

## Client Alerts

### Texas Home Equity Amendment

September 15, 2003

On September 13, 2003, the voters of Texas approved an amendment to the Texas constitution which will, among other things, permit lenders to extend home equity lines of credit (HELOCs) to borrowers in the State of Texas for the first time. In addition to the extensive requirements for closed-end home equity loans, HELOCs will be subject to the following requirements:

- each advance must be for at least \$4,000;
- advances may not be obtained by use of credit cards, debit cards, preprinted checks or similar devices;
- the aggregate amount of advances outstanding under the HELOC at any one time may not exceed 50% of the fair market value of the homestead and, when added to all other debt secured by the homestead, may not exceed 80% of the fair market value of the homestead as of the date the HELOC was established; and
- all fees must be charged up-front -- no fees may be charged in connection with an advance.

The amendment also implements the following new requirements for all home equity loans, including HELOCs:

- scheduled payments may be due not more often than every 14 days or less often than monthly;
- at least one day prior to closing, the lender must provide the borrower with an itemized good faith estimate of the fees, points, interest, costs and charges that the borrower will be required to pay at closing; and
- licensed mortgage brokers are now included in the list of lenders that are authorized to make home equity loans under the Texas constitution.

The amendment also provides much needed relief for lenders in the form of "remedial" provisions which allow lenders to cure defective home equity loans by refunding overcharges to borrowers and making appropriate loan modifications in order to conform the loans to the applicable requirements of the Texas constitution. If a loan defect cannot be cured, the lender will have the option to credit the borrower's account for \$1,000 and offer to the borrower the right to refinance the loan for its remaining term at no cost on the same terms (including interest rate) as the original loan, with any modification necessary to comply with the applicable Texas constitutional provisions. The failure to cure a defective loan in the manner specified by the new amendment will result in a lender's forfeiture of all principal and interest on the loan.

The new amendment further provides a mechanism for refinancing existing home equity loans into reverse mortgage loans so that older borrowers (62 years of age and older) may convert their home equity into money that may be used for current expenses.

The amendment does not, however, provide a mechanism for a rate/term refinance of a purchase money loan and a seasoned (one year or older) home equity loan into a new first lien loan without such new first lien loan being deemed to be a home equity loan (and thus subject to the requirements of the Texas constitution). The Texas Mortgage Bankers Association (TMBA) had proposed such a provision, but it was unable to overcome the adamant opposition of Texas realtors. The TMBA has indicated that it will make the adoption of the rate/term refinancing proposal its primary goal for the next legislative session.

While the new amendment is beneficial to lenders, the home equity lending provisions of the Texas constitution remain extensive and complex. In order to provide clarification of issues that have arisen or may arise, the amendment authorizes the legislature to delegate to one or more state agencies the power to interpret various provisions of the Texas constitution relating to home equity loans. The Texas legislature has enacted a statute delegating such authority to the Credit Union Commission (for credit unions) and the Texas Finance Commission (for all other lenders).

The new amendment will become effective when certified by the Texas Secretary of State, which is expected to occur within the next two weeks.

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**This memorandum is only intended to be a general discussion and summary of the matters discussed, based upon laws and regulations currently in effect. For more information on the Texas home equity laws and regulations, please do not hesitate to contact Mark Harris at (214) 659-4425.**