdivisions (a) – (e), the lender or holder may cure the failure to comply by (i) a refund or credit to the borrower/owner of the sum of $1,000 *and* (ii) an offer to the borrower/owner of the right to refinance the home equity loan with the lender or holder for the remaining term of the loan at no cost to the borrower/owner on the same terms, including interest, as the original home equity loan (with any modifications in terms necessary for the loan to comply with Section 50 requirements or on such terms as the lender or holder and the borrower otherwise may agree upon). [Note: Such a refinancing made under the cure provisions of subdivision (Q)(x)(f) would not be subject to the seasoning limitations of amended Subsection (a)(6)(M)(iii), which otherwise would prohibit the refinance of an (a)(6) equity loan before the first anniversary of the closing date of the loan.]

Although subdivisions (a) – (e) seem to provide clear guidelines for a lender to cure the more common constitutional deficiencies and subdivision (f) is designed to provide a means of curing violations that otherwise do not lend themselves to such easy cure (including, for example, the failure of the lender to have deferred the loan closing for a 12-day "cooling off" period under Subsection (a)(6)(M)), all risks of forfeiture would not be eliminated by the revamped (Q)(x) cure provision. Two violations particularly are excepted from the cure provision under Subsection (Q)(xi), and the lender or holder of a home equity loan would expressly forfeit all principal and interest of the loan:

- *If* the loan is made by a lender that is not authorized by Subsection (a)(6)(P) to make home equity loans [Note: Licensed Texas mortgage brokers would be added as a new category of authorized lenders under new subdivision (P)(vi).]; or

- *If* the lien securing the loan was not created under a written agreement with the consent of each owner *and* each owner's spouse as required by Subsection (a)(6)(A) (*unless* the lender subsequently obtains the written consent of each owner and each owner's spouse who did not initially consent).

Furthermore, uncertainties persist regarding the precise procedures that lenders must follow to invoke the protections of the (Q)(x) cure provisions. For example, although the borrower/owner is required to first give notice of a violation to the lender to start the running of the 60-day period in which the lender or holder must act to cure the violation, the form and the manner of delivery of such a notice is not specified. The notice is not expressly required by the constitution to be in writing or delivered to the lender or holder at any particular address or by any particular means. Arguably, an unrecorded complaint made orally by telephone call to the holder's loan servicing department or even to the lender's branch production office might suffice as notice that initiates the running of 60-day cure period. Lenders may need to redraft notice provisions set out in their standard forms of promissory notes and security instruments documenting home equity loans for that reason to require that the borrower make any notice required under the loan documents or the constitution or statutes of the State of Texas in writing and deliver or mail the notice to a particular centralized address where trained personnel may log them in and process the notices appropriately (although such a provision might not be enforced by the courts as an effective waiver of vested constitutional rights of the owner under (Q)(x) to provide notice by any means). Moreover, the 60-day period appears to be an absolute, and no *mailbox rule* has been provided in the amendment that would deem the lender's notice or other required curative action to be timely if mailed properly stamped and postmarked by midnight of the 60th day. Similarly, no provision has been made for curative efforts that are begun within the 60-day period and diligently pursued, but not completed by midnight of the 60th day.

B. CONSTITUTIONAL PROHIBITION AGAINST OPEN-END ACCOUNTS WOULD BE AMENDED TO AUTHORIZE A FORM OF HOME EQUITY LINE OF CREDIT

Subsection (a)(6)(F) defines a Texas home equity loan in part as an extension of credit that "is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time." SJR 42 would amend Subsection (a)(6)(F) to provide that open-end accounts are prohibited "unless the open-end account is a home equity line of credit" as defined by new Subsection (t). This reform measure would authorize for the first time in Texas a form of home equity line of credit that would permit homeowners, subject to limitations, to borrow against the built-up equity in their homes in requested advances from time to time when the homeowner has a specific use or need for the money. Homeowners should be able to minimize their costs of borrowings under line of credit terms by fixing the amount and timing of their borrowings to coincide with their needs, such as when college tuition payments are due each fall and spring.

