

BROWN, FOWLER & ALSUP

A Professional Corporation
Attorneys at Law

10333 Richmond Avenue, Suite 860
Houston, Texas 77042
www.LoanLawyers.com

Telephone 713/468-0400
Facsimile 713/706-5565

2017 TEXAS LEGISLATIVE UPDATE

By: Logan E. Hastings, Associate Attorney

The Texas Legislature meets in a regular 140-day legislative session every two years, convening on the second Tuesday in January of odd-numbered years. The 85th Legislative Session convened on January 10, 2017 and was adjourned on May 29, 2017. On July 18, 2017, the legislature began its special session and it adjourned one day early on August 15, 2017. Below is a synopsis of selected legislation most likely to affect our clients and colleagues in the real estate finance and title business. Please click on the bill number for more information on each piece of legislation.

1. AD VALOREM TAXES / DISABLED VETERANS

[House Bill 217](#)

Author: Canales, Moody,
Collier

Sponsor: Hinojosa

Effective: September 1, 2017

Extends to disabled veterans the ability to defer the collection of a tax, abate a suit to collect a delinquent tax, or abate a sale to foreclose a tax lien if the veteran is qualified to receive an exemption under Texas Tax Code Section 11.22.

Amends Texas Tax Code §33.06

2. AD VALOREM TAXES / DISABLED VETERANS

[House Bill 626](#)

Author: Workman

Co-Author: Fallon

Sponsor: Campbell

Effective: September 1, 2017

Extends the time certain veterans or their families have to file a late application for a homestead exemption from one year to two years after the delinquency date for the taxes on the homestead has passed.

Extends the time for a disabled veteran to file a late application for a disabled veteran ad valorem tax exemption from one to five years after the delinquency date for the taxes on the property has passed.

If either of the above late applications is approved, the Chief Appraiser shall notify the Tax Collector not later than the 30th day after the date the late application was approved.

If the late homestead exemption is approved and the taxes have already been paid, the Tax Collector shall refund the difference to the tax payer not later than the 60th day after the date the Tax Collector was notified by the Chief Appraiser that the late application was approved.

Amends Texas Tax Code §§11.431 and 11.439

3. AD VALOREM TAXES / DISABLED VETERANS

House Bill 150

Author: Bell, Metcalf, Guillen,
Shine, Blanco

Coauthor: Frullo, Jarvis
Johnson, Keough, Miller,
Neave, Tomas Uresti

Sponsor: Creighton

Effective: January 1, 2018 if
approved by voters

Prior to this amendment, a disabled veteran whose disability rating was less than 100% was entitled to an exemption from taxation of a percentage of the appraised value of his residence equal to his percentage of disability only if the home was donated to the veteran by a charitable organization at no cost to the veteran. This amendment would permit a veteran who paid some cost towards a similarly donated home, in the form of cash or a mortgage or both, to receive the same exemption so long as the cost paid by the veteran is not more than 50% of the good faith estimate of the market value of the home.

Amends Texas Tax Code §11.132(b)

4. AD VALOREM TAXES / VETERANS

House Bill 777

Author: Ashby, Bernal,
Murphy, Blanco, Fallon

Coauthor: Isaac, Lambert,
Schubert

Sponsor: Nichols

Effective: September 1, 2017

Permits land which is eligible for appraisal for ad valorem tax purposes as qualified open space land to retain its eligibility as such if the land ceases to be devoted principally to the use of agriculture so long as the owner is a member of the armed services who is deployed outside the United States and intends to resume agricultural activities on the land no later than the 180th day after the owner ceases to be deployed outside the United States.

Such an owner must notify the appraisal office in writing, not later than the 30th day after the date the owner is deployed, that he will be deployed outside the United States and that he intends to resume agricultural activities within the 180 day time period referenced above.

Amends Texas Tax Code §23.523

5. AD VALOREM TAXES / TELEPHONE PROTEST

House Bill 455

Author: Metcalf, Bonnen,
Dennis, Murphy

Coauthor: Keough

Sponsor: Nichols

Effective: September 1, 2017

Permits a property owner to participate in property tax protest hearings by way of a telephone conference call and provides procedures for participation by telephone. See the statute for a more in depth understanding of these procedures.

Amends Texas Tax Code §41.45

6. AD VALOREM TAXES / CONFIDENTIALITY OF HOME ADDRESS

House Bill 457

Author: Holland, Wray,
Murphy, Lucio III, White

Coauthor: Allen, Bell, Blanco,
Dennis Bonnen, Burns, Dean,
Geren, Guillen, Hefner, Gina
Hinojosa, Eric Johnson,
Keough, Lambert, Lang,
Minjarez, Moody, Oliverson,
Parker, Phelan, Price,
Raymond, Shine, Simmons,
Springer, Stephenson, Thierry,
Senfronia Thompson, Tomas
Uresti, Villalba

Sponsor: Estes

Effective: September 1, 2017

Certain people may elect to have their home address information kept confidential in the ad valorem tax appraisal records. Eligible persons include, but are not limited to, peace officers, jailers, judges, victims of family violence, and district attorneys. This bill adds the spouse or surviving spouse of a current or former peace officer and the adult children of a current peace officer to the list of eligible persons.

Amends Texas Tax Code §25.025(a)

7. AD VALOREM TAXES / TAX REDETERMINATIONS AND REFUND CLAIMS

Senate Bill 1095

Author: Larry Taylor

Sponsor: Cook

Effective: September 1, 2017

Extends the time to file a petition for tax redetermination from 30 to 60 days after the date the notice of determination is issued.

Changes the time at which an order or decision of the comptroller on a petition for redetermination becomes final. In the past, it became final 20 days after service on the petitioner of the notice of the order or decision. Now, the order or decision becomes final at the time a decision or order in a contested case is final under Chapter 2001 of the Texas Government Code, which governs administrative procedure. See that chapter for a more complete understanding of the applicable deadlines.

A taxpayer who is dissatisfied with the decision on a motion for redetermination may now file a motion for rehearing in the time provided by Chapter 2001 of the Texas Government Code.

Extends the time in which a person who claims a refund under Section 111.104 of the Texas Tax Code may request a hearing on the claim from the 30th to the 60th day after the date the comptroller issues a letter denying the claim for refund.

Changes the time at which an order or decision of the comptroller becomes final following a hearing on a claim for a refund. In the past, it became final 20 days after service on the claimant of the notice of the order or decision. Now, the order or decision becomes final at the time a decision or order in a contested case is final under Chapter 2001 of the Texas Government Code.

A taxpayer who is dissatisfied with the decision on the claim may now file a motion for rehearing in the time provided by Chapter 2001 of the Texas Government Code.

Amends Texas Tax Code §111.009

8. REQUIRED DISCLOSURE REGARDING THE IMPACT OF MILITARY INSTALLATIONS

[House Bill 890](#)

Author: Geren, Gutierrez,
Minjarez, Holland, Lambert

Sponsor: Estes

Effective: September 1, 2017

Requires a county and any municipality in which a military installation is located to work closely with the installation to ensure the most recent Air Installation Compatible Use Zone Study or Joint Land Use Study applicable to each military installation, or a link to that information, is publicly available on the local government's website.

