

By: Carona
(Villarreal)

S.J.R. No. 18

1 SENATE JOINT RESOLUTION

2 proposing a constitutional amendment to authorize the making of a
3 reverse mortgage loan for the purchase of homestead property and to
4 amend certain requirements in connection with a reverse mortgage
5 loan.

6 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF TEXAS:

7 SECTION 1. Subsection (k), Section 50, Article XVI, Texas
8 Constitution, is amended to read as follows:

9 (k) "Reverse mortgage" means an extension of credit:

10 (1) that is secured by a voluntary lien on homestead
11 property created by a written agreement with the consent of each
12 owner and each owner's spouse;

13 (2) that is made to a person who is or whose spouse is
14 62 years or older;

15 (3) that is made without recourse for personal
16 liability against each owner and the spouse of each owner;

17 (4) under which advances are provided to a borrower:

18 (A) based on the equity in a borrower's
19 homestead; or

20 (B) for the purchase of homestead property that
21 the borrower will occupy as a principal residence;

22 (5) that does not permit the lender to reduce the
23 amount or number of advances because of an adjustment in the
24 interest rate if periodic advances are to be made;

1 (6) that requires no payment of principal or interest
2 until:

3 (A) all borrowers have died;

4 (B) the homestead property securing the loan is
5 sold or otherwise transferred;

6 (C) all borrowers cease occupying the homestead
7 property for a period of longer than 12 consecutive months without
8 prior written approval from the lender;

9 (C-1) if the extension of credit is used for the
10 purchase of homestead property, the borrower fails to timely occupy
11 the homestead property as the borrower's principal residence within
12 a specified period after the date the extension of credit is made
13 that is stipulated in the written agreement creating the lien on the
14 property; or

15 (D) the borrower:

16 (i) defaults on an obligation specified in
17 the loan documents to repair and maintain, pay taxes and
18 assessments on, or insure the homestead property;

19 (ii) commits actual fraud in connection
20 with the loan; or

21 (iii) fails to maintain the priority of the
22 lender's lien on the homestead property, after the lender gives
23 notice to the borrower, by promptly discharging any lien that has
24 priority or may obtain priority over the lender's lien within 10
25 days after the date the borrower receives the notice, unless the
26 borrower:

27 (a) agrees in writing to the payment

1 of the obligation secured by the lien in a manner acceptable to the
2 lender;

3 (b) contests in good faith the lien
4 by, or defends against enforcement of the lien in, legal
5 proceedings so as to prevent the enforcement of the lien or
6 forfeiture of any part of the homestead property; or

7 (c) secures from the holder of the
8 lien an agreement satisfactory to the lender subordinating the lien
9 to all amounts secured by the lender's lien on the homestead
10 property;

11 (7) that provides that if the lender fails to make loan
12 advances as required in the loan documents and if the lender fails
13 to cure the default as required in the loan documents after notice
14 from the borrower, the lender forfeits all principal and interest
15 of the reverse mortgage, provided, however, that this subdivision
16 does not apply when a governmental agency or instrumentality takes
17 an assignment of the loan in order to cure the default;

18 (8) that is not made unless the prospective borrower
19 and the spouse of the prospective borrower attest [~~owner of the~~
20 ~~homestead attests~~] in writing that the prospective borrower and the
21 prospective borrower's spouse [~~owner~~] received counseling
22 regarding the advisability and availability of reverse mortgages
23 and other financial alternatives that was completed not earlier
24 than the 180th day nor later than the 5th day before the date the
25 extension of credit is closed;

26 (9) that is not closed before the 12th day after the
27 date the lender provides to the prospective borrower the following

1 written notice on a separate instrument, which the lender or
2 originator and the borrower must sign for the notice to take effect:

3 "IMPORTANT NOTICE TO BORROWERS

4 RELATED TO YOUR REVERSE MORTGAGE

5 "UNDER THE TEXAS TAX CODE, CERTAIN ELDERLY PERSONS MAY DEFER THE
6 COLLECTION OF PROPERTY TAXES ON THEIR RESIDENCE HOMESTEAD. BY
7 RECEIVING THIS REVERSE MORTGAGE YOU MAY BE REQUIRED TO FORGO ANY
8 PREVIOUSLY APPROVED DEFERRAL OF PROPERTY TAX COLLECTION AND YOU MAY
9 BE REQUIRED TO PAY PROPERTY TAXES ON AN ANNUAL BASIS ON THIS
10 PROPERTY.

11 "THE LENDER MAY FORECLOSE THE REVERSE MORTGAGE AND YOU MAY LOSE
12 YOUR HOME IF:

13 "(A) YOU DO NOT PAY THE TAXES OR OTHER ASSESSMENTS ON THE
14 HOME EVEN IF YOU ARE ELIGIBLE TO DEFER PAYMENT OF PROPERTY TAXES;

15 "(B) YOU DO NOT MAINTAIN AND PAY FOR PROPERTY INSURANCE ON
16 THE HOME AS REQUIRED BY THE LOAN DOCUMENTS;

17 "(C) YOU FAIL TO MAINTAIN THE HOME IN A STATE OF GOOD
18 CONDITION AND REPAIR;

