

## **SJR 42: CREATING NEW OPPORTUNITIES FOR TEXAS LENDERS AND CONSUMERS**

by  
**Michael K. O'Neal and Erica D. Thomas**

On September 29, 2003, Governor Perry formally certified the ballot results of the September 13 ballot and in doing so SJR 42 took effect. Presented to the voters as Proposition 16, SJR 42 does, among other things, the following: authorizes home equity lines of credit ("HELOCs"), a form of revolving account that permits borrowing from time to time, at the borrower's discretion, up to a set credit limit; authorizes biweekly payments of home equity loans; adds licensed mortgage brokers to the categories of authorized lenders eligible to make home equity loans; amends the prescribed 12-day notice; requires a new itemized preclosing disclosure; authorizes delegated rulemaking power; and defines new cure procedures.

The addition of HELOCs and the other changes are significant. Both lenders and consumers should benefit from the changes.

HELOCs are popular in other states, and now borrowers in Texas will also benefit from this option. Borrowers can access their equity at their discretion and in the amount needed rather than having to take a lump sum and pay interest on it. The Texas Comptroller issued a report in which she noted:

- An estimated \$12.7 billion in higher-cost, non-tax-deductible loans that currently exist could be supplemented if HELOCs were available and Texans used them at the same rate as other consumers in the country.
- Texas consumers could save \$741 million annually using HELOCs instead of other loans.

HELOCs allow Texas homeowners to borrow money secured by their homes in draws from time to time when a need arises. However, there are several requirements that both lenders and consumers must keep in mind. Those requirements include:

- Each advance is at least \$4,000.
- Credit cards, debit cards, pre-printed solicitation checks, or "similar devices" are not authorized to access the HELOC.
- Any fees described by the three percent fee limit are charged and collected only at the time the HELOC is established and no fee is charged or collected in connection with any debit or advance.
- The maximum principal amount that may be extended under the HELOC added to the aggregate total of the outstanding principal balances of all indebtedness secured by the homestead cannot exceed 80 percent of the fair market value ("FMV") of the homestead.
- No additional debits or advances are authorized if the total principal amount outstanding exceeds 50 percent of the FMV of the homestead (as determined on the date the account is established).
- A lender may not unilaterally amend the terms of the HELOC.

- Repayment is to be made in regular periodic installments, not more often than every 14 days and not less often than monthly, beginning not later than two months from the date the extension of credit is made, and the following:
  - 1) during the "draw period" each installment equals or exceeds the amount of accrued interest; and
  - 2) during the "repayment period" installments are substantially equal.

SJR 42 also amends the law so that an equity loan may not be closed before "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." Thus, a new preclosing disclosure is required.

Certain lenders had been reluctant to make home equity loans because of the steep penalty for making an error - loss of the entire principal and interest on the loan – and because of the uncertainty of how some provisions may be interpreted. These concerns are addressed, in part, through the new cure provisions and administrative interpretations.

The home equity lending law is long and complex. Since its original adoption, questions have arisen as to how certain provisions are interpreted. No state agency was initially given the authority to administratively answer those questions. Interpretive authority relating to the home equity lending law is now granted to the Finance Commission, and to the Credit Union Commission for credit unions, with a safe harbor for lenders who conform to such interpretations. In addition to home equity loans, the grant includes the ability to issue interpretations pertaining to home improvement loans, reverse mortgages, and certain refinance rules.

SJR 42 provides clear guidelines regarding the timing and procedural requirements that lenders must follow to cure failures to comply with their obligations. This should reduce the risk to lenders that unintended deficiencies in documentation or closing procedures could have the consequence of forfeiture of loan principal and interest. The cure provisions allow lenders, within 60-days after notification by the borrower of any noncompliance with the home equity law, to cure the failure in the specific manner provided by the Constitution.

Lenders and consumers alike should benefit from these changes. Several lenders are actively marketing and now making HELOCs. Lenders that did not originally make home equity loans, or only made a few, are now considering or are increasing making the same. The net result, creating new opportunities for both lenders and consumers, which should have a positive impact on the economy.

# # #

*Mike O'Neal is a shareholder and member of the Banking Practice of Winstead Sechrest & Minick P.C. Erica Thomas is an associate in the Banking Practice of Winstead Sechrest & Minick P.C. For more information concerning this topic please contact Mike or Erica at 214/745-5400, or via e-mail at moneal@winstead.com and ethomas@winstead.com.*