

- SUBJECT:** Constitutional amendment revising home equity loan provisions
- COMMITTEE:** Investments and Financial Services — committee substitute recommended
- VOTE:** 7 ayes — Parker, Stephenson, Burrows, Dean, Holland, E. Johnson, Longoria
- 0 nays
- WITNESSES:** For — Burt Solomons, Texas Association of Realtors; (*Registered, but did not testify*: Stephen Scurlock, Independent Bankers Association of Texas; David Emerick, JPMorgan Chase; Randy Lee, Stewart Title Guaranty Company; Julia Parenteau, Texas Association of Realtors; Celeste Embrey, Texas Bankers Association; Jeff Huffman, Texas Credit Union Association; Jim Reaves, Texas Farm Bureau; Allen Place, Texas Land Title Association; John Fleming and Mark Raskin, Texas Mortgage Bankers Association)
- Against — Robert Doggett; Robert "Chip" Lane
- BACKGROUND:** Home equity lending in Texas is governed by Texas Constitution, Art. 16, sec. 50(a)(6). There are numerous provisions governing home equity loans in the Constitution. Under Art. 16, sec. 50(a)(6)(B), the outstanding principal on all debt secured by a home cannot exceed 80 percent of a home's fair market value.
- Fee cap.** Fees to originate, evaluate, maintain, record, insure, and service home equity loans are capped at 3 percent.
- Refinancing.** Home equity loans can be refinanced only as another home equity loan or a reverse mortgage.
- Agricultural homesteads.** Home equity loans may not be secured by homesteads designated for agricultural use, except for homesteads used for milk production.

Home equity lines of credit. A home equity line of credit is a form of open-ended account that borrowers can debit from time to time. With a home equity line of credit, borrowers can take out a loan and then draw, repay, and reborrow money. There are numerous conditions on these loans, including requiring all advances to be at least \$4,000 and prohibiting the use of a credit or debit card to obtain an advance. Home equity lines of credit are held to the requirement of all home equity loans that the principal amount borrowed when added to the total outstanding principal balance on all debt secured by the home cannot exceed 80 percent of the home's fair market value. In addition, no advances may be taken on a line-of-credit loan if the outstanding principal exceeds 50 percent of the home's fair market value.

DIGEST:

CSHJR 99 would amend the Texas Constitution to revise the cap on fees that can be charged when making a home equity loan, allow the refinancing of home equity loans into non-home equity loans, repeal a prohibition on home equity loans for most agricultural homesteads, revise a provision governing home equity lines of credit, and amend the list of approved lenders.

Fee cap. CSHJR 99 would lower the cap on fees that can be charged to borrowers and would revise what type of fees count toward the cap. The cap on fees would be lowered from 3 percent to 2 percent of the principal of the loan. The following would be excluded from the calculation of the fee cap:

- appraisals done by third party appraisers;
- property surveys by state registered or licensed surveyors;
- state base premiums for title insurance with endorsements; and
- a title examination report if its cost is less than the state base premiums for title insurance without endorsements.

Refinancing. CSHJR 99 would allow home equity loans to be refinanced as non-home equity loans and secured with a lien against a home, if certain conditions were met. The refinancing would have to:

- occur at least a year after the home equity loan was closed;
- not include additional funds other than ones to refinance another type of debt outlined in the Constitution and costs and reserves required by the lender to refinance the debt; and
- be of an amount that, when added to the total outstanding principal balances of other indebtedness secured by encumbrances against the home, was not more than 80 percent of the fair market value of the home.

In addition, the lender would be required to give the owner a written notice, reproduced in the Constitution, within three business days of a loan application being submitted and at least 12 days before the loan is closed. The written notice lists the differences between home equity and non-home equity loans.

Home equity lines of credit. CSHJR 99 would repeal a current restriction on home equity lines of credit which prohibits additional advances on a loan from being made if the principal amount outstanding exceeds 50 percent of the fair market value of the homestead.

Agricultural homesteads. CSHJR 99 would repeal a prohibition on home equity loans for homesteads designated for agricultural use.

Approved lenders. The current list of entities that can make home equity loans would be expanded to include subsidiaries of banks, savings and loan associations, savings banks, and credit unions that meet other requirements in the Constitution. Mortgage brokers would be removed from the list and mortgage bankers and mortgage companies would be added.

Changes to notice. CSHJR 99 would make conforming changes to the notice that must be given to borrowers that outline the Constitution's provisions on home equity loans. The notice itself is reproduced in the Constitution.

Ballot language and effective date. The proposed constitutional amendment would be submitted to voters at an election on November 7, 2017. The ballot proposal would read: "The constitutional amendment to establish a lower amount for expenses that can be charged to a borrower and removing certain financing expense limitations for a home equity loan, establishing certain authorized lenders to make a home equity loan, changing certain options for the refinancing of home equity loans, changing the threshold for an advance of a home equity line of credit, and allowing home equity loans on agricultural homesteads."

If approved by voters, the amendment would take effect January 1, 2018. Changes would apply only to loans made on or after that date and to existing loans that are refinanced on or after that date.

**SUPPORTERS
SAY:**

CSHJR 99 would adjust the state's home equity lending framework to help make loans more accessible, lower costs for borrowers, and give consumers more choice. The proposed amendment would be consistent with the goal of protecting consumers within a stable housing market that Texas set when it developed home-equity loans.

