CREDIT UNION DEPARTMENT

DATE: **December 10, 2020**

TO: **State Chartered Credit Unions**

SUBJECT: **Change 58 to Update the Texas Rules for Credit Unions**

The attached pages constitute changes to the Texas Rules for Credit Unions. Your book of rules should be updated as follows:

REMOVE PAGES	INSERT	AMENDMENTS OR NEW RULES
Index – pages ix thru xii	Index – pages ix and xii	Updated Index
151- 1 thru 151-4	151-1 thru 151-2	Amended Chapter 151.1
		Repealed Chapters 151.2, 151.3, 151.4, Chapter 151.5, 151.6, and 151.7
		Readopted Chapter 151.8
152-1 thru 152-4	152-1 thru 152-4	Readopted Chapters 152.1, 152.3, 152.5, 152.7, 152.9, 152.11, 152.13, and 152.15
153-1 thru 153-23	153-1 thru 153-24	Readopted Chapters 153.1, 153.2, 153.3, 153.4, 153.5, 153.7, 153.9, 153.10, 153.12, 153.13, 153.16, 153.17, 153.18, 153.20, 153.24, 153.25, 153.45, 153.51, 153.82, 153.85, 153.86, 153.88, 153.91, 153.92, 153.93, 153.94, 153.95, and 153.96
		Amended Chapters 153.8, 153.11, 153.14, 153.15, 153.22, and 153.45
		New Chapter 153.26

FOR YOUR RECORDS - Please keep this letter of transmittal behind the **Update Tab** of the Rules Section of your binder as a record to show your rules are up to date.

CHAPTER 151
Procedures for Administrative Interpretation of Subsection (a), Section 50, Article XVI, Texas Constitution (The Home Equity Lending Law)

CHAPTER 152
Administrative Interpretation of Subsection (a), Section 50, Article XVI, Texas Constitution, (Repair, Renovation, and New Construction on Homestead Property)

CHAPTER 153
Administrative Interpretation of Subsection (a), Section 50, Article XVI, Texas Constitution, (The Home Equity Lending Law)

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Part VIII. Joint Interpretations

Chapter 151. Procedures for Administrative Interpretation of Subsection (a), Section 50, Article XVI, Texas Constitution, (The Home Equity Lending Law)

§151.1. Interpretation Procedures.

(a) Issuing interpretations. The Finance Commission and Credit Union Commission may on their own motion issue interpretations of Section 50(a) (5)-(7), (e)-(p), and (t), Article XVI of the Texas Constitution. The commissions will propose and adopt interpretations in accordance with the rulemaking requirements of Texas Government Code, Chapter 2001, Subchapter B.

(b) Agency recommendations. The Office of Consumer Credit Commissioner, Department of Banking, or Department of Savings and Mortgage Lending may recommend proposed interpretations to the Finance Commission. The Credit Union Department may recommend proposed interpretations to the Credit Union Commission. The four agencies may seek informal input from stakeholders and the other agencies before recommending a proposed interpretation to the commissions.

(c) Informal request for interpretation. A person may submit an informal request for an interpretation of Section 50(a)(5) – (7), (e) – (p), or (t), Article XVI of the Texas Constitution. An informal request may be submitted to the Office of Consumer Credit Commissioner, Department of Banking, Department of Savings and Mortgage Lending, or Credit Union Department. A request should:

(1) cite the specific provision of the Texas Constitution to be interpreted;

(2) explain the factual and legal context for the request; and

(3) explain the requestor's opinion of how the request should be resolved.

(d) Petition for rulemaking. An interested person may formally request an interpretation of Section 50(a)(5) – (7), (e) – (p), or (t), Article XVI of the Texas Constitution by submitting a petition of initiate rulemaking.

(1) Any petition for the Finance Commission to issue an interpretation must be submitted to the Office of Consumer Credit Commissioner and must include the information required by §9.82 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

(2) Any petition for the Credit Union Commission to issue an interpretation must be submitted to the Credit Union Department and must include the information required by §97.500 of this title (relating to Petitions to Initiate Rulemaking Proceedings).

Source: The provisions of this §151.1 adopted to be effective January 7, 2004, 29 TexReg 83; reviewed and amended to be effective November 13, 2008, 33 TexReg 9074; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and amended to be effective November 26, 2020, 45 TexReg 8307.

§151.8. Savings Clause and Severability.