As amended, new Subsection (t) would define an authorized Texas home equity line of credit as "a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which . . .":

(1) Revolving Line of Credit. The borrower/owner requests advances, repays money, and "reborrows" money;

(2) $4,000 Minimum Advance: Any single debit or advance is not less than $4,000;

(3) No Credit Card: The borrower/owner does not use a credit card, debit card, preprinted solicitation check, or similar device to obtain an advance;

(4) No Advance Fees: Any fees charged by the lender are charged and collected only at loan closing (subject to the 3% fee cap provisions) and no fee is charged or collected in connection with any debit or advance;

(5) 80% Loan to Value Limitation: The maximum principal amount that may be extended under the account (when added to the aggregate total of all other indebtedness secured by the homestead property as of the date of closing) does not exceed 80% of the fair market value of the homestead as provided under Subsection (a)(6)(B);

(6) 50% Outstanding Balance to Value Limitation: No additional debits or advances are made if the total principal amount outstanding exceeds an amount equal to 50% of the fair market value of the homestead property determined as of the date of closing;

(7) No Unilateral Amendment: The lender or holder may not unilaterally amend the terms of the loan; and

(8) Regular Periodic Repayment Installments: Repayment is made in regular periodic installments that are not more frequent than every 14 days and not less frequent than monthly and that commence not later than two months from the date the extension of credit is established; and

- during the draw period in which the borrower/owner may request advances, each such installment equals or exceeds the amount of accrued interest; and

- after the draw period in which the borrower/owner may request advances, installments are made in substantially equal amounts.

A Texas home equity line of credit (HELOC) loan of course, may be made only under, and subject to, the 25 or more conditions of Section 50(a)(6) applicable to other Texas home equity loans, except as modified by subsection (t). A Texas HELOC conforming to these constitutional requirements would differ from typical HELOC loan programs in other jurisdictions where borrowers are permitted to draw any amount up to a maximum limit unilaterally established by the lender from time to time and to repay the loan in minimum monthly payments of only 1.5% of the unpaid principal balance — with a resulting large balloon payment at the end of a 5-10 year term that often must be refinanced. Moreover, an annual fee and transaction fees in connection with each draw requested and the release or reconveyance of the security upon satisfaction of the loan are typically charged the borrower in addition to interest.

Under Texas law, homeowners could be charged fees, other than interest, only at loan closing and would be restricted in their borrowings both with respect to the amount of each advance (i.e., not less than $4,000) and a maximum loan limit determined as of the date of the loan closing (i.e., not exceeding 50% of the homestead property's then fair market value). Furthermore, the terms of repayment (after an initial draw period in which interest only may be charged) require that bi-weekly or monthly payments be fixed in substantially equal amounts (i.e., presumably in equal amount adequate to amortize the unpaid balance over the remaining term of the loan). These amortizing payment terms and the 50% LTV maximum loan limits are consumer protection provisions designed to assure that Texas homeowners will not over-extend their borrowings and risk losing their homesteads through foreclosure.

C. THE LEGISLATURE WOULD BE AUTHORIZED TO DELEGATE TO ONE OR MORE STATE AGENCIES THE POWER TO INTERPRET SUBSECTIONS (a)(5) HOME IMPROVEMENT, (a)(6) HOME EQUITY,

AND (a)(7) REVERSE MORTGAGE PROVISIONS AND THEREBY PROVIDE LENDERS "RELIANCE ON RULE" PROTECTIONS.

One of the criticisms of the 1997 legislation amending the Texas Constitution to first authorize home equity lending in Texas was that no implementing legislation accompanied the amendment and no state agency was delegated rulemaking authority to provide interpretive guidance to mortgage lenders and homeowners seeking to comply with the complex and often ambiguous requirements of Section 50. The Office of the Attorney General refrained from responding to numerous requests for interpretations of the new constitutional provisions by calling on the legislature in a May 29, 1998 letter to revisit Section 50 and to provide a mechanism for giving lenders and consumers interpretive guidance:

> "Furthermore, we believe that the legislature should be given the opportunity to revisit section 50 in the next legislative session. As we have said, no state agency was given regulatory authority to construe or enforce the amendments, nor was any enabling legislation passed or mandated in conjunction with the changes. The five opinion requests submitted to this office are a strong indication of the number of questions raised by the amendments and the uncertainty facing lenders, builders, insurers, consumers, and others in creating enforceable loans pursuant to the new law. The legislature may wish to remedy the state of uncertainty by giving express regulatory power to an agency, by enabling legislation, or by proposing further amendments to section 50."