Amends the Seller's Disclosure Notice by adding Item 8 to the form that, at a minimum, is substantially similar to the following:

This property may be located near a military installation and may be affected by high noise or air installation compatible use zones or other operations. Information relating to high noise and compatible use zones is available in the most recent Air Installation Compatible Use Zone Study or Joint Land Use Study prepared for a military installation and may be accessed on the Internet website of the military installation and of the county and any municipality in which the military installation is located.

Amends Texas Local Government Code Chapter 397

9. EFFECT OF EXPUNCTION OF NOTICE OF LIS PENDENS

[Senate Bill 1955](#)

Author: Hughes

Sponsor: Wray

Effective: September 1, 2017

Clarifies the effect of a recorded, certified copy of an order expunging a notice of lis pendens. Specifically, after the order is recorded an interest in the real property affected by the order may be transferred free of all matters or claims asserted or disclosed in the notice or the action in connection with which the notice was filed.

Amends Texas Property Code §12.0071(f)

10. OWNER-BUILDER LOAN PROGRAM

[House Bill 1512](#)

Author: Isaac

Sponsor: Watson

Effective: September 1, 2017

Amends the Owner-Builder Loan Program, also known as the Texas Bootstrap Loan Program, by deleting the \$90,000 ceiling on the total loan amount that the owner-builder may borrow.

This amendment also creates certain financial and accounting requirements applicable to the Department of Housing and Community Affairs' administration of the Owner-Builder Loan Program. See the statute for a more complete understanding of these requirements.

Amends Texas Government Code §2306.754(b)

11. EDUCATION REQUIREMENTS FOR RESIDENTIAL MORTGAGE LOAN ORIGINATORS

[House Bill 3342](#)

Author: Parker

Sponsor: Buckingham

Effective: January 1, 2018

In the past, an individual who failed to maintain a residential mortgage loan originator license for at least five consecutive years was required to retake the pre-licensing education requirements. This bill replaces that time frame with "the period of time established by rule of the rulemaking authority."

The time period will remain five years until the Finance Commission of Texas finalizes the new time period through its administrative rulemaking procedure.

Amends Texas Finance Code §180.056(h)

12. TRANSFER ON DEATH DEED

[Senate Bill 2150](#)

Author: Huffman

Sponsor: Farrar

Effective: September 1, 2017

On September 1, 2015 during the 84th legislative session, Texas joined the growing list of states that permit the use of transfer on death deeds. A transfer on death deed allows an owner of real estate to transfer title to their property to a beneficiary outside of the probate process after their death. One concern in drafting estate planning documents such as a will or transfer on death deed is what happens if a named beneficiary dies before the person who made the document? If the document does not address this situation and if there are no other laws regarding the disposition of the bequest then, the bequest is said to lapse. The result of a lapsed bequest is title to the property may pass through the process of intestate succession, wherein the court follows a statutory formula to determine the decedent's heirs and gives the property to them. This may not be the person or people the decedent intended to receive the property. To address the possibility of this unintended outcome, Texas has an established anti-lapse statute. The purpose of the anti-lapse statute is to allow certain lapsed bequests to pass to the descendants of the intended beneficiary rather than through intestate succession.

Section 114.104(a) of the Estates Code governs the applicability of the anti-lapse statute to transfer on death deeds. As this section was drafted in 2015, the anti-lapse statute was applicable only if the decedent designated more than one beneficiary in the deed. Senate Bill 2150 amends Section 114.103(a) to ensure the anti-lapse statute applies to transfer on death deeds, regardless of the number of designated beneficiaries.

This bill also extensively modifies the statutorily promulgated optional transfer on death deed form by adding options that the transferor may elect. These options are related to and include the possible scenarios in which some or all of the primary or alternate beneficiaries do not survive the transferor and whether title should pass as directed by the anti-lapse statute or otherwise.

We have included an updated Transfer on Death Deed form attached hereto as Exhibit A.

Amends Texas Estates Code §§114.103(a) and 114.151

13. ADVERSE POSSESSION AGAINST A COTENANT HEIR

Senate Bill 1249

Author: West

Sponsor: Schofield

Effective: September 1, 2017

“Heirship Property” is a term often used to describe property that passes from one generation to the next without the use of a will, transfer on death deed, or other estate planning tool. When an heir or cotenant heirs acquire real property through this informal process, they do not acquire a record title fee simple interest in the property and they may, as a result, encounter difficulties if they attempt to sell or use their property as collateral for a loan.

The current Texas law relating to adverse possession provides a mechanism by which a person may acquire fee simple title to property if certain conditions are met. However, this remedy does not well serve cotenant heirs with respect to heirship property because adverse possession requires possession of the property to the exclusion of other cotenant heirs.

This bill addresses these concerns by adding Section 16.0265 to Subchapter B, Chapter 16 of the Civil Practices and Remedies Code. This section provides a mechanism by which a cotenant heir may acquire a record title fee simple interest in their property through adverse possession. This limited legislative update will not include a thorough analysis of the entire process and procedure by which an adversely possessing cotenant may acquire title. However, the following is brief overview of the procedure.

1. One or more cotenant heirs may acquire the interests of other cotenant heirs through adverse possession of the property under certain terms following a continuous, uninterrupted 10 year period.
2. Immediately after this 10 year period, the possessing cotenant must file in the deed records a valid affidavit of heirship, publish notice of the claim in the local newspaper for four consecutive weeks, and provide written notice of the claim to the other cotenant heirs by mail.
3. The statute provides certain requirements that must be met by the above affidavits.
4. The non-possessing cotenant heir must file a controverting affidavit or bring suit to recover his interest no later than 5 years after the date the affidavits asserting adverse possession were filed. If the non-possessing cotenant does not take one of these actions within 5 years, the possessing cotenant obtains title.

The statute also provides protections for a bona fide lender for value who relies on the affidavits referenced above if they were properly executed, filed for record for the requisite time period, and so long as no controverting affidavits or judgements were filed in that time period.

Finally, if the adverse possessor does not claim title under a title instrument, the statute limits the amount of land that may be acquired under this section to 160 acres unless the number of acres actually enclosed exceeds 160 acres. If the adversely possessed property is held under a duly registered deed or other memorandum of title that fixes the boundaries of the property, the possessor’s claim extends to the described boundaries.

Amends Texas Civil Practice and Remedies Code Subchapter B, Chapter 16

14. UNIFORM PARTITION OF HEIRS PROPERTY ACT

[Senate Bill 499](#)

Author: West

Sponsor: Wray

Effective: September 1, 2017

Texas joined a growing list of states who have adopted the Uniform Partition of Heirs Act. This act seeks to prevent speculative real estate investors from depleting a family's wealth by acquiring a cotenant share of inherited property and forcing a sale, which could result in the other cotenant heirs receiving less than fair market value for their shares. The act accomplishes this by enacting a series of due process protections. The following is a brief overview of that process.

1. The cotenant who seeks a partition by sale must provide notice to all cotenants.
2. The court orders an appraisal to determine the parcel's fair market value. If a cotenant objects to this valuation, the court must hold a hearing to hear arguments and weigh other evidence of fair market value.
3. A cotenant or multiple cotenants may purchase the share of the cotenant who seeks a partition for an amount equal to the proportional fair market value of that share.
4. If the other cotenants do not purchase the share of the cotenant who seeks partition, the court will order a partition in kind, unless that would cause great prejudice to the cotenants.
5. If a partition in kind would cause great prejudice, the court will order a partition by sale. The property must be offered for fair market value, for a reasonable period of time, and in a reasonable manner on the open market. The court may elect to sell the property under other terms if it would yield a better return for the cotenants.