The Finance Commission and Credit Union Commission intend that each provision of any interpretation adopted under Chapters 151, 152, and 153 of this title is consistent with Chapter 2001, Government Code. The provisions of any interpretation adopted under Chapters 151, 152,

and 153 of this title are severable. If any provision of any interpretation adopted under Chapters 151, 152, and 153 of this title is determined to be inconsistent with Chapter 2001, Government Code or otherwise invalid, all valid provisions are severable from the invalid part.

Source: The provisions of this §151.8 adopted to be effective January 7, 2004, 29 TexReg 83; reviewed and amended to be effective November 13, 2008, 33 TexReg 9074; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

Part VIII. Joint Interpretations

Chapter 152. Administrative Interpretation of Subsection (a), Section 50, Article XVI, Texas Constitution, (Repair, Renovation, and New Construction on Homestead Property)

§152.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, Section 50. Words and terms have these meanings when used in this chapter, unless the context indicates otherwise:

(1) Contract - A contract for work and material that complies with the Texas Constitution and the Texas Property Code, used to:

(A) construct new improvements;

(B) repair or renovate existing improvements; or

(C) both (A) and (B).

(2) Existing improvements - A pre-existing addition to a homestead that is physically attached to the homestead.

(3) New improvements - An addition physically attached to a homestead:

(A) that does not exist on the homestead prior to the commencement of the use of work and material to physically attach the new improvements to the homestead under Section 50(a)(5); and

(B) the construction of which will not involve:

(i) work on existing improvements

(ii) the use of material on existing improvements; or

(iii) physically attaching material to existing improvements.

(4) Material - Material used in constructing new improvements or repairing or renovating existing improvements. Material alone is not improvements. Material used to construct new improvements becomes a part of the new improvements once physically attached to the new improvements. Likewise, material used to repair or renovate existing improvements becomes a part of the existing improvements once physically attached to the existing improvements.

(5) Owner - A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(6) Physically attach – To permanently attach, affix, add to, or fasten onto.

(7) Repair or Renovate - Work and material used to:

(A) replace material physically attached to existing improvements whether or not the new material is similar to or the same as the material being replaced (examples include replacing flooring, roofing, built-in appliances, siding, windows, or other material that is attached to existing improvements);

(B) physically attach material to existing improvements where there is no previously attached material being replaced that is the same as or similar to the material being attached (examples include attaching to existing improvements a new room, a built-in cabinet, or a second story); and

(C) mend, remedy or upgrade all or a portion of existing improvements without adding or replacing material to the existing improvements (examples include restoring wood flooring or woodwork of an existing improvement where the work does not include

physically attaching material to the existing improvements, and removing flooring to expose flooring underneath).

(8) Title company - A title insurance company or an agent of a title insurance company.

Source: The provisions of this §152.1 adopted to be effective July 7, 2005, 30 TexReg 3866; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted September 4, 2020, 45 TexReg 6251.

§152.3. Requirements for Construction of New Improvements: Section 50(a)(5).

(a) Except as provided in Section 152.5(c) of this chapter, Section 50(a)(5)(A)-(D) does not apply to the construction of new improvements on a homestead.

(b) A valid lien, under Section 50(a)(5), may be created on a homestead if the debt for the work and material used for new improvements is contracted for in writing. Once the lien is created, the homestead is not protected by Section 50 from forced sale for the payment of the debt.

Source: The provisions of this §152.3 adopted to be effective July 7, 2005, 30 TexReg 3867; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted September 4, 2020, 45 TexReg 6251.

§152.5. Requirements for Work and Material Used to Repair or Renovate: Section 50(a)(5)(A)-(D).

(a) Section 50(a)(5)(A)-(D) applies only to contracts and applications for work and material used to repair or renovate existing improvements.

(b) If debt is incurred for work and material used to repair or renovate existing improvements and the requirements of Section 50(a)(5)(A)-(D) have been met, a lien is established on the homestead of a family, or of a single adult person, and it is not protected by Section 50 from forced sale for the payment of the debt.

(c) If the application and contract are for both work and material used to repair or renovate existing improvements and for work and material used in constructing new improvements, the entire transaction is considered a contract to repair and renovate existing improvements and compliance with the constitutional requirements of Section 50(a)(5)(A)-(D) is required to establish a lien on the homestead.

Source: The provisions of this §152.5 adopted to be effective July 7, 2005, 30 TexReg 3867; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted September 4, 2020, 45 TexReg 6251.