Months later on December 21, 1998, the Office of the Attorney General issued its Opinion No. DM-495 addressing whether the legislature may legally authorize and empower a state agency to construe and interpret the provisions of Section 50, Article XVI, Texas Constitution, regarding home equity loans absent a constitutional amendment. The answer, strictly read, was that "the legislature has no authority to interpret or declare a matter of constitutional construction, nor may it delegate such authority to an administrative agency" absent express constitutional authority. Although the legislature may not infringe upon the power of the judiciary to construe and interpret the constitution, the Attorney General nevertheless clarified that under its plenary powers the legislature may authorize a state agency to adopt rules implementing the home equity amendment that are subject to review but that may be given weight in the discretion of the courts, unless clearly wrong.

In recognition of the need for interpretive guidance, the Office of the Consumer Credit Commissioner (in conjunction with the state's Department of Banking, Savings & Loan Department, and Credit Union Department) undertook to issue a *Regulatory Commentary on Equity Lending Procedures*, which was last revised and issued October 7, 1998, in an attempt to provide unofficial interpretive guidance to lenders and consumers regarding the meaning and effect of the provisions of the amendment — while acknowledging that Texas courts may not defer to the agencies' interpretations. In fact, the Texas Supreme Court did show passing deference to the *Regulatory Commentary on Equity Lending Procedures* in *Stringer v. Cendant Mortgage Corporation*, 23 S.W.3d 353 (Tex. 2000) when construing Subsection (a)(6)(Q)(i), which prohibits a lender from requiring that the borrower/owner use home equity loan proceeds to repay another debt to the lender that is not already secured on the homestead property. The Supreme Court cited the commentary in support of its own conclusions and showed it particular credence, considering that no constitutional or statutory authority exists for these agencies to interpret the Texas Constitution and that no protections from liability are afforded lenders who in good faith rely on these interpretations. The court signaled its willingness to look to the commentary in future cases with the following praise:

> "Although the commentary is advisory and not authoritative, it represents four Texas administrative agencies' interpretation of the Home Equity Constitutional Amendment. These agencies are responsible for regulating the entities that make home equity loans. The Commentary's purpose is to provide guidance to lenders and consumers about the regulatory

> views on the meaning and effect of article XVI, section 50." "Furthermore, we believe that the legislature should be given the opportunity to revisit section 50 in the next legislative session. As we have said, no state agency was given regulatory authority to construe or enforce the amendments, nor was any enabling legislation passed or mandated in conjunction with the changes. The five opinion requests submitted to this office are a strong indication of the number of questions raised by the amendments and the uncertainty facing lenders, builders, insurers, consumers, and others in creating enforceable loans pursuant to the new law. The legislature may wish to remedy the state of uncertainty by giving express regulatory power to an agency, by enabling legislation, or by proposing further amendments to section 50."

SJR 42 would now provide the constitutional authority for the legislature to delegate interpretive power to one or more state agencies. Specifically, new Subsection 50(u) would provide that the legislature by statute may delegate one or more state agencies the power to interpret Subsections (a)(5) – (a)(7), (e) – (p), and (t) pertaining to home improvement loans, home equity loans, and reverse mortgage loans. Furthermore, new Subsection 50(u) provides constitutional "reliance on rule" protections to lenders relying on interpretations of state agencies that are delegated interpretive authority. In that regard, the constitution would provide that any act or omission by a lender does not constitute a violation of any provision of those subsections if the act or omission conforms to an interpretation of the provision that is in effect at the time of the act or omission and made by a state agency to which the power of interpretation is delegated or an interpretation made by a Texas or federal appellate court.