Amends Texas Property Code by adding Chapter 23A

15. NOTARIES PUBLIC / RECORDKEEPING

[Senate Bill 1098](#)

Author: Zaffirini

Sponsor: Rodney Anderson

Effective: September 1, 2017

Notaries public are required to maintain certain records for each notarial acknowledgment performed. Prior to this bill, a notary public was required to keep, among other records, the address of the signor's "residence or alleged residence." The law now requires the notary public retain the signor's "mailing address" instead.

The bill also amends and clarifies the language in the statute relating to a notary public's duty to provide his records to a requesting party who has paid all requisite fees. The change clarifies that a requesting party may only request records "of official acts" in the notary public's "book of record" rather than "any record" in the notary public's "office," as the law previously required.

Amends Texas Government Code §406.014

16. NOTARIES PUBLIC / ONLINE NOTARIZATION

House Bill 1217

Author: Parker

Sponsor: Creighton

Effective: July 1, 2018

Texas became the third state, along with Montana and Virginia, to allow notaries public to notarize documents online using audio-video communication. House Bill 1217 added Subsections (c) and (d) to Section 121.006 of the Texas Civil Practices and Remedies Code. These Subsections provide definitions for relevant terms, qualifications and application procedures for becoming an online notary, online notarial procedures, requirements regarding the notary's electronic signature and seal, and recordkeeping requirements for online notaries. See the statute for a more complete understanding of these additions.

Amends Texas Civil Practices and Remedies Code §121.006

17. PUBLIC SALE OF REAL PROPERTY UNDER A POWER OF SALE IN A SECURITY INSTRUMENT

House Bill 1470

Author: Villalba, Oliveira

Sponsor: Creighton

Effective: September 1, 2017

The authors of this bill believed that certain aspects of the foreclosure process in Texas were ill-defined. Specifically, they sought to clarify the reasonableness of fees charged by the trustees who conduct foreclosure auctions, the auction process, and the requirements for each party post-auction. The following is a brief synopsis of the contents of the newly enacted Chapter 22 of the Texas Business and Commerce Code.

A trustee or substitute trustee conducting a public sale of residential property under a power of sale in a security instrument may contract with an attorney to advise the trustee or to administer any of the trustee's functions or responsibilities.

Requires the winning bidder, except for the foreclosing mortgagee or mortgage servicer, to provide certain information to the trustee post-sale. The trustee may decline to complete the transaction or deliver a deed if the requisite information is not provided.

Requires the trustee provide the winning bidder a receipt for proceeds tendered and a deed or to file the deed of record.

Requires the trustee ensure that funds received for the sale are kept in a separate account and ensure a written record of deposits and disbursements from the account is kept.

Requires the trustee make reasonable attempts to identify and locate the persons entitled to all sale proceeds.

Authorizes a trustee to receive actual costs incurred, a reasonable trustee's fee, and reasonable attorney's fees. The statute also sets out provisions for the timing, payment, and reasonableness of these fees.

Entitles a trustee to recover reasonable attorney's fee necessary to defend against a claim related to the sale if a court finds the claim to be groundless in law or in fact.

Clarifies that the statute does not preclude the filing of an interpleader action or the depositing of the funds in a court registry.

Amends Texas Business and Commerce Code by adding Chapter 22

18. FORECLOSURE AUCTIONS DATES / HOLIDAYS

House Bill 1128

Author: Wray

Sponsor: Larry Taylor

Effective: September 1, 2017

Foreclosure auctions are held on the first Tuesday of the month. If an auction falls on January 1st or July 4th, that auction is moved to the first Wednesday of the month.

Amends Texas Civil Practices and Remedies Code §34.041

19. TRUSTS

Senate Bill 617

Author: Rodríguez

Sponsor: Wray

Effective: September 1, 2017

This bill makes numerous amendments to the Texas Property Code relating to trust law. Many of these amendments are outside the scope of this limited legislative update and a reader who seeks a more in-depth understanding of the changes to trust law should see the statute. The changes that are most relevant to this update are the addition of provisions clarifying that a trustee's right to delegate duties to an agent includes the delegation of duties relating to real estate transactions.

Prior to this bill, Section 113.018 briefly stated.

A trustee may employ attorneys, accountants, agents, including investment agents, and brokers reasonably necessary in the administration of the trust estate.

The bill fleshes out the employment and appointment of agents by adding rules briefly discussed below.

1. Authorizes a trustee to appoint an agent to act for the trustee in any lawful manner for purposes of real property transactions.
2. Provides a list of duties and powers that a trustee may delegate to an agent.
3. Provides that a trustee who appoints an agent is liable to the beneficiaries or to the trust for actions of the agent.
4. Requires a trustee who appoints an agent to document the delegation in a properly acknowledged, written instrument.
5. Provides that the agency terminates by operation of law six months from the date of the acknowledgment unless terminated sooner by death, incapacity, resignation, or removal of the trustee, or after a date specified in the agency agreement.
6. Offers protections for a person who deals with an agent in good faith, without actual knowledge that the delegation is void, invalid, or terminated, that the purported agent's authority is void, invalid, or terminated, or that the agent is exceeding or improperly exercising the agents authority.
7. Authorizes a trustee to delegate the above powers to an agent even if the governing instrument does not affirmatively permit the trustee to hire agents so long as it does not expressly prohibit the trustee from appointing agents.

Amends Texas Property Code in numerous sections relating to trust law

20. MANUFACTURED HOMES

House Bill 2019

Author: Tracy O. King, Flynn, Guillen, Elkins

Sponsor: Estes

Effective: September 1, 2017

This bill makes numerous changes to the law relating to the regulation of manufactured homes. It amends multiple sections the Texas Occupational Code, Finance Code, Property Code, and Tax Code. The majority of these amendments are outside the scope of this limited legislative update and a reader who seeks a more in-depth understanding of these changes should conduct additional research. The law changes that are most relevant to this update are briefly outlined below.

Subchapter A, Chapter 1201 of the Texas Occupations Code was amended by adding Section 1201.010 which reads:

The department shall provide to the public through the department's internet website searchable and downloadable information regarding manufactured home ownership records, lien records, installation records, license holder records, and enforcement records.

Also, the document known as the Statement of Ownership and Location, which had the unfortunate acronym SOL, has been renamed the Statement of Ownership.

Subdivision (1), "Certificate of attachment" was added to Section 1201.201 of the Texas Occupations Code. This Subdivision provides that a certificate of attachment is a written instrument issued by the director before September 1, 2001, that provides certain information required by former Section 19(1), Texas Manufactured Housing Standards Act. Beginning September 1, 2003, a certificate of attachment is considered to be a statement of ownership and may be exchanged for a statement of ownership.

Amends multiple Texas Codes in various sections relating to the regulation of manufactured homes

21. POWER OF ATTORNEY

[House Bill 1974](#)

Author: Wray

Sponsor: Rodriguez

Effective: September 1, 2017

The Texas Legislature made numerous and sweeping changes to the law governing powers of attorney (POA). These changes were made in three different bills: House Bill 1974, Senate Bill 39, and Senate Bill 1193. A thorough analysis of these bills is beyond the scope of this limited legislative update, which will only provide a limited overview of some of the changes. For a more thorough understanding, see the affected statutes. We have prepared an updated POA form incorporating these changes. It is attached hereto as Exhibit B.