§152.7. Consent of Spouses in the Case of Family Homestead: Section 50(a)(5)(A).

(a) In the case of a family homestead, both spouses must consent in writing to the contract for repair or renovation of existing improvements, regardless of whether the spouse has a community property interest or other ownership interest in the homestead.

(b) In addition to the consent of both spouses of a family homestead, the lender or contractor, at its option, may also require all other owners and their spouses to consent to the contract.

Source: The provisions of this §152.7 adopted to be effective July 7, 2005, 30 TexReg 3867; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted September 4, 2020, 45 TexReg 6251.

§152.9. Five Day Waiting Period for a Contract Before Executing Work and Materials for Repairs or Renovation: Section 50(a)(5)(C).

The contract for work and materials may not be executed before the fifth calendar day after the owner makes written application for any extension of credit for the work and materials except as provided in §152.13. To count the five days, the day after the application for extension of credit is made is day one. If the fifth calendar day falls on a Sunday or federal legal public holiday, then the contract for work and materials may not be executed until the next calendar day that is not a Sunday or federal legal public holiday.

Source: The provisions of this §152.9 adopted to be effective March 3, 2005, 30 TexReg 1065; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted September 4, 2020, 45 TexReg 6251.

§152.11. Three Day Right to Rescind Contract for Work and Materials for Repairs or Renovation: Section 50(a)(5)(C).

The owner and owner's spouse may rescind the contract for work and materials within three calendar days after execution by all parties of the contract for work and materials. To count the three days, the day after the contract is executed is day one. The rescission period ends at midnight of the third calendar day following the execution of the contract. If the third calendar day falls on a Sunday or federal legal public holiday, then the right of rescission is extended to midnight of the next calendar day that is not a Sunday or federal legal public holiday.

Source: The provisions of this §152.11 adopted to be effective March 3, 2005, 30 TexReg 1068; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted September 4, 2020, 45 TexReg 6251.

§152.13. Health or Safety Reasons for Waiving the Five Day Waiting Period and the Three Day Right to Rescind: Section 50(a)(5)(B) and (C).

(a) If the owner wants to waive the 5-day waiting period in §50(a)(5)(B) or the 3-day right of rescission in §50(a)(5)(C), the owner must sign a statement that, at a minimum:

(1) describes how the conditions of the homestead property require immediate repair;

(2) describes how the conditions of the homestead property materially affect the health and safety of the owner or the person residing in the homestead; and

(3) states that the owner is waiving the 5-day waiting period under §50(a)(5)(B), the 3-day period to rescind the contract for work and materials under §50(a)(5)(C), or both;

(b) Printed forms for this purpose are prohibited.

Source: The provisions of this §152.13 adopted to be effective March 3, 2005, 30 TexReg 1068; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted September 4, 2020, 45 TexReg 6251.

152.15. Place for Execution of Contract for Work and Material: Section 50(a)(5)(D).

(a) The persons granting or acknowledging the encumbrance of their homestead interest must execute the contract for work and material used to repair or renovate existing improvements at the permanent physical address of:

(1) the office or branch office of a third-party lender making an extension of credit for the work and material;

(2) an attorney at law; or

(3) a title company.

(b) Execution of the contract may not occur at a mobile office located at:

(1) the homestead; or

(2) any other place not permitted by subsection (a) of this section.

Source: The provisions of this §152.15 adopted to be effective July 7, 2005, 30 TexReg 3867; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted September 4, 2020, 45 TexReg 6251.

Part VIII. Joint Interpretations

Chapter 153. Administrative Interpretation of Subsection (a), Section 50, Article XVI, Texas Constitution, (The Home Equity Lending Law)

§153.1. Definitions.

Any reference to Section 50 in this interpretation refers to Article XVI, Texas Constitution, unless otherwise noted. These words and terms have the following meanings when used in this chapter, unless the context indicates otherwise:

(1) Balloon – an installment that is more than an amount equal to twice the average of all installments scheduled before that installment.

(2) Business Day – All calendar days except Sundays and these federal legal public holidays: New Year's Day, the Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, and Christmas Day.

(3) Closed or closing – the date when each owner and the spouse of each owner signs the equity loan agreement or the act of signing the equity loan agreement by each owner and the spouse of each owner.