SB 1067, a companion bill to SJR 42, which will be effective if and when SJR 42 takes effect, delegates the interpretive power authorized by Subsection 50(u) to the Texas Finance Commission, with respect to constitutionally authorized home equity lenders, and to the Credit Union Commission, with respect to the credit union lenders regulated by that commission. The Finance Commission and Credit Union Commission are required to attempt to adopt interpretations that are as consistent as feasible (or must state justification for any inconsistency). Interpretations of these agencies are subject to the uniform policies and procedures of the Administrative Procedures Act, Chapter 2001, Texas Government Code. The Texas Finance Commission or Credit Union Commission under this delegated authority may, on request of an interested person or on its own motion, issue interpretations of Subsections 50(a)(5) –(7), (e) –p), (t) and (u). Presumably one of the finance commission's first official acts would be to adopt, and ratify the past application of, the joint agencies' *Regulatory Commentary on Equity Lending Procedures* of October 7, 1998.

D. LENDERS WOULD BE REQUIRED TO PROVIDE HOMEOWNERS A NEW ITEMIZED DISCLOSURE OF ACTUAL FEES AND CHARGES ONE BUSINESS DAY BEFORE LOAN CLOSING.

A Texas home equity loan is defined in part as an extension of credit that is not closed before the 12th day after the later of the date that the homeowner submits a loan application to the lender for an equity loan or the date that the lender delivers to the homeowner a promulgated form of Notice Concerning Extensions of Credit Defined by Section 50(a)(6), Article XVI, Texas Constitution (the "12-Day Notice") as set out in full in Section 50(g). Furthermore, if the loan is to refinance another home equity loan secured on the same homestead property, the loan may not be closed before the first anniversary of the closing date of the prior equity loan.

SJR 42 would now amend Subsection 50(a)(6)(M) to further provide that a home equity loan may not be closed before one business day after the homeowner receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged to the borrower at closing:

> "(M) is closed not before:
> . . .

> (ii) one business day after the date that the owner of the homestead receives a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provided the documentation to the owner or the lender may modify previously provided documentation on the date of closing; and

This requirement for delivery of yet another written disclosure to the homeowner as a constitutional condition of closing was a late floor amendment to SJR 42 penned by Rep. Steve Wolens (Dem.-Dallas) before the bill was laid before the Senate for concurrence in the 11th hour of the Regular Session. Of course, the federal Real Estate Settlement Procedures Act (RESPA) already requires that a Good Faith Estimate of all such fees and charges be provided loan applicants within three business days after loan application and that actual fees and charges be itemized and given to borrowers at loan closing in the form of the HUD-1 Settlement Statement. RESPA also requires that the settlement agent permit borrowers to inspect the HUD-1 Settlement Statement, completed to set forth those items then known to the settlement agent, during the business day immediately preceding the date of closing. Courts have construed this provision to not require that the HUD-1 be completed and delivered to the borrower on the business day preceding a scheduled closing, but instead merely to require that the HUD-1 be made available for the borrower's inspection at the offices of the title company or other settlement agent during regular business hours on the preceding business day.

But the provisions of new Subsection (a)(6)(M)(ii) are more restrictive than the RESPA requirements in that the new constitutional disclosure must be delivered to the homeowner one business day before the date of loan closing and it must contain an itemization of "*actual* fees, points, interest, costs, and charges." In practice, actual fees and charges often are not known until the lender's closing instructions and invoices from third-party settlement service providers are received by the settlement agent responsible for preparing the settlement statement — often only minutes before a scheduled closing. Presumably, because the requirement for the advance disclosure of actual charges would be embedded as a constitutional condition to the creation of a valid lien, equity loan closings would have to be routinely deferred and rescheduled at least one business day should any fee be altered or amended after deliver of the disclosure. Because no particular form of the disclosure is prescribed, a completed HUD-1 Settlement Statement delivered to the homeowner one business day preceding the date of closing should satisfy this notice requirement. Although closings of home equity loans theoretically could still be accomplished on the 12th day following the date of loan application and delivery of the 12-Day Notice by providing the Subsection (a)(6)(M)(ii) notice on the 11th such day, it would require that title agents serving as settlement agents significantly alter their current practices and procedures in order to determine final, unalterable figures and provide a written itemization of all such amounts one business day prior to a scheduled loan closing.