House Bill 1974 was proposed by the Real Estate, Probate, and Trust Law Section of the State Bar of Texas (REPTL). Generally, it was designed to reduce the need for guardianship proceedings for incapacitated persons by more adequately ensuring that validly executed POAs are more effective and more widely accepted.

The bill seeks to accomplish these goals by, among other things, encouraging timely acceptance of a POA, eliminating the risk to those who do accept a POA by allowing reliance on an agent's certification that the document is valid for its presented purpose, providing numerous valid reasons to reject a POA, and providing a mechanism by which disputes regarding a POA may be decided by a court. Acceptance of POAs is not made mandatory, and liability is not shifted to those who accept POAs, but new liability protections are now in place, which aim to encourage wider acceptance of POAs.

Amends multiple Sections of Texas Estates Code

22. POWER OF ATTORNEY

[Senate Bill 39](#)

Author: Zaffirini

Sponsor: Farrar

Effective: September 1, 2017

Senate Bill 39 was also proposed by REPTL in order to reform the laws governing guardianships. Its relevant provisions include a clarification of the court procedures to remove an agent under a POA as a way to avoid a guardianship proceeding and an automatic suspension of a POA when a guardian is established in order to prevent a situation where two people, agent and guardian, both purport to act for the incapacitated principle.

Amends multiple Sections of Texas Estates Code

23. POWER OF ATTORNEY

[Senate Bill 1193](#)

Author: Van Taylor

Sponsor: Parker

Effective: September 1, 2017

This bill addresses the management of digital assets, such as emails, text messages, online photographs, online bank statements, and other online communications or records, for an individual who has lost capacity or died.

The bill has two major purposes. First, it ensures fiduciaries have the same authority to manage digital assets that they have to manage traditional, tangible assets and accounts. Second, custodians of digital assets are given authority to cooperate with the fiduciaries of their users, with the goal of balancing that authority with the users expectations of privacy. Custodians whose acts or omissions comply with this bill are granted immunity from liability.

The end result is to provide internet users with the ability to plan for the management and disposition of their digital assets in the event of disability or death by allowing them to vest a fiduciary with authority to manage and dispose of those assets.

Amends Texas Estates Code by adding Title 4

24. HOME EQUITY LENDING

[Senate Joint Resolution 60](#)

Author: Jackson

Effective: January 1, 2018 if approved by voters

Should this amendment be approved by voters, it will provide for numerous changes to the law governing Texas' already booming home equity lending industry. A memorandum containing a more thorough analysis of these changes is attached hereto as Exhibit C. The following is a brief overview of some of the potential changes.

Amends what is and what is not included in the calculation of the cap on fees associated with a home equity loan.

Provides alternative refinance options for a seasoned home equity loan, permitting the refinancing of an equity loan as a rate/term loan, subject to certain requirements.

Maintains the \$4,000 draw requirements on home equity lines of credit but increases the 50% equity provision to 80%.

Removes the restriction against securing a home equity loan with agricultural property.

Authorizes a subsidiary of a bank, savings and loan association, savings bank, or credit union to make home equity loans.

Clarifies that a mortgage banker or mortgage company is an authorized lender, able to originate home equity loans.

Amends the requirement that a home equity security instrument identify the transaction as a home equity loan, as defined by Subsection (a)(6) of Section 50.

Amends Section 50, Article XVI, Texas Constitution Subsections (a), (f), (g), and (t) and adding Subsection (f-1).

NOTICE

THIS MEMORANDUM IS PROVIDED FOR THE GENERAL INFORMATION OF CLIENTS AND FRIENDS OF OUR FIRM AND IS NOT INTENDED AS SPECIFIC LEGAL ADVICE. YOU SHOULD NOT RELY ON THIS GENERAL INFORMATION ALONE BUT SHOULD CONSULT AN ATTORNEY REGARDING THE APPLICATION OF THE LAWS AND REGULATIONS DISCUSSED IN THIS MEMORANDUM TO YOUR SPECIFIC BUSINESS OR CIRCUMSTANCES.

EXHIBIT "A"

REVOCABLE TRANSFER ON DEATH DEED

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

IMPORTANT NOTICE TO OWNER: You should carefully read all the information included in the instructions to this form. You may want to consult a lawyer before using this form.

MUST RECORD DEED: Before your death, this deed must be recorded with the county clerk where the property is located, or it will not be effective.

MARRIED PERSONS: If you are married and want your spouse to own the property on your death, you must name your spouse as the primary beneficiary. If your spouse does not survive you, the property will transfer to any listed alternate beneficiary or beneficiaries on your death.

1. Owner (Transferor) Making this Deed:

Printed Name

Mailing address

2. Legal Description of the Property:

3. Address of the Property (if any) (include county):

4. Primary Beneficiary (Transferee) or Beneficiaries (Transferees).

I designate the following beneficiary or beneficiaries, if the beneficiary survives me:

Printed Name

Mailing address

5. Alternate Beneficiary or Beneficiaries (Optional).

I designate the following alternate beneficiary or beneficiaries, if the alternate beneficiary survives me:

Printed Name

Mailing address

6. Transfer on Death: (Choose an option under both A and B below, and if you have designated any alternate beneficiaries, choose an option under C.)

At my death, I grant and convey to the primary beneficiary or beneficiaries my interest in the property, to have and hold forever.

A. IF AT LEAST ONE PRIMARY BENEFICIARY SURVIVES ME (Select either option (1) or (2) by placing your initials next to the option chosen. If you do not choose an option, then option (1), which is the anti-lapse election, will apply.)

If at least one primary beneficiary survives me, I grant and convey the primary beneficiaries' share or shares of the property, to have and hold forever, as follows:

_____ (1) Anti-Lapse Election. To the surviving primary beneficiary or beneficiaries, but if a deceased primary beneficiary, if any, was a child or other descendant of mine or of one or both of my parents, that deceased primary beneficiary's share will pass to the surviving children or other descendants of that deceased primary beneficiary.

_____ (2) Surviving Primary Beneficiaries Election. To the surviving primary beneficiary or beneficiaries only. If a deceased primary beneficiary, if any, was a child or other descendant of mine or of one or both of my parents, I do not want that deceased primary beneficiary's share to pass to the children or other descendants of that deceased primary beneficiary.

B. IF NO PRIMARY BENEFICIARY SURVIVES ME (Select either option (1) or (2) by placing your initials next to the option chosen. If you do not choose an option, then option (1), which is the anti-lapse election, will apply.)

If no primary beneficiary survives me, I grant and convey the share of the property that would have transferred to a deceased primary beneficiary, to have and hold forever, as follows:

_____ (1) Anti-Lapse Election. To the surviving children or other descendants of the deceased primary beneficiary, if the deceased primary beneficiary was a child or other descendant of mine or of one or both of my parents.

_____ (2) Surviving Alternate Beneficiaries Election. To the alternate beneficiary or beneficiaries designated above. If the deceased primary beneficiary was a child or other descendant of mine or of one or both of my parents, I do not want that deceased primary beneficiary's share to pass to the children or other descendants of that deceased primary beneficiary.

