

BILL ANALYSIS

Senate Research Center

S.J.R. 12
By: Patterson
State Affairs
3-24-97
Committee Report (Amended)

DIGEST

Currently, the Texas Constitution prohibits the use of equity in a home for collateral for loans other than home improvement loans. S.J.R. 12 proposes a constitutional amendment authorizing a voluntary, consensual encumbrance on homestead property for the purpose of an equity loan.

PURPOSE

As proposed, S.J.R. 12 requires the submission to the voters of a constitutional amendment to authorize a voluntary, consensual encumbrance on homestead property for the purpose of an equity loan.

RULEMAKING AUTHORITY

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 50, Article XVI, Texas Constitution, as follows.

Sec. 50. Provides that a homestead of a family or of a single adult person shall be protected from forced sale, for the payment of all debts, except for an equity loan, among others.

(b) Makes a nonsubstantive change.

(c) Makes no changes.

(d) Provides that an equity loan may be made, originated, negotiated, or arranged only by certain persons or institutions.

(e) Prohibits an equity loan from being secured by homestead property that is designated for agricultural use, as provided by statutes governing property tax.

(f) Prohibits an equity loan from being in the form of a credit card transaction, as defined by statute.

(g) Prohibits a homestead from being encumbered by more than one equity loan in addition to any valid encumbrances on the homestead property authorized by Subsection (a)(1), (2), (3), (4), or (5) of this section.

(h) Prohibits a lender from requiring or accepting real or personal property as additional collateral on an equity loan. Provides exceptions. Provides that only the homestead property securing an equity loan may be collateral for the equity loan.

(i) Prohibits a lender from requiring or accepting a borrower's homestead property, regardless of whether the property was previously encumbered by an existing equity loan, as collateral on a debt not described by Subsection (a) of this section.

(j) Provides that the committed principal amount of an equity loan plus the aggregate total

of the outstanding balances of other indebtedness secured by valid encumbrances of record against the homestead property may not exceed 90 percent of the fair market value of the homestead property on the date the equity loan is closed. Provide that violation of this subsection does not affect the validity of other indebtedness secured by valid encumbrances of record against the homestead property.

(k) Provides that the aggregate total of the outstanding balances of indebtedness secured by valid encumbrances of record against the homestead property does not include any advance made by the lender to protest a lien, security interest, or other valid encumbrance on the homestead property securing the lien.

(l) Prohibits a lender from accelerating the remaining payments of an equity loan or demand payment of the loan in full because of a decrease in the market value of the homestead property securing the equity loan and provides certain exceptions to this prohibition. Authorizes a lender, if permitted by the loan documents, to refuse to make additional advances under an equity loan, other than a reverse mortgage, if the value of the homestead property decreases, regardless of the cause of the decrease.

(m) Prohibits a lender from accelerating the remaining payments of an equity loan or demand payment of the loan in full because of the borrower's default under any other indebtedness not secured by a prior valid encumbrance on the homestead property. Authorizes a lender to refuse to make additional advances under an equity loan under certain circumstances.

(n) Authorizes a lienholder or assignee to conclusively rely on an acknowledgment by the owner of homestead property and the owner's spouse, if applicable, of certain requirements for an equity loan secured by a mortgage, trust deed, or other lien on a homestead.

(o) Defines "blended equity loan," "equity loan," and "reverse mortgage."

SECTION 2. Adds a temporary provision to the Texas Constitution, as follows:

TEMPORARY PROVISION. (a) Provides that this temporary provision applies to the constitutional amendment proposed by the 75th Legislature, Regular Session, 1997, authorizing a voluntary, consensual encumbrance on homestead property.

(b) Provides that the constitutional amendment takes effect January 1, 1998.

(c) Provides that the temporary provision takes effect on the adoption of the amendment by the voters and expires January 2, 1998.

SECTION 3. Requires this proposed constitutional amendment to be submitted to the voters at an election to be held November 4, 1997. Sets forth the required language for the ballot.

SUMMARY OF COMMITTEE CHANGES

Amendment 1

Page 2, line 25, strike "or". Page 3, Line 1, strike the period and substitute "; or". Page 3, after line 1, add new Subdivision (4) to include in the provisions of this subsection a person contracted to make, originate, or arrange loans qualified for purchase by the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation.