

HOME EQUITY LENDING

Constitutional Requirements for a Texas Home Equity Loan

- 1) The home equity loan is voluntary (applicant is not required to obtain a Home Equity loan) and the Home Equity lien is created “under a written agreement with the consent of each owner and each owner’s spouse.”**
- 2) The total debt (“encumbrances”) on the homestead (including the HE loan) cannot exceed 80% of the Fair Market Value as of the date of loan closing.**
- 3) There is no personal liability (non-recourse) for the HE loan unless the loan was obtained by fraud.**
- 4) A HE loan may only be foreclosed by Court Order (Judicial Foreclosure)**
- 5) Loan Origination charges (all fees paid by borrower to “originate, evaluate, maintain, record, insure or service the loan”) may not exceed 3% of the loan amount. Fees to be included in the 3% calculation: Discount points, Origination/processing fees, title insurance premiums and charges, attorney’s fees, credit reports, survey, flood**

- certification, tax certificates, inspections, appraisals, recording, tax and flooding servicing and mortgage insurance.**
- 6) The loan is pre-payable without penalty or charge.**
 - 7) The loan is secured only by the homestead. There can be no additional collateral to secure the loan (no Guarantee Agreements, no Cross-collateral protection).**
 - 8) The homestead does not have an Agricultural Tax designation (except for milk producers).**
 - 9) The HE loan may not be accelerated because of decrease in value of property or because of owner's default on other debt.**
 - 10) There can only be one HE loan at a time.**
 - 11) The HE loan is scheduled to be repaid in "equal successive periodic payments" which equals or exceeds the amount of accrued interest not more often than every 14 days and not less often than monthly.**
 - 12) Payments must begin within 2 months of closing.**
 - 13) The HE loan may not be closed for at least 12 days after owner submits loan application and lender has given owner the HE Notice.**

- 14) **Owner has 1 business day to review final closing statement unless there is a bona fide emergency “or another good cause exists” and the owner gives written permission to close.**
- 15) **The HE loan may not be closed within 1 year of last HE loan (unless owner requests an earlier closing because a state of emergency has been declared by the President or Governor for the area where the homestead is located).**
- 16) **The HE loan may only be closed in the office of the lender, an attorney or title company. If a Power of Attorney is used or if the documents are mailed to the owner for their signature, the Power of Attorney and the documents must be signed in an office of the lender, an attorney or title company.**
- 17) **The HE loan may be at a fixed or adjustable rate.**
- 18) **The lender must be authorized to make HE loans in Texas.**
- 19) **Lender may require borrower to use HE loan proceeds to pay off debt owed to 3rd party creditors or valid debt against the homestead. Lender cannot force borrower to pay off other non-homestead debt owed to the Lender (credit cards, boat loans, etc.)**
- 20) **The borrower should not sign HE loan documents with blanks relating to “substantive terms” of the agreement.**

- 21) At closing, the owner should receive a copy of all final loan documents and all executed documents signed by owner at closing.**
- 22) The HE Deed of Trust (Security Agreement) should disclose that it secures a HE loan under Section 50(a) (6) of the Texas Constitution.**
- 23) Upon payoff of the HE loan, the lender must cancel and return the promissory note and a recordable Release of Lien.**
- 24) Any owner or spouse may, within 3 days of the HE loan closing, rescind the HE loan “without penalty or charge”.**
- 25) The owner and lender must sign a written acknowledgement of the property’s fair market value as of the closing date.**
- 26) Unless the lender corrects its violation of a HE requirement, the lender “shall forfeit all principal and interest” of the HE loan.**
- 27) The lender has 60 days after the lender is notified of a violation:**
 - a. To pay the owner any charge over the 3% limit;**
 - b. To send the owner a written acknowledgement that the HE lien is valid**
 - i. Only up to the maximum 80% limit;**
 - ii. Is not secured by additional collateral;**

iii. Is not secured by property with an Agricultural Tax designation.

- c. To send owners copies of required documents;**
- d. To obtain the required signatures on written acknowledgement of fair market value;**
- e. To send written acknowledgement to owner that interest is abated until a disallowed prior lien is released.**

28) If the violation cannot be cured by the foregoing procedures, the lender may refund or credit the owner with \$1000.00 and refinance the HE loan at no cost to owner with modifications to cure the violations.

29) The lender shall forfeit all principal and interest if the lender is not qualified to make HE loans or if the HE agreement was not signed by each owner and each owner's spouse, unless they subsequently consent to the HE agreement.

30) The owner must be provided with a specific Home Equity Notice.

31) If the loan negotiations/discussions are in any language other than English, the HE Notice must be translated into that other language.