One exception to the timing requirement for delivery of the new disclosure arises if "a bona fide emergency or other good cause exists" and the lender obtains the written consent of the owner. In that event only, the lender may satisfy the disclosure requirements of new Subsection (a)(6)(M)(ii) by providing the written itemization of actual charges to the homeowner (or modifying a previously provided itemization) on the date of closing. Significantly, such terms as "business day," "bona fide emergency," and "good cause" are not defined, and their meaning may be among the first of the queries laid before the Finance Commission for guidance under its new interpretive powers delegated by SB 1067.

E. LENDERS WOULD BE AUTHORIZED TO REFINANCE AND REPLACE A HOME EQUITY LIEN WITH THE PROCEEDS OF A REVERSE MORTGAGE (AS AN EXCEPTION TO THE "ONCE A HOME EQUITY, ALWAYS A HOME EQUITY" RULE) BUT WOULD STILL BE PROHIBITED FROM AFFIXING A REVERSE MORTGAGE LIEN ON THE SAME HOMESTEAD PROPERTY ENCUMBERED WITH A HOME EQUITY LIEN

Many senior homeowners who had voted for the 1997 constitutional amendment authorizing Texas home equity and reverse mortgage loans for the first time have been denied eligibility for a reverse mortgage because they unwittingly took out a home equity loan to tide them over until reverse mortgages were actually available in the marketplace some three years later. These seniors were unaware that under current provisions of Section 50(f) proceeds from a reverse mortgage cannot be used to refinance a home equity loan. The initial funding of a reverse mortgage loan is routinely used in part to pay-off and discharge any existing liens in order to attain first-priority lien status on the homestead.

Section 50(f), sometimes referred to as the "Once a home equity, always a home equity" provision, is generally construed to prohibit the refinance of any home equity loan with any loan other than another home equity loan (presumably to prevent a lender from evading the extensive (a)(6) consumer protections once the equity loan is funded by refinancing the equity loan with a traditional mortgage loan).

SJR 42 would amend Section 50(f) to simply authorize an (a)(6) home equity loan to be refinanced *either* by another (a)(6) home equity loan *or* an (a)(7) reverse mortgage, and would read as follows:

> (f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) **or (a)(7)** of this section.

This amendment to Section 50(f) would restore the promise to Texas's senior homeowners that must have been intended by the Texas Legislature and Texas citizens when voting to establish a constitutional right for senior Texas homeowners to use their own home equity as a resource for borrowings needed to live out their "Golden Years" in the comfort and security of their own homes, if they so choose. Importantly, these reforms would preserve many of the extensive consumer protections of the 1997 and 1999 home equity amendments. Constitutional safeguards such as non-recourse liability, restrictions on events of default, and judicial process foreclosures in certain instances are preserved intact under this proposal.

Although lenders may replace an (a)(6) equity loan secured on a homestead property with a reverse mortgage loan, Subsection(a)(6)(K) would still prohibit making a reverse mortgage loan to a homeowner that is secured on the same homestead property already securing an (a)(6) home equity loan i.e., a homestead may not be encumbered with both an (a)(6) home equity lien and an (a)(7) reverse mortgage lien at the same time. Subsection(a)(6)(K) defines a home equity loan in part as "the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1) – (a)(5) **or Subsection (a)(8)** of this section." This provision has the effect of prohibiting more than one home equity loan to be secured on the same homestead property at any one time or any home equity loan to be secured on the same homestead property at the same time as a reverse mortgage loan.

F. Form of "12-Day Notice" would be Amended to Incorporate New Disclosures about HELOC Terms and Cure Provisions and to Correct Defective Disclosure Language about Applying Loan Proceeds to Pay Debts to the Same Lender

A promulgated written form of Notice Concerning Extensions of Credit Defined by Section 50(a)(6), Article XVI, Texas Constitution is set out in full in Section 50(g). The lender must provide this so-called 12-Day Notice notice to the homeowner to commence a 12-day "cooling off" period before a Texas home equity loan may be closed. In an effort to simplify the explanations of the more complex provisions contained in the constitutional language, the 12-Day Notice lapsed into inaccuracies in several instances. One of the more pronounced of these inaccuracies involved the explanation of the provisions of Subsection (a)(6)(Q)(i) that "the owner of the homestead is not required to apply the proceeds of the [home equity loan] to repay another debt except debt secured by the homestead or debt to another lender." Under this provision, an equity loan cannot be conditioned on a requirement that the loan proceeds be used wholly, or in part, to discharge or repay another indebtedness owed the same lender, *except* a debt that is already validly secured by the homestead property. An apparent purpose of this provision is to prevent an unsecured creditor from demanding that the creditor be granted a security interest in the debtor's homestead as a condition for granting a forbearance, rearrangement or recasting of the unsecured indebtedness. While the language clearly would permit the lender to require that loan proceeds be used in part to repay an indebtedness already secured on the homestead (even if owed the same lender) or an unsecured debt owed another lender or creditor, the promulgated form of the 12-Day Notice conflicts with that clear meaning. Paragraph Q of the form of notice reads in pertinent part as follows:

> (Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:
>
> (1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT THAT IS NOT SECURED BY YOUR HOME OR TO ANOTHER DEBT TO THE SAME LENDER;
>
> . . .

The issue whether homestead owners may be required to use loan proceeds in part to pay other creditors as a condition to a home equity loan was raised squarely in a certified question to the Texas Supreme Court by the federal Fifth Circuit Court of Appeals in *Stringer v. Cendant Mortgage Corporation*, 23 S.W.3d 353 (Tex. 2000). The circuit court had under review a claim by plaintiffs that they were unlawfully required to use a portion of their loan proceeds to pay off debts to creditors other than Cendant in contravention to the prohibition set out in paragraph Q of the 12-Day Notice. Although the notice provision conflicts in that regard with the constitutional language itself, plaintiffs contended that any ambiguity between the provisions of the notice and the constitutional provision of Section 50(a)(6)(Q) should be resolved in favor of the notice, which Stringer contended "clearly and concisely" reflected the intent of the Texas Legislature. The question certified to the Texas Supreme Court by the circuit court at 199 F.3d 190, 192 (5th Cir. 1999) read as follows:

> Under the Texas Constitution, may a home-equity lender require the borrower to pay off third-party debt that is not secured by the homestead with the proceeds of the loan?

The Supreme Court answered the certified question *yes* and held "that under the Texas Constitution, a home equity lender may require a borrower to use loan proceeds to pay a third-party debt that is not secured by the homestead." The Supreme Court agreed with the Fifth Circuit court that the plain language of the constitutional provision and that of the notice conflict, but reasoned that the constitutional provisions of Section 50(a)(6)(Q)(i) establish the substantive rights and obligations of lenders and borrowers in this regard. The notice provisions set out in Section 50(g)(Q)(1) provide only

the language of the mandatory notice to borrowers, the court held, and do not independently establish rights or obligations for the extension of the home equity credit. Based on this finding of state law, the Fifth Circuit thereupon affirmed the judgment of the trial court dismissing the case. In an unusual quasi-legislative initiative, the Supreme Court also sought to resolve the conflict between the substantive provisions of the constitution and the flawed notice summarizing those provisions that can mislead prospective home equity borrowers through the invention of an additional notice that the court stated lenders *should* provide in addition to the 50(g)(Q)(1) notice to identify the conflict between the two sections and explain the Section 50(a)(6)(Q)(i) substantive effect. This notice according to the Supreme Court should state:

> **The notice above states that your home-equity lender may not require you to apply the loan proceeds to another debt that is not secured by your home. Although the Texas Constitution requires that the notice include this statement, the statement conflicts with another provision of the Texas Constitution. That provision permits your home-equity lender to require you to apply the loan proceeds to a debt to another lender that is not secured by your home. This provision is controlling, and you should disregard the contrary statement in the notice.**

SJR 42 would correct the defective explanation in the 12-Day Notice that the *Stringer* decision struck down to read in pertinent part as follows (corrections noted and emphasized):

> "(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:
>
> "(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT **EXCEPT A DEBT** THAT IS [~~**NOT**~~] SECURED BY YOUR HOME OR **OWED** TO ANOTHER [~~**DEBT TO THE SAME**~~] LENDER;

SJR 42 further would supercede the advice of the Texas Supreme Court in *Stringer* that an additional notice be provided to homeowners to disregard the defective notice, and would substitute therefor the following legend:

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

Although SJR 42 does not address other disclosures in the 12-Day Notice that arguably are similarly defective, including specifically subdivisions (E), (H), (L), and (M), it does in effect codify the findings in *Stringer* that only the express provisions of the constitution itself may be relied upon to support a claim that a lender has failed to comply with its constitutional obligations.