If no primary beneficiary survives me and the anti-lapse election is not chosen or that election is chosen, but a deceased primary beneficiary is not a child or other descendant of mine or of one or both of my parents, I grant and convey to the alternate beneficiary or beneficiaries my share in the property that otherwise would have transferred to the deceased primary beneficiary, to have and hold forever. If I have not designated alternate beneficiaries, this transfer on death deed shall be considered cancelled by me.

C. IF AN ALTERNATE BENEFICIARY DOES NOT SURVIVE ME (Select either option (1) or (2) by placing your initials next to the option chosen. If you do not choose an option, then option (1), which is the anti-lapse election, will apply.)

If an alternate beneficiary does not survive me, I grant and convey that alternate beneficiary's share of the property as follows:

_____ (1) Anti-Lapse Election. To the surviving alternate beneficiary or beneficiaries, but if the deceased alternate beneficiary was a child or other descendant of mine or of one or both of my parents, that deceased alternate beneficiary's share will pass to the surviving children or other descendants of that deceased alternate beneficiary.

_____ (2) Surviving Alternate Beneficiaries Election. To the surviving alternate beneficiary or beneficiaries only. If the deceased alternate beneficiary was a child or other descendant of mine or of one or both of my parents, I do not want that deceased alternate beneficiary's share to pass to the children or other descendants of that deceased alternate beneficiary.

If no alternate beneficiary survives me and the anti-lapse election is not chosen or that election is chosen, but no deceased alternate beneficiary was a child or other descendant of mine or of one or both of my parents, this transfer on death deed shall be considered cancelled by me.

7. Printed Name and Signature of Owner Making this Deed:

Printed Name

Mailing address

Signature

Printed Name

Mailing address

Signature

THE STATE OF _____

COUNTY OF _____

This instrument was acknowledged before me on the _____ day of _____,
20 _____, by _____.

Notary Public

After Recording Return to:

**
**
**
**

INSTRUCTIONS FOR TRANSFER ON DEATH DEED
DO NOT RECORD THESE INSTRUCTIONS
Instructions for Completing the Form

1. Owner (Transferor) Making this Deed: Enter your first, middle (if any), and last name here, along with your mailing address.
2. Legal Description of the Property: Enter the formal legal description of the property. This information is different from the mailing and physical address for the property and is necessary to complete the form. To find this information, look on the deed you received when you became an owner of the property. This information may also be available in the office of the county clerk for the county where the property is located. Do NOT use your tax bill to find this information. If you are not absolutely sure, consult a lawyer.
3. Address of the Property: Enter the physical address of the property.
4. Primary Beneficiary or Beneficiaries: Enter the first and last name of each person you want to get the property when you die. If you are married and want your spouse to get the property when you die, enter your spouse's first and last name (even if you and your spouse own the property together).
5. Alternate Beneficiary or Beneficiaries: Enter the first and last name of each person you want to get the property if no primary beneficiary survives you.
6. Transfer on Death: You should carefully read the language describing the options and choose an option under both A and B of Paragraph 6, and if you have listed any alternate beneficiaries, choose an option under C of Paragraph 6.
7. Printed Name and Signature of Owner: Do not sign your name or enter the date until you are before a notary. Include your printed name.
8. Acknowledgment: This deed must be signed before a notary. The notary will fill out this section of the deed.

EXHIBIT "B"

STATUTORY DURABLE POWER OF ATTORNEY

NOTICE: THE POWERS GRANTED BY THIS DOCUMENT ARE BROAD AND SWEEPING. THEY ARE EXPLAINED IN THE DURABLE POWER OF ATTORNEY ACT, SUBTITLE P, TITLE 2, ESTATES CODE. IF YOU HAVE ANY QUESTIONS ABOUT THESE POWERS, OBTAIN COMPETENT LEGAL ADVICE. THIS DOCUMENT DOES NOT AUTHORIZE ANYONE TO MAKE MEDICAL AND OTHER HEALTH-CARE DECISIONS FOR YOU. YOU MAY REVOKE THIS POWER OF ATTORNEY IF YOU LATER WISH TO DO SO. IF YOU WANT YOUR AGENT TO HAVE THE AUTHORITY TO SIGN HOME EQUITY LOAN DOCUMENTS ON YOUR BEHALF, THIS POWER OF ATTORNEY MUST BE SIGNED BY YOU AT THE OFFICE OF THE LENDER, AN ATTORNEY AT LAW, OR A TITLE COMPANY.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until:

- (1) you die or revoke the power of attorney;
- (2) your agent resigns, is removed by court order, or is unable to act for you; or
- (3) a guardian is appointed for your estate.

I, **JOHN A. DOE**, whose address is **1234 MAIN STREET, DALLAS, TEXAS 77000**, appoint **JANE B. DOE**, whose address is **1234 MAIN STREET, DALLAS, TEXAS 77000**, as my agent to act for me in any lawful way with respect to all of the following powers that I have initialed below. (YOU MAY APPOINT CO-AGENTS. UNLESS YOU PROVIDE OTHERWISE, CO-AGENTS MAY ACT INDEPENDENTLY.)

TO GRANT ALL OF THE FOLLOWING POWERS, INITIAL THE LINE IN FRONT OF (O) AND IGNORE THE LINES IN FRONT OF THE OTHER POWERS LISTED IN (A) THROUGH (N).

TO GRANT A POWER, YOU MUST INITIAL THE LINE IN FRONT OF THE POWER YOU ARE GRANTING.

TO WITHHOLD A POWER, DO NOT INITIAL THE LINE IN FRONT OF THE POWER. YOU MAY, BUT DO NOT NEED TO, CROSS OUT EACH POWER WITHHELD.

- A. Real property transactions;
- B. Tangible personal property transactions;
- C. Stock and bond transactions;
- D. Commodity and option transactions;
- E. Banking and other financial institution transactions;
- F. Business operating transactions;
- G. Insurance and annuity transactions;

- H. Estate, trust, and other beneficiary transactions;
- I. Claims and litigation;
- J. Personal and family maintenance;
- K. Benefits from social security, Medicare, Medicaid, or other governmental programs or civil or military service;
- L. Retirement plan transactions;
- M. Tax matters;
- N. Digital assets and the content of an electronic communication;
- O. ALL OF THE POWERS LISTED IN (A) THROUGH (N). YOU DO NOT HAVE TO INITIAL THE LINE IN FRONT OF ANY OTHER POWER IF YOU INITIAL LINE (O).

GRANT OF SPECIFIC AUTHORITY

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below: (CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent. If you DO NOT want to grant your agent one or more of the following powers, you may also CROSS OUT a power you DO NOT want to grant.)

- Create, amend, revoke, or terminate an inter vivos trust;
- Make a gift, subject to the limitations of section 751.032 of the Durable Power of Attorney Act (Section 751.032, Estates Code) and any special instructions in this power of attorney;
- Create or change rights of survivorship;
- Create or change a beneficiary designation;
- Authorize another person to exercise the authority granted under this power of attorney.

SPECIAL INSTRUCTIONS:

Special instructions applicable to agent compensation (initial in front of one of the following sentences to have it apply; if no selection is made, each agent will be entitled to compensation that is reasonable under the circumstances):

- My agent is entitled to reimbursement of reasonable expenses incurred on my behalf and to compensation that is reasonable under the circumstances.
- My agent is entitled to reimbursement of reasonable expenses incurred on my behalf but shall receive no compensation for serving as my agent.