(4) Consumer Disclosure – The written notice contained in Section 50(g) that must be provided to the owner at least 12 days before the date the extension of credit is made.

(5) Cross-default provision– a provision in a loan agreement that puts the borrower in default if the borrower defaults on another obligation.

(6) Date the extension of credit is made – the date on which the closing of the equity loan occurs.

(7) Equity loan – An extension of credit as defined and authorized under the provisions of Section 50(a)(6).

(8) Equity loan agreement – the documents evidencing the agreement between the parties of an equity loan.

(9) Fair Market Value – the fair market value of the homestead as determined on the date that the loan is closed.

(10) Force-placed insurance – insurance purchased by the lender on the homestead when required insurance on the homestead is not maintained in accordance with the equity loan agreement.

(11) Interest – As used in Section 50(a)(6)(E), "interest" means the amount determined by multiplying the loan principal by the interest rate over a period of time.

(12) Lockout provision – a provision in a loan agreement that prohibits a borrower from paying the loan early.

(13) Owner – A person who has the right to possess, use, and convey, individually or with the joinder of another person, all or part of the homestead.

(14) Preclosing Disclosure – The written itemized disclosure required by Section 50(a)(6)(M)(ii).

(15) Two percent limitation – the limitation on fees in Section 50(a)(6)(E).

Source: The provisions of this §153.1 adopted to be effective January 7, 2004, 29 TexReg 84; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; amended to be effective January 1, 2015, 39 TexReg 10407; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and amended to be effective March 29, 2018, 43 TexReg 1839; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.2. Voluntary Lien: Section 50(a)(6)(A).

An equity loan must be secured by a voluntary lien on the homestead created under a written agreement with the consent of each owner and each owner's spouse.

(1) The consent of each owner and each owner's spouse must be obtained, regardless of whether any owner's spouse has a community property interest or other interest in the homestead.

(2) An owner or an owner's spouse who is not a maker of the note may consent to the lien by signing a written consent to the mortgage instrument. The consent may be included in the mortgage instrument or a separate document.

(3) The lender, at its option, may require each owner and each owner's spouse to consent to the equity loan. This option is in addition to the consent required for the lien.

Source: The provisions of this §153.2 adopted to be effective January 7, 2004, 29 TexReg 84; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.3. Limitation on Equity Loan Amount: Section 50(a)(6)(B).

An equity loan must be of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made. For example, on a property with a fair market value of $100,000, the maximum amount of debt against the property permitted by Section 50(a)(6)(B) is $80,000. Assuming existing debt of $30,000, the maximum amount of the equity loan debt is $50,000.

(1) The principal amount of an equity loan is the sum of:

(A) the amount of the cash advanced; and

(B) the charges at the inception of an equity loan to the extent these charges are financed in the principal amount of the loan.

(2) The principal balance of all outstanding debt secured by the homestead on the date the extension of credit is made determines the maximum principal amount of an equity loan.

(3) The principal amount of an equity loan does not include interest accrued after the date the extension of credit is made (other than any interest capitalized and added to the principal balance on the date the extension of credit is made), or other amounts advanced by the lender after closing as a result of default, including for example, ad valorem taxes, hazard insurance premiums, and authorized collection costs, including reasonable attorney's fees.

(4) On a closed-end multiple advance equity loan, the principal balance also includes contractually obligated future advances not yet disbursed.

Source: The provisions of this §153.3 adopted to be effective January 7, 2004, 29 TexReg 84; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21,2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.4. Nonrecourse: Section 50(a)(6)(C).

An equity loan must be without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud.

(1) If an owner or the spouse of an owner cosigns an equity loan agreement or consents to a security interest, the equity loan must not give the lender personal liability against an owner or an owner's spouse.

(2) A lender is prohibited from pursuing a deficiency except when the owner or owner's spouse has committed actual fraud in obtaining an equity loan.

(3) To determine whether a lender may pursue personal liability, the borrower or owner must have committed "actual fraud." To obtain personal liability under this section, the deceptive conduct must constitute the legal standard of "actual fraud." Texas case law distinguishes "actual fraud" from "constructive fraud." "Actual fraud" encompasses dishonesty of purpose or intentional breaches of duty that are designed to injure another or to gain an undue and unconscientious advantage.

Source: The provisions of this §153.4 adopted to be effective January 7, 2004, 29 TexReg 85; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.5. Two percent fee limitation: Section 50(a)(6)(E).