Fee cap. CSHJR 99 would balance consumer protection with an appropriate standard for lenders by lowering the ceiling on fees that can be charged and removing certain fees from the calculation of the cap. These changes would address problems that have surfaced, especially for loans around \$100,000 and those in rural areas. It can be difficult for lenders to put together a loan under the fee cap, resulting in some being reluctant to make such loans.

The fee cap was designed as a check against lenders imposing excessive fees, and CSHJR 99 would continue that consumer protection. The fees that would be excluded from the cap come from third parties and do not go to lenders, including ones for appraisals, surveys, title insurance, and title examination reports. If these were excluded and the cap was lowered, consumers would continue to be protected against extreme fees from lenders, and lenders would be held to a reasonable standard that ensured

they could offer such loans.

Refinancing. CSHJR 99 would increase consumer choice by allowing the refinancing of home equity loans into non-home equity loans, something currently prohibited. If consumers want to combine a home equity loan with a purchase money loan, perhaps to get a lower interest rate on the total amount borrowed and have one payment, that option should be available. The proposed amendment would establish reasonable parameters on such refinances, including requiring at least a year to pass before a home equity loan could be refinanced as a non-home equity loan, not allowing cash advances, and keeping the standard limit used for home equity loans so that the total amount the homeowner had borrowed could not exceed 80 percent of the home's value.

CSHJR 99 would require that consumers receive a notice that clearly explained the difference in the two types of loans so that they could make an informed choice. The notice would ensure that borrowers were especially aware of two important differences between these loan types by including a statement that the new loan would permit lenders to foreclose without a court order and that lenders would have recourse against other assets. This full knowledge of the conditions of each type of loan would help protect borrowers from any aggressive lending practices. Refinanced loans would be under the same regulations as any non-home equity loans with which the borrower would be familiar.

Home equity lines of credit. The proposed amendment would repeal an unnecessary restriction on home equity lines of credit, which has resulted in consumers being unable to access funds for which they had been approved. In such instances, owners must repay funds in order to access the remaining line of credit. This can result in consumers taking out larger loans sooner than they would like and paying more interest.

CSHJR 99 would eliminate the 50 percent limit on the amount that can be outstanding before making additional withdrawals, but lines of credit would continue to be covered by provisions that limit loans to 80 percent of fair market value. This would make conditions on lines of credit

consistent with regular home equity loans, while continuing the same protections with these loans.

Agricultural homesteads. CSHJR 99 would allow home equity loans to be made on agricultural homesteads to give these consumers the same choice as other Texans. The original home equity laws broadly prohibited such loans, but there have been no problems in the more than 20 years of home equity lending in Texas that would support continuing a prohibition on loans to one class of homesteads. In addition to shutting owners of larger farms and ranches out from home equity loans, the current prohibition keeps smaller, hobby agricultural homesteads from having the option of taking out home equity loans. All of the current consumer protections would continue to cover these loans.

Approved lenders. CSHJR 99 would update the types of approved lenders that can make home equity loans by including subsidiaries of entities that already can make the loans, including banks, savings and loan associations, savings banks, and credit unions. The bill also would update language relating to those in the mortgage industry by eliminating an obsolete term and including mortgage bankers and mortgage companies. All of the lenders that would be added by CSHJR 99 are highly regulated and would be held to the same standards as those who make the loans now.

OPPONENTS
SAY:

CSHJR 99 would raise costs for borrowers and would roll back important consumer protections. These protections have worked for consumers and lenders and contributed to a stable housing market that was not as seriously affected by the recent housing bubble as other states.

Fee cap. CSHJR 99's changes to the fee cap would raise, not lower, costs for consumers and could create incentives to lenders to make loans. While the bill would lower the overall cap, it also would exclude major charges from the cap calculation. Borrowers would continue to pay these charges for appraisals, surveys, title insurance, or title examination reports. Lenders would then have room under the cap to raise or add upfront fees. Taken together, the costs to borrowers could easily be higher than current

costs under the 3 percent cap. Higher fees going to lenders could incentivize the approval of loans by originators interested in the fees. To protect against predatory lending practices, the focus for lenders should be not only on the fees but on home equity loans as a package, with fees, interest rate, and consumer protections taken into consideration.

Refinancing. Allowing home equity loans to be refinanced as non-home equity loans would be counter to the ideas and protections embedded in the Texas home equity laws. These laws deliberately encompassed the idea of "once-a-home-equity-loan, always-a-home-equity-loan" so that homeowners who borrowed against the equity in their homes would have certain protections.

Consumers would lose important protections if home equity loans were refinanced as non-home equity loans. These protections include requiring judicial foreclosure on home equity loans and making home equity loans non-recourse so that a borrower's other assets are not at risk in a default. Requiring judicial foreclosure is especially important as it ensures the involvement of a court and that homeowners are afforded certain rights in the foreclosure process. Allowing this type of refinancing also could give lenders incentives to push the refinancing of loans both to earn the fees and to bring a loan out from under the protections given to home equity borrowers.

Home equity loan borrowers interested in refinancing their loans already can do so with a new home equity loan that carries with it all the protections, and this would be a better option than the change proposed by CSHJR 99.

NOTES:

A companion resolution, SJR 60 by Hancock, was approved by the Senate on April 20 and has been reported favorably by the House Investments and Financial Services Committee.

According to the fiscal note, the cost to publish the resolution would be \$114,369.