A form of the revised 12-Day Notice illustrating these and other amendments proposed by SJR 42 is set out in full as Exhibit A to this memorandum.

G. LICENSED TEXAS MORTGAGE BROKERS WOULD BE AUTHORIZED TO MAKE HOME EQUITY LOANS FOR THE FIRST TIME

When either a first- or second-lien home equity loan is made under the provisions of Section 50(a)(6), only the following categories of lenders enumerated in Section 50(a)(6)(P) are authorized to make the loan:

> "(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States;
> (ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;
> (iii) a person licensed to make regulated loans, as provided by statute of this state;
> (iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; or
> (v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity."

Strictly construed, it has been assumed by legal practitioners that a purported equity loan made by a lender not expressly authorized by this constitutional provision would be void, at least for purposes of creating an effective lien on a homestead property. That has meant that the presumed but ambiguous authority of some traditional mortgage originators who make or arrange equity loans but who do not clearly fit within any of these other enumerated categories of authorized lenders, such as mortgage brokers, FHA correspondents, VA lenders, and foreign state-chartered banks, could be the grounds for a claim of lien invalidity under Section 50(a)(6)(P).

Mortgage brokers, who were then unlicensed under Texas law and fit none of the categories of authorized lenders, seized on the distinction between the act of "making" and that of "arranging" a loan to justify their home equity loan origination activities. Because only the "making" of an equity loan appears to be regulated by Section 50(a)(6)(P), mortgage brokers argued that their activity of "negotiating," or "arranging" a home equity loan is not prohibited. Mortgage brokers contended that so long as the equity loan is closed in the name of an authorized lender (i.e., the constitutionally authorized lender is the named payee in the note evidencing the loan) and closed with funds advanced by the authorized lender from its own resources or a banking warehouse line of credit for which the lender is liable, the equity loan will have been "made" by the authorized lender within the meaning of this constitutional provision — notwithstanding that the mortgage broker performed various loan origination, processing, and related services in connection with the loan for which it will be compensated.

[Note: If an equity loan in any case is secured by a secondary, or subordinate, mortgage subject to Chapter 342, Texas Finance Code, the mortgage broker more clearly would be required to be a Consumer Loan licensee under new Chapter 342 because the regulated activity under the Secondary Mortgage Loans provisions of that chapter expressly includes engaging in "the business of making, transacting, or *negotiating*, [secondary mortgage loans] … ."]

The joint agencies' *Regulatory Commentary on Equity Lending Procedures* of October 7, 1998, discussed above in Section C. supports this rationale that a mortgage broker only "negotiating or arranging" a first-lien equity loan or a secondary lien equity loan providing for annual interest of 10%, or less, would *not* be required to be licensed to carry on these activities:

> "Mortgage Brokers
> A mortgage broker must be licensed to make loans. The constitutional amendment only refers to an equity loan "made" by a lender. Making a loan is the process of determining to extend the credit, the act of funding a loan, or being identified as the "payee" of the note. If the loan documents recognize a person as making or originating the loan and then the transaction is immediately assigned (often referred to as "table funding") to the ultimate lender, both of these lenders (the originator and the funder) must be licensed or

otherwise qualify as authorized lenders. A person who only arranges loans does not necessarily fall into this category. Again, one must look to the provisions of Chapter [342] regarding activities that require a license. Thus, a broker negotiating or arranging secondary mortgage equity loans at an interest rate greater than 10% must be licensed. A mortgage broker only arranging a first lien equity loan or a cash-out refinance need not be licensed if the broker did not "make" the loan."

SJR 42 would now remove the necessity for such hairsplitting distinctions between "making" and "arranging" home equity loans by amending Section 50(a)(6)(P) to add licensed Texas mortgage brokers as a category of lenders authorized to make home equity loans. As amended, new subdivision (P)(vi) would define an equity loan in part as an extension of credit that:

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

. . .

