

By: Carona

S.J.R. No. 18

A JOINT RESOLUTION

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

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

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

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

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

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

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

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

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

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

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

24 (6) that requires no payment of principal or interest

1 until:

2 (A) all borrowers have died;

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

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

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

14 (D) the borrower:

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

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

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

26 (a) agrees in writing to the payment
27 of the obligation secured by the lien in a manner acceptable to the

1 lender;

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

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

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

17 (8) that is not made unless the borrower and the
18 borrower's spouse attest [~~owner of the homestead attests~~] in
19 writing that the borrower and the borrower's spouse [~~owner~~]
20 received counseling regarding the advisability and availability of
21 reverse mortgages and other financial alternatives;

22 (9) that is not closed before the 12th day after the
23 date the lender provides to the borrower the following written
24 notice on a separate instrument:

25 "IMPORTANT NOTICE TO BORROWERS

26 RELATED TO YOUR REVERSE MORTGAGE

27 "THE LENDER MAY FORECLOSE THE REVERSE MORTGAGE AND YOU MAY LOSE

1 YOUR HOME IF:

2 "(A) YOU DO NOT PAY THE TAXES OR OTHER ASSESSMENTS ON THE
3 HOME;

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

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

8 "(D) YOU CEASE OCCUPYING THE HOME FOR A PERIOD LONGER THAN
9 12 CONSECUTIVE MONTHS WITHOUT THE PRIOR WRITTEN APPROVAL FROM THE
10 LENDER OR, IF THE EXTENSION OF CREDIT IS USED FOR THE PURCHASE OF
11 THE HOME, YOU FAIL TO TIMELY OCCUPY THE HOME AS YOUR PRINCIPAL
12 RESIDENCE WITHIN A PERIOD OF TIME AFTER THE EXTENSION OF CREDIT IS
13 MADE THAT IS STIPULATED IN THE WRITTEN AGREEMENT CREATING THE LIEN
14 ON THE HOME;

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

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

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

19 "(H) YOU FAIL TO MAINTAIN THE PRIORITY OF THE LENDER'S LIEN
20 ON THE HOME, AFTER THE LENDER GIVES NOTICE TO YOU, BY PROMPTLY
21 DISCHARGING ANY LIEN THAT HAS PRIORITY OR MAY OBTAIN PRIORITY OVER
22 THE LENDER'S LIEN WITHIN 10 DAYS AFTER THE DATE YOU RECEIVE THE
23 NOTICE, UNLESS YOU:

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

26 "(2) CONTEST IN GOOD FAITH THE LIEN BY, OR DEFEND
27 AGAINST ENFORCEMENT OF THE LIEN IN, LEGAL PROCEEDINGS SO AS TO

1 PREVENT THE ENFORCEMENT OF THE LIEN OR FORFEITURE OF ANY PART OF THE
2 HOME; OR

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

6 "IF A GROUND FOR FORECLOSURE EXISTS, THE LENDER MAY NOT COMMENCE
7 FORECLOSURE UNTIL THE LENDER GIVES YOU WRITTEN NOTICE BY MAIL THAT A
8 GROUND FOR FORECLOSURE EXISTS AND GIVES YOU AN OPPORTUNITY TO
9 REMEDY THE CONDITION CREATING THE GROUND FOR FORECLOSURE OR TO PAY
10 THE REVERSE MORTGAGE DEBT WITHIN THE TIME PERMITTED BY SECTION
11 50(k)(10), ARTICLE XVI, OF THE TEXAS CONSTITUTION."

12
13 "YOU SHOULD CONSULT WITH YOUR HOME COUNSELOR IF YOU HAVE ANY
14 CONCERNS ABOUT THESE OBLIGATIONS BEFORE YOU CLOSE YOUR REVERSE
15 MORTGAGE LOAN."

16
17 "THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS
18 CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI,
19 OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE." [~~that requires~~
20 ~~the lender, at the time the loan is made, to disclose to the~~
21 ~~borrower by written notice the specific provisions contained in~~
22 ~~Subdivision (6) of this subsection under which the borrower is~~
23 ~~required to repay the loan];~~

24 (10) that does not permit the lender to commence
25 foreclosure until the lender gives notice to the borrower, in the
26 manner provided for a notice by mail related to the foreclosure of
27 liens under Subsection (a)(6) of this section, that a ground for

1 foreclosure exists and gives the borrower at least 30 days, or at
2 least 20 days in the event of a default under Subdivision
3 (6)(D)(iii) of this subsection, to:

4 (A) remedy the condition creating the ground for
5 foreclosure;

6 (B) pay the debt secured by the homestead
7 property from proceeds of the sale of the homestead property by the
8 borrower or from any other sources; or

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

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

15 SECTION 2. This proposed constitutional amendment shall be
16 submitted to the voters at an election to be held November 5, 2013.
17 The ballot shall be printed to permit voting for or against the
18 proposition: "The constitutional amendment to authorize the making
19 of a reverse mortgage loan for the purchase of homestead property
20 and to amend lender disclosures and other requirements in
21 connection with a reverse mortgage loan."