UNLESS YOU DIRECT OTHERWISE BELOW, THIS POWER OF ATTORNEY IS EFFECTIVE IMMEDIATELY AND WILL CONTINUE UNTIL IT TERMINATES.

CHOOSE ONE OF THE FOLLOWING ALTERNATIVES BY CROSSING OUT THE ALTERNATIVE NOT CHOSEN:

- (A) This power of attorney is not affected by my subsequent disability or incapacity.
- (B) This power of attorney becomes effective upon my disability or incapacity.

YOU SHOULD CHOOSE ALTERNATIVE (A) IF THIS POWER OF ATTORNEY IS TO BECOME EFFECTIVE ON THE DATE IT IS EXECUTED.

IF NEITHER (A) NOR (B) IS CROSSED OUT, IT WILL BE ASSUMED THAT YOU CHOSE ALTERNATIVE (A).

If Alternative (B) is chosen and a definition of my disability or incapacity is not contained in this power of attorney, I shall be considered disabled or incapacitated for purposes of this power of attorney if a physician certifies in writing at a date later than the date this power of attorney is executed that, based on the physician's medical examination of me, I am mentally incapable of managing my financial affairs. I authorize the physician who examines me for this purpose to disclose my physical or mental condition to another person for purposes of this power of attorney. A third party who accepts this power of attorney is fully protected from any action taken under this power of attorney that is based on the determination made by a physician of my disability or incapacity.

I agree that any third party who receives a copy of this document may act under it. Termination of this durable power of attorney is not effective as to a third party until the third party has actual knowledge of the termination. I agree to indemnify the third party for any claims that arise against the third party because of reliance on this power of attorney. The meaning and effect of this durable power of attorney is determined by Texas Law.

If any agent named by me dies, becomes incapacitated, resigns, refuses to act or is removed by court order, or if my marriage to an agent named by me is dissolved by a court decree of divorce or annulment or is declared void by a court (unless I provided in this document that the dissolution or declaration does not terminate the agent's authority to act under this power of attorney), I name the following (each to act alone and successively, in the order named) as successor(s) to that agent: _____.

Signed this _____ day of _____, 20_____.

JOHN A. DOE

The State of Texas

County of **DALLAS**

This document was acknowledged before me on the _____ day of _____, 20_____, by **JOHN A. DOE**.

Notary Public

IMPORTANT INFORMATION FOR AGENT

Agent's Duties

When you accept the authority granted under this power of attorney, you establish a "fiduciary" relationship with the principal. This is a special legal relationship that imposes on you legal duties that continue until you resign or the power of attorney is terminated, suspended, or revoked by the principal or by operation of law. A fiduciary duty generally includes the duty to:

- (1) act in good faith;
- (2) do nothing beyond the authority granted in this power of attorney;
- (3) act loyally for the principal's benefit;
- (4) avoid conflicts that would impair your ability to act in the principal's best interest; and
- (5) disclose your identity as an agent when you act for the principal by writing or printing the name of the principal and signing your own name as "agent" in the following manner:

JOHN A. DOE by **JANE B. DOE** as Agent

In addition, the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code) requires you to:

- (1) maintain records of each action taken or decision made on behalf of the principal;
- (2) maintain all records until delivered to the principal, released by the principal, or discharged by a court; and
- (3) if requested by the principal, provide an accounting to the principal that, unless otherwise directed by the principal or otherwise provided in the Special Instructions, must include:
 - (A) the property belonging to the principal that has come to your knowledge or into your possession;
 - (B) each action taken or decision made by you as agent;
 - (C) a complete account of receipts, disbursements, and other actions of you as agent that includes the source and nature of each receipt, disbursement, or action, with receipts of principal and income shown separately;
 - (D) a listing of all property over which you have exercised control that includes an adequate description of each asset and the asset's current value, if known to you;
 - (E) the cash balance on hand and the name and location of the depository at which the cash balance is kept;
 - (F) each known liability;
 - (G) any other information and facts known to you as necessary for a full and definite understanding of the exact condition of the property belonging to the principal; and

(H) all documentation regarding the principal's property.

Termination of Agent's Authority

You must stop acting on behalf of the principal if you learn of any event that terminates or suspends this power of attorney or your authority under this power of attorney. An event that terminates this power of attorney or your authority to act under this power of attorney includes:

- (1) the principal's death;
- (2) the principal's revocation of this power of attorney or your authority;
- (3) the occurrence of a termination event stated in this power of attorney;
- (4) if you are married to the principal, the dissolution of your marriage by a court decree of divorce or annulment or declaration that your marriage is void, unless otherwise provided in this power of attorney;
- (5) the appointment and qualification of a permanent guardian of the principal's estate unless a court order provides otherwise; or
- (6) if ordered by a court, your removal as agent (attorney in fact) under this power of attorney. An event that suspends this power of attorney or your authority to act under this power of attorney is the appointment and qualification of a temporary guardian unless a court order provides otherwise.

Liability of Agent

The authority granted to you under this power of attorney is specified in the Durable Power of Attorney Act (Subtitle P, Title 2, Estates Code). If you violate the Durable Power of Attorney Act or act beyond the authority granted, you may be liable for any damages caused by the violation or subject to prosecution for misapplication of property by a fiduciary under Chapter 32 of the Texas Penal Code.

THE AGENT, BY ACCEPTING OR ACTING UNDER THE APPOINTMENT, ASSUMES THE FIDUCIARY AND OTHER LEGAL RESPONSIBILITIES OF AN AGENT.

EXHIBIT "C"

BROWN, FOWLER & ALSUP

A Professional Corporation
Attorneys at Law

Aaron Polasek
Board Certified in Residential Real Estate Law
Texas Board of Legal Specialization

10333 Richmond Avenue, Suite 860
Houston, Texas 77042
www.LoanLawyers.com

Telephone 713/468-0400
Facsimile 713/468-5335
aPolasek@BFAlegal.com

MEMORANDUM

TO: Clients and Friends of the Firm
FROM: Aaron Polasek
DATE: May 10, 2017
SUBJECT: Proposed Constitutional Amendments of Texas Home Equity Laws

The Texas House and Senate have recently adopted Senate Joint Resolution 60 that will, if approved by Texas voters on a November 7, 2017 ballot (and canvassed by the Texas governor thereafter), amend certain provisions of the Texas Constitution that prescribe requirements for the origination and closing of Texas home equity loans. If approved, the amendments will become effective to and applicable for Texas home equity loans originated on or after January 1, 2018 and to existing home equity loans refinanced (as explained below) on or after that date.