(vi) a person regulated by this state as a mortgage broker; and" (emphasis added)

[Note: Although mortgage brokers were unregulated when home equity loans were first authorized by the 1997 amendment, the activities of persons who receive applications from prospective borrowers for the purpose of making mortgage loans secured by first-lien deeds of trust or other security interests in one-to-four family residential real estate in Texas are now regulated by the Mortgage Broker License Act, Texas Finance Code §§ 156.00, *et seq*. effective September 1, 1999. Generally, under the Act persons acting in the capacity of, engaging in the business of, or advertising or holding themselves out as a *mortgage broker* are required to qualify for and maintain a current license, maintain a physical office within the State of Texas, provide certain standardized consumer disclosures regarding the nature of their services and their compensation, and comply with regulations limiting fees that may be charged the applicant before the completion of all services to be performed by the mortgage broker. To qualify for a license, mortgage brokers must meet certain minimum standards for financial net worth and formal education or industry experience and must not have been convicted of a relevant criminal offense. When renewing the license each two years, mortgage brokers must additionally demonstrate that they have completed 15 hours of approved continuing education courses during the license term. *Mortgage bankers* as defined by the Act and certain regulated financial institutions and their employees are exempt from the licensing requirements of the Act. Loan officers may be separately licensed under the Act but are exempt from the licensing requirements when acting for a sponsoring licensed mortgage broker.]

This express authority of Texas licensed mortgage brokers to make home equity loans is particularly important in light of the proposed amendments under SJR 42 to Section 50(a)(6)(Q), which would add a new subdivision (xi) to read as follows:

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

By enacting new subdivision (xi), the legislature apparently intends that home equity loans made by any person or entity not expressly authorized by Section 50(a)(6)(P) to make home equity loans would be void and subject to immediate forfeiture of all principal and interest. Moreover, when made by an unauthorized lender, home equity loans would not have the protections of the Section 50(a)(6)(Q)(x) cure provisions discussed above in Section A. of this memorandum or require any notice or other action on the part of a homeowner as a condition of forfeiture. The possibility of forfeiture in this limited circumstance suggests that wholesale mortgage lenders and their assignees must have in place reliable screening procedures to verify that originators of home equity loans are authorized lenders

under the provisions of Section 50(a)(6)(P) as either (i) a federal- or state-chartered depository institution, including expressly either a bank, savings and loan association, savings bank, or credit union; (ii) a HUD-approved mortgagee (i.e., a "a person approved as a mortgagee by the United States government to make federally insured loans); (iii) a licensed regulated lender under Chapter 342, Texas Finance Code (regarding consumer and secondary mortgage loans); or (vi) a licensed mortgage broker under Chapter 156, Texas Finance Code.

Attachment: Exhibit A – Form of "Notice Concerning Extensions of Credit Defined by Section 50(a)(6), Article XVI, Texas Constitution" illustrating amendments to Notice proposed by SJR 42.

EXHIBIT A

(Illustrating Amendments to Notice Proposed by SJR 42)

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

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

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

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

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

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

(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 3% OF THE LOAN AMOUNT;

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

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

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

(I) THE LOAN MAY NOT BE SECURED BY AGRICULTURAL HOMESTEAD PROPERTY, UNLESS THE AGRICULTURAL HOMESTEAD PROPERTY IS USED PRIMARILY FOR THE PRODUCTION OF MILK;

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

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

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

(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A WRITTEN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN;

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

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

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

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

(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT **EXCEPT A DEBT** THAT IS ~~**NOT**~~ SECURED BY YOUR HOME OR **OWED** TO ANOTHER ~~**DEBT TO THE SAME**~~ LENDER;

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

(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS LEFT TO BE FILLED IN;

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

(5) PROVIDE THAT YOU RECEIVE A COPY OF ALL DOCUMENTS YOU SIGN AT CLOSING;

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

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

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

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

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

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

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

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

(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, SOLICITATION CHECK, OR SIMILAR DEVICE TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

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

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

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

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

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

THE UNDERSIGNED ACKNOWLEDGE RECEIPT OF THE FOREGOING NOTICE ON _____ ____, 200_.

_____ Owner/Borrower	_____ Owner/Borrower
_____ Owner/Borrower	_____ Owner/Borrower
_____ Owner/Borrower	_____ Owner/Borrower