An equity loan must not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two percent of the original principal amount of the extension of credit, excluding fees for an appraisal performed by a third party appraiser, a property survey performed by a state registered or licensed surveyor, a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law, or a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(1) Optional Charges. Charges paid by an owner or an owner's spouse at their sole discretion are not fees subject to the two percent fee limitation. Charges that are not imposed or required by the lender, but that are optional, are not fees subject to the two percent limitation. The use of the word "require" in Section 50(a)(6)(E) means that optional charges are not fees subject to the two percent limitation.

(2) Optional Insurance. Insurance coverage premiums paid by an owner or an owner's spouse that are at their sole discretion are not fees subject to the two percent limitation.

Examples of these charges may include credit life and credit accident and health insurance that are voluntarily purchased by the owner or the owner's spouse.

(3) Charges that are Interest. Charges an owner or an owner's spouse is required to pay that constitute interest under §153.1(11) of this title (relating to Definitions) are not fees subject to the two percent limitation.

(A) Per diem interest is interest and is not subject to the two percent limitation.

(B) Bona fide discount points are interest and are not subject to the two percent limitation. Discount points are bona fide if the discount points truly correspond to a reduced interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the equity loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are bona fide. This system may include documentation of options that the owner is offered in the course of negotiation, including a contract rate without discount points and a lower contract rate based on discount points.

(4) Charges that are not Interest. Charges an owner or an owner's spouse is required to pay that are not interest §153.1 (11) of this title are fees subject to the two percent limitation.

(5) Charges Absorbed by Lender. Charges a lender absorbs, and does not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the two percent limitation.

(6) Charges to Originate. Charges an owner or an owner's spouse is required to pay to originate an equity loan that are not interest under §153.1(11) of this title are fees subject to the two percent limitation.

(7) Charges Paid to Third Parties. Charges an owner or an owner's spouse is required to pay to third parties for separate and additional consideration for activities relating to originating an equity loan are fees subject to the two percent limitation. For example, these charges include attorneys' fees for document preparation to the extent authorized by applicable law. Charges that third parties absorb, and do not charge an owner or an owner's spouse that the owner or owner's spouse might otherwise be required to pay are unrestricted and not fees subject to the two percent limitation.

(8) Charges to Evaluate. Charges an owner or an owner's spouse is required to pay to evaluate the credit decision for an equity loan, that are not interest under §153.1(11) of this title, are fees subject to the two percent limitation. Examples to these charges include fees collected to cover the expenses of a credit report, flood zone determination, tax certificate, inspection, or appraisal management services.

(9) Charges to Maintain. Charges paid by an owner or an owner's spouse to maintain an equity loan that are not interest under §153.1(11) of this title are fees subject to the two percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(10) Charges to Record. Charges an owner or an owner's spouse is required to pay for the purpose of recording equity loan documents in the official public record by public officials are fees subject to the two percent limitation.

(11) Charges to Insure an Equity Loan. Premiums an owner or an owner's spouse is required to pay to insure an equity loan are fees subject to the two percent limitation. Examples of these charges include title insurance and mortgage insurance protection, unless the premiums are otherwise excluded under paragraph (15) of this section.

(12) Charges to Service. Charges paid by an owner or an owner's spouse for a party to service an equity loan that are not interest under §153.11(11) of this title are fees subject to the

two percent limitation if the charges are paid at the inception of the loan, or if the charges are customarily paid at the inception of an equity loan but are deferred for later payment after closing.

(13) Exclusion for Appraisal Fee. A fee for an appraisal performed by a third party appraiser is not a fee subject to the two percent limitation. The appraisal must be performed by a person who is not an employee of the lender. The excludable appraisal fee is limited to the amount paid to the appraiser for the completion of the appraisal, and does not include an appraisal management services fee described by Texas Occupations Code, §1104.158(a)(2).

(14) Exclusion for Property Survey Fee. A fee for a property survey performed by a state registered or licensed surveyor is not a fee subject to the two percent limitation. The property survey must be performed by a person who is licensed or registered under Texas Occupations Code, Chapter 1071.

(15) Exclusion for Title Insurance Premium. A state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law is not a fee subject to the two percent limitation.

(A) The excludable premium is limited to the applicable basic premium rate for title insurance published by the Texas Department of Insurance, plus authorized premiums for applicable endorsements.

(B) Any mortgagee policy for the equity loan must be provided by a company authorized to do business in this state.