The proposed amendments would implement the following changes to Texas home equity loans:

- Confirm *bona fide* discount points used to buy down the interest rate are excluded from the fee limitation calculation;
- Reduce the fee limitation from 3% of the original principal amount of the loan to 2%, but exclude from the calculation fees for an appraisal performed by a third party appraiser, fees incurred for a property survey performed by a state registered or licensed surveyor, and fees incurred for a state base premium for a loan policy of title insurance with endorsements established in accordance with state law or fees incurred for a title examination report if that cost is less than the state base premium for a loan policy of title insurance without endorsements established in accordance with state law;
- Remove the prohibition against securing a Texas home equity loan with property designated for agricultural use;
- Authorize the following entities, if doing business under the laws of the state of Texas or the United States, to make Texas home equity loans: a subsidiary of a bank, savings and loan association, savings bank or credit union;
- Confirm a mortgage banker or mortgage company is an authorized lender, able to originate a Texas home equity loan;

- Amend the requirement of a Texas home equity loan Deed of Trust to identify the transaction as a home equity loan to disclose that the extension of credit is the type of credit defined by Subsection (a)(6) of Section 50, an example of which appears as Exhibit “A”; and

- Permit an existing home equity loan that meets certain requirements to be refinanced in a rate/term refinance loan (doing away with the “once a home equity loan, always a home equity loan” requirement for loans meeting the Constitutionally-mandated criteria). To meet the criteria for this type of transaction, the following conditions must be met (the “Criteria”):

- 1) The existing home equity loan is “seasoned” for one year; the rate/term refinance cannot be closed before the first anniversary of the date the extension of credit was closed. [The term “closed” is defined by the Texas Administrative Code as the date on which each owner and the spouse of each owner signs the equity loan documents; the operative date for calculating the one year seasoning requirement is the date of closing, not funding.];
- 2) The rate/term refinance does not include the advance of any additional funds other than amount necessary pay-off the equity loan and, if applicable, other valid debt secured against the homestead property, and actual closing costs and reserves required by the lender to refinance the existing debt;
- 3) The rate/term refinance principal loan amount, when added to the aggregate total of all other outstanding debt secured by valid encumbrances of record against the property does not exceed 80 percent of the fair market value of the homestead property on the date the rate/term refinance is made. [This requirement is similar to the 80% CLTV limitation imposed on the origination of a home equity loan, and compliance with the limitation *should* be documented by a similar Acknowledgment of Fair Market Value, but there is no legal requirement such a document be utilized or signed by either the owner/borrower or lender.]; and
- 4) The Lender provides the owner the following written notice, on a separate document, not later than the third *business* day after the owner submits the loan application to the lender and at least 12 days (*calendar* days) before the date of the loan closing:

“YOUR EXISTING LOAN THAT YOU DESIRE TO REFINANCE IS A HOME EQUITY LOAN. YOU MAY HAVE THE OPTION TO REFINANCE YOUR HOME EQUITY LOAN AS EITHER A HOME EQUITY LOAN OR AS A NON-HOME EQUITY LOAN, IF OFFERED BY YOUR LENDER.

HOME EQUITY LOANS HAVE IMPORTANT CONSUMER PROTECTIONS. A LENDER MAY ONLY FORECLOSE A HOME EQUITY LOAN BASED ON A COURT ORDER. A HOME EQUITY LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE.

IF YOU HAVE APPLIED TO REFINANCE YOUR EXISTING HOME EQUITY LOAN AS A NON-HOME EQUITY LOAN, YOU WILL LOSE CERTAIN CONSUMER PROTECTIONS. A NON-HOME EQUITY REFINANCED LOAN:

(1) WILL PERMIT THE LENDER TO FORECLOSE WITHOUT A COURT ORDER;

(2) WILL BE WITH RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE; AND

(3) MAY ALSO CONTAIN OTHER TERMS OR CONDITIONS THAT MAY NOT BE PERMITTED IN A TRADITIONAL HOME EQUITY LOAN.

BEFORE YOU REFINANCE YOUR EXISTING HOME EQUITY LOAN TO MAKE IT A NON-HOME EQUITY LOAN, YOU SHOULD MAKE SURE YOU UNDERSTAND THAT YOU ARE WAIVING IMPORTANT PROTECTIONS THAT HOME EQUITY LOANS PROVIDE UNDER THE LAW AND SHOULD CONSIDER CONSULTING WITH AN ATTORNEY OF YOUR CHOOSING REGARDING THESE PROTECTIONS.

YOU MAY WISH TO ASK YOUR LENDER TO REFINANCE YOUR LOAN AS A HOME EQUITY LOAN. HOWEVER, A HOME EQUITY LOAN MAY HAVE A HIGHER INTEREST RATE AND CLOSING COSTS THAN A NON-HOME EQUITY LOAN.”

An affidavit executed by the owner or the owner’s spouse acknowledging the Criteria have been met conclusively establishes the requirements for a rate/term refinance loan have been met.

If passed by Texas voters, these Constitutional amendments will require or, in some instances while not required we recommend, the following changes to existing documents, or following new documents be incorporated into our Client’s Texas home equity loan packages:

- 1) An amended 12-Day Disclosure, for the origination of new Texas home equity loans, a copy of which is attached hereto as “Exhibit B”;
- 2) A new 12-Day Disclosure for loan transactions originated and closed as a “qualified” home equity loan refinanced as a rate/term transaction (an “Equity loan rate/term refinance”), a copy of which is attached hereto as “Exhibit C”;
- 3) An Affidavit to be signed by the owner or owner’s spouse in connection with the closing of an Equity loan rate/term refinance, a suggested copy of which is attached hereto as “Exhibit D”; and
- 4) An Acknowledgement of Fair Market Value specific to an Equity loan rate/term refinance, a suggested copy of which is attached hereto as “Exhibit E.”

The proposed Constitutional amendment would also increase the threshold at which a borrower can receive funds under a HELOC from 50% to 80%. Accordingly, a HELOC borrower could only receive funds under a line-of-credit if the amount requested was less than 80% (cumulative of all valid debt secured by the property) of the fair market value of the homestead property as established on the day of loan closing.

Should you have any questions or would like additional clarification of these issues please contact our office for further guidance.

EXHIBIT "A"

**THIS SECURITY INSTRUMENT SECURES AN EXTENSION OF CREDIT AS
DEFINED BY SUBSECTION (a)(6) OF SECTION 50, ARTICLE XVI OF THE TEXAS
CONSTITUTION.**

Texas Home Equity Security Instrument

EXHIBIT "B"

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 TWO PERCENT (2%) OF THE LOAN AMOUNT, EXCEPT FOR A FEE OR CHARGE FOR AN APPRAISAL PERFORMED BY A THIRD PARTY APPRAISER, A PROPERTY SURVEY PERFORMED BY A STATE REGISTERED OR LICENSED SURVEYOR, A STATE BASE PREMIUM FOR A MORTGAGEE POLICY OF TITLE INSURANCE WITH ENDORSEMENTS, OR A TITLE EXAMINATION REPORT;
- (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 UNLESS IT IS A HOME EQUITY LINE OF CREDIT;
- (G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;
- (H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;
- (I) **(REPEALED);**
- (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 LOAN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND MAY NOT WITHOUT YOUR CONSENT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH YOU RECEIVE A COPY OF YOUR LOAN APPLICATION IF NOT PREVIOUSLY PROVIDED AND A FINAL ITEMIZED DISCLOSURE OF THE ACTUAL FEES, POINTS, INTEREST, COSTS, AND CHARGES THAT WILL BE CHARGED AT CLOSING; 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, UNLESS ON OATH YOU REQUEST AN EARLIER CLOSING DUE TO A DECLARED STATE OF EMERGENCY;
- (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;
- (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 SECURED BY YOUR HOME OR OWED TO ANOTHER LENDER;
 - (2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

- (3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS FOR SUBSTANTIVE TERMS OF AGREEMENT 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 YOUR FINAL LOAN APPLICATION AND ALL EXECUTED 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 CLOSSES; 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, OR SIMILAR DEVICE, OR PREPRINTED CHECK THAT YOU DID NOT SOLICIT, 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 80 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 80 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
UPON THE DATE STATED BELOW.**

DATE OF SIGNATURE: _____

Owner/Borrower

Owner/Borrower

Owner/Borrower

Owner/Borrower

EXHIBIT "C"

**NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED
BY SECTION 50(f)(2), ARTICLE XVI,
TEXAS CONSTITUTION
(Home Equity to Rate/Term Refinance)**

YOUR EXISTING LOAN THAT YOU DESIRE TO REFINANCE IS A HOME EQUITY LOAN. YOU MAY HAVE THE OPTION TO REFINANCE YOUR HOME EQUITY LOAN AS EITHER A HOME EQUITY LOAN OR AS A NON-HOME EQUITY LOAN, IF OFFERED BY YOUR LENDER.