19 "(D) YOU CEASE OCCUPYING THE HOME FOR A PERIOD LONGER THAN
20 12 CONSECUTIVE MONTHS WITHOUT THE PRIOR WRITTEN APPROVAL FROM THE
21 LENDER OR, IF THE EXTENSION OF CREDIT IS USED FOR THE PURCHASE OF
22 THE HOME, YOU FAIL TO TIMELY OCCUPY THE HOME AS YOUR PRINCIPAL
23 RESIDENCE WITHIN A PERIOD OF TIME AFTER THE EXTENSION OF CREDIT IS
24 MADE THAT IS STIPULATED IN THE WRITTEN AGREEMENT CREATING THE LIEN
25 ON THE HOME;

26 "(E) YOU SELL THE HOME OR OTHERWISE TRANSFER THE HOME
27 WITHOUT PAYING OFF THE LOAN;

1 "(F) ALL BORROWERS HAVE DIED AND THE LOAN IS NOT REPAID;

2 "(G) YOU COMMIT ACTUAL FRAUD IN CONNECTION WITH THE LOAN; OR

3 "(H) YOU FAIL TO MAINTAIN THE PRIORITY OF THE LENDER'S LIEN
4 ON THE HOME, AFTER THE LENDER GIVES NOTICE TO YOU, BY PROMPTLY
5 DISCHARGING ANY LIEN THAT HAS PRIORITY OR MAY OBTAIN PRIORITY OVER
6 THE LENDER'S LIEN WITHIN 10 DAYS AFTER THE DATE YOU RECEIVE THE
7 NOTICE, UNLESS YOU:

8 "(1) AGREE IN WRITING TO THE PAYMENT OF THE OBLIGATION
9 SECURED BY THE LIEN IN A MANNER ACCEPTABLE TO THE LENDER;

10 "(2) CONTEST IN GOOD FAITH THE LIEN BY, OR DEFEND
11 AGAINST ENFORCEMENT OF THE LIEN IN, LEGAL PROCEEDINGS SO AS TO
12 PREVENT THE ENFORCEMENT OF THE LIEN OR FORFEITURE OF ANY PART OF THE
13 HOME; OR

14 "(3) SECURE FROM THE HOLDER OF THE LIEN AN AGREEMENT
15 SATISFACTORY TO THE LENDER SUBORDINATING THE LIEN TO ALL AMOUNTS
16 SECURED BY THE LENDER'S LIEN ON THE HOME.

17 "IF A GROUND FOR FORECLOSURE EXISTS, THE LENDER MAY NOT COMMENCE
18 FORECLOSURE UNTIL THE LENDER GIVES YOU WRITTEN NOTICE BY MAIL THAT A
19 GROUND FOR FORECLOSURE EXISTS AND GIVES YOU AN OPPORTUNITY TO
20 REMEDY THE CONDITION CREATING THE GROUND FOR FORECLOSURE OR TO PAY
21 THE REVERSE MORTGAGE DEBT WITHIN THE TIME PERMITTED BY SECTION
22 50(k)(10), ARTICLE XVI, OF THE TEXAS CONSTITUTION. THE LENDER MUST
23 OBTAIN A COURT ORDER FOR FORECLOSURE EXCEPT THAT A COURT ORDER IS
24 NOT REQUIRED IF THE FORECLOSURE OCCURS BECAUSE:

25 "(1) ALL BORROWERS HAVE DIED; OR

26 "(2) THE HOMESTEAD PROPERTY SECURING THE LOAN IS SOLD
27 OR OTHERWISE TRANSFERRED."

1
2 "YOU SHOULD CONSULT WITH YOUR HOME COUNSELOR OR AN ATTORNEY IF YOU
3 HAVE ANY CONCERNS ABOUT THESE OBLIGATIONS BEFORE YOU CLOSE YOUR
4 REVERSE MORTGAGE LOAN. TO LOCATE AN ATTORNEY IN YOUR AREA, YOU MAY
5 WISH TO CONTACT THE STATE BAR OF TEXAS."

6
7 "THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS
8 CONSTITUTION. YOUR RIGHTS ARE GOVERNED IN PART BY SECTION 50,
9 ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

10 ~~[that requires the lender, at the time the loan is made, to disclose~~
11 ~~to the borrower by written notice the specific provisions contained~~
12 ~~in Subdivision (6) of this subsection under which the borrower is~~
13 ~~required to repay the loan];~~

14 (10) that does not permit the lender to commence
15 foreclosure until the lender gives notice to the borrower, in the
16 manner provided for a notice by mail related to the foreclosure of
17 liens under Subsection (a)(6) of this section, that a ground for
18 foreclosure exists and gives the borrower at least 30 days, or at
19 least 20 days in the event of a default under Subdivision
20 (6)(D)(iii) of this subsection, to:

21 (A) remedy the condition creating the ground for
22 foreclosure;

23 (B) pay the debt secured by the homestead
24 property from proceeds of the sale of the homestead property by the
25 borrower or from any other sources; or

26 (C) convey the homestead property to the lender
27 by a deed in lieu of foreclosure; and

1 (11) that is secured by a lien that may be foreclosed
2 upon only by a court order, if the foreclosure is for a ground other
3 than a ground stated by Subdivision (6)(A) or (B) of this
4 subsection.

5 SECTION 2. This proposed constitutional amendment shall be
6 submitted to the voters at an election to be held November 5, 2013.
7 The ballot shall be printed to permit voting for or against the
8 proposition: "The constitutional amendment to authorize the making
9 of a reverse mortgage loan for the purchase of homestead property
10 and to amend lender disclosures and other requirements in
11 connection with a reverse mortgage loan."