(C) If additional premiums for endorsements are charged, the endorsements must be applicable to the mortgagee policy for the equity loan. Rules adopted by the Texas Department of Insurance govern the applicability of endorsements and the authorized amount of the premium for each endorsement.

(16) Exclusion for Title Examination Report Fee. A fee for a title examination report is not a fee subject to the two percent limitation if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law.

(A) The excludable fee must be less than the applicable basic premium rate for title insurance published by the Texas Department of Insurance, not including any additional premiums for endorsements.

(B) The fee for a title examination report may not be excluded from the two percent limitation if the equity loan is covered by a mortgagee policy of title insurance.

(C) The fee must comply with applicable law. If the equity loan is a secondary mortgage loan under Texas Finance Code, Chapter 342, then the fee is limited to a reasonable fee for a title examination and preparation of an abstract of title by an attorney who is not an employee of the lender, or a title company or property search company authorized to do business in this state, as provided by Texas Finance Code, §342.308(a)(1).

(17) Secondary Mortgage Loans. A lender making an equity loan that is a secondary mortgage loan under Texas Finance Code, Chapter 342 may charge only those fees permitted in Texas Finance Code, §§342.307, 342.308, and 342.502. A lender must comply with the provisions of Texas Finance Code, Chapter 342 and the constitutional restrictions on fees in connection with a secondary mortgage loan made under Texas Finance Code, Chapter 342.

(18) Escrow Funds. A lender may provide escrow services for an equity loan. Because funds tendered by an owner or an owner's spouse into an escrow account remain the property of the owner or the owner's spouse those funds are not fees subject to the two percent limitation. Examples of escrow funds include account funds collected to pay taxes, insurance premiums,

maintenance fees, or homeowner's association assessments. A lender must not contract for a right of offset against escrow funds pursuant to Section 50(a)(6)(H).

(19) Subsequent Events. The two percent limitation pertains to fees paid or contracted for by an owner or owner's spouse at the inception or at the closing of an equity loan. On the date the equity loan is closed an owner or an owner's spouse may agree to perform certain promises during the term of the equity loan. Failure to perform an obligation of an equity loan may trigger the assessment of costs to the owner or owner's spouse. The assessment of costs is a subsequent event triggered by the failure of the owner's or owner's spouse to perform under the equity loan agreement and is not a fee subject to the two percent limitation. Examples of subsequent event costs include contractually permitted charges for force-placed homeowner's insurance costs, returned check fees, debt collection costs, late fees, and costs associated with foreclosure.

(20) Property Insurance Premiums. Premiums an owner or an owner's spouse is required to pay to purchase homeowner's insurance coverage are not fees subject to the two percent limitation. Examples of property insurance premiums include fire and extended coverage insurance and flood insurance. Failure to maintain this insurance is generally a default provision of the equity loan agreement and not a condition of the extension of credit. The lender may collect and escrow premiums for this insurance and include the premium in the periodic payment amount or principal amount. If the lender sells insurance to the owner, the lender must comply with applicable law concerning the sale of insurance in connection with a mortgage loan.

Source: The provisions of this §153.5 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; amended to be effective January 1, 2015, 39 TexReg 10408; reviewed and amended to be effective November 24, 2016, 41 TexReg 9106; reviewed and amended to be effective March 29, 2018, 43 TexReg 1839; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.7. Prohibition on Prepayment Penalties: Section 50(a)(6)(G).

An equity loan may be paid in advance without penalty or other charge.

(1) A lender may not charge a penalty to a borrower for paying all or a portion of an equity loan early.

(2) A lockout provision is not permitted in an equity loan agreement because it is considered a prepayment penalty.

Source: The provisions of this §153.7 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.8. Security of the Equity Loan: Section 50(a)(6)(H).

An equity loan must not be secured by any additional real or personal property other than the homestead. The definition of "homestead" is located at Section 51 of Article XVI, Texas Constitution, and Chapter 41 of the Texas Property Code.

(1) A lender and an owner or an owner's spouse may enter into an agreement whereby a lender may acquire an interest in items incidental to the homestead. An equity loan secured by the following items is not considered to be secured by additional real or personal property:

(A) escrow reserves for the payment of taxes and insurance;

(B) an undivided interest in a condominium unit, a planned unit development, or the right to the use and enjoyment of certain property owned by an association;

(C) insurance proceeds related