HOME EQUITY LOANS HAVE IMPORTANT CONSUMER PROTECTIONS. A LENDER MAY ONLY FORECLOSE A HOME EQUITY LOAN BASED ON A COURT ORDER. A HOME EQUITY LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE.

IF YOU HAVE APPLIED TO REFINANCE YOUR EXISTING HOME EQUITY LOAN AS A NON-HOME EQUITY LOAN, YOU WILL LOSE CERTAIN CONSUMER PROTECTIONS. A NON-HOME EQUITY REFINANCED LOAN:

- (1) WILL PERMIT THE LENDER TO FORECLOSE WITHOUT A COURT ORDER;
- (2) WILL BE WITH RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE; AND
- (3) MAY ALSO CONTAIN OTHER TERMS OR CONDITIONS THAT MAY NOT BE PERMITTED IN A TRADITIONAL HOME EQUITY LOAN.

BEFORE YOU REFINANCE YOUR EXISTING HOME EQUITY LOAN TO MAKE IT A NON-HOME EQUITY LOAN, YOU SHOULD MAKE SURE YOU UNDERSTAND THAT YOU ARE WAIVING IMPORTANT PROTECTIONS THAT HOME EQUITY LOANS PROVIDE UNDER THE LAW AND SHOULD CONSIDER CONSULTING WITH AN ATTORNEY OF YOUR CHOOSING REGARDING THESE PROTECTIONS.

YOU MAY WISH TO ASK YOUR LENDER TO REFINANCE YOUR LOAN AS A HOME EQUITY LOAN. HOWEVER, A HOME EQUITY LOAN MAY HAVE A HIGHER INTEREST RATE AND CLOSING COSTS THAN A NON-HOME EQUITY LOAN.

| | |
|-------|------|
| Owner | Date |
| Owner | Date |

EXHIBIT "D"

**AFFIDAVIT ACKNOWLEDGING COMPLIANCE OF EQUITY LOAN
RATE/TERM REFINANCE REQUIREMENTS
(PURSUANT TO TEXAS CONSTITUTION, ART. XVI, SECTION 50(f)(2))**

STATE OF TEXAS §
 §
COUNTY OF _____ §

Loan No.:

Lender:

Homestead Property:

BEFORE ME, the undersigned authority, on this day personally appeared _____
_____ (“Affiant”, collectively if more than one), who is/are the owner(s)
and/or the spouse(s) of the owner(s) of the Homestead Property, being by me first duly sworn, state the following
under oath:

Affiant is the owner or spouse of the owner of the Homestead Property. Affiant has applied for and wishes to close a refinance mortgage transaction (the “Loan”) of an existing home equity loan secured by the Homestead Property, as permitted by Article XVI, Section 50(f)(2), Texas Constitution. Affiant hereby, under oath, states and affirms the following conditions required of Lender have been met and complied with in the Loan creation and closing:

- 1) The Loan was not closed before the first anniversary date of the date the existing home equity loan was closed;
- 2) The Loan does not include the advance of additional funds other than funds necessary to pay-off the existing home equity loan and, if applicable, other debt secured by a valid lien against the Homestead Property, as well as the actual costs and escrow reserve funds required by Lender to close the Loan;
- 3) The Loan is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the Homestead Property does not exceed 80 percent of the fair market value of the Homestead Property on the date the refinance of the extension of credit is made; and
- 4) The Lender provided the owner of the Homestead Property the following written notice on a separate document not later than the third business day after the date the owner submitted the loan application for the Loan to the Lender and at least 12 days before the date the Loan closed:

**“NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED
BY SECTION 50(f)(2), ARTICLE XVI,
TEXAS CONSTITUTION
(Home Equity to Rate/Term Refinance)**

YOUR EXISTING LOAN THAT YOU DESIRE TO REFINANCE IS A HOME EQUITY LOAN.
YOU MAY HAVE THE OPTION TO REFINANCE YOUR HOME EQUITY LOAN AS EITHER

A HOME EQUITY LOAN OR AS A NON-HOME EQUITY LOAN, OFFERED BY YOUR LENDER.

HOME EQUITY LOANS HAVE IMPORTANT CONSUMER PROTECTIONS. A LENDER MAY ONLY FORECLOSE A HOME EQUITY LOAN BASED ON A COURT ORDER. A HOME EQUITY LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE.

IF YOU HAVE APPLIED TO REFINANCE YOUR EXISTING HOME EQUITY LOAN AS A NON-HOME EQUITY LOAN, YOU WILL LOSE CERTAIN CONSUMER PROTECTIONS. A NON-HOME EQUITY REFINANCED LOAN:

- (1) WILL PERMIT THE LENDER TO FORECLOSE WITHOUT A COURT ORDER;
- (2) WILL BE WITH RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE; AND
- (3) MAY ALSO CONTAIN OTHER TERMS OR CONDITIONS THAT MAY NOT BE PERMITTED IN A TRADITIONAL HOME EQUITY LOAN.

BEFORE YOU REFINANCE YOUR EXISTING HOME EQUITY LOAN TO MAKE IT A NON-HOME EQUITY LOAN, YOU SHOULD MAKE SURE YOU UNDERSTAND THAT YOU ARE WAIVING IMPORTANT PROTECTIONS THAT HOME EQUITY LOANS PROVIDE UNDER THE LAW AND SHOULD CONSIDER CONSULTING WITH AN ATTORNEY OF YOUR CHOOSING REGARDING THESE PROTECTIONS.

YOU MAY WISH TO ASK YOUR LENDER TO REFINANCE YOUR LOAN AS A HOME EQUITY LOAN. HOWEVER, A HOME EQUITY LOAN MAY HAVE A HIGHER INTEREST RATE AND CLOSING COSTS THAN A NON-HOME EQUITY LOAN.”

Affiant affirms and acknowledges Lender would not make the Loan without, and will rely upon the truthfulness of, the representations made herein.

Executed this _____ day of _____, 20_____.

| | |
|-------|-------|
| _____ | _____ |
| Owner | Owner |
| _____ | _____ |
| Owner | Owner |

SWORN TO AND SUBSCRIBED BEFORE ME this _____ day of _____, 20_____, by _____.

NOTARY PUBLIC, STATE OF TEXAS

