



## Home Equity Reform Constitutional Amendment Filed

By TMBA

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On Tuesday, House Chairman Tan Parker filed HJR 99, the Constitutional Amendment that amends the Home Equity provisions of the Constitution. It is expected that the Senate will file a companion joint resolution sometime today or tomorrow.

HJR 99 reflects extensive work over the last year by Texas Mortgage Bankers Association, Texas Bankers Association, Independent Bankers Association of Texas, the Texas Association of Realtors and the two credit union trade associations to make some common-sense reforms to home equity lending in Texas.

Here is a synopsis of HJR 99:

- 1. Amends the fee cap to facilitate making smaller dollar home equity loans.** Lenders are de facto prohibited from making small dollar home equity loans because of the existing 3 percent fee cap. HJR 99 provides that the fee cap will be reduced from 3 percent to 2 percent, but the following charges will not be included in calculating the 2 percent: appraisal fees; survey fees; title premiums or title examination charges in lieu of a title policy. Feedback from lenders to the work group indicated that while lenders preferred additional exclusions, excluding these major components will accomplish the objective of allowing consumers to access smaller dollar home equity loans. Significantly, HJR 99 also specifically codifies that bona fide discount points do not count against the cap.
- 2. Clarifies who is an authorized lender.** While current law authorizes depository institutions to make home equity loans, the Constitution is silent on subsidiaries of depository institutions. HJR 99 clarifies that a subsidiary of a depository institution is an authorized lender. Current law uses the outdated term “mortgage broker.” HJR 99 substitutes “mortgage banker or mortgage company.”
- 3. Permits refinance of a seasoned home equity loan as a rate and term refinance.** The current law has what we know as “once a home equity loan, always a home equity loan” provisions. HJR 99 will allow the refinance of a home equity loan after one year as a traditional rate and term refinance. The total refinanced when added to all other debt securing the homestead may not exceed 80 percent of the value of the property. Consumers must be provided a notice not later than three days after application for the refinance that the consumer has the option of refinancing as a home equity loan or a non-home equity loan. The notice will inform the consumer that the non-home equity loan may be foreclosed

without a court order, that the consumer will have personal liability for any deficiency and that the non-home equity loan may have other terms that are prohibited in a home equity loan. Presumably, the non-home equity loan carries a lower interest rate, so a consumer can choose the lower rate of the non-home equity loan or to refinance as a home equity loan.

**4. Repeals the prohibition of home equity loans secured by agricultural property.** Currently, agricultural property cannot secure a home equity loan. HJR 99 repeals this restriction. As HJR 99 was being drafted, the agricultural interests that had favored the prohibition indicated that their organizations had reversed positions and wanted the restriction repealed.

**5. Deletes the HELOC restrictions on future advances.** Current law restricts future advances under a home equity line of credit so that the total aggregate indebtedness may not exceed 50 percent of the value of the homestead. This restriction is puzzling, since a borrower could borrow the full 80 percent of value by taking all the money upfront. HJR 99 repeals the 50 percent of value limitation for future advances.

HJR 99 represents the most significant home equity changes in 14 years. TMBA looks forward to working with our industry partners in promoting passage of HJR 99 and its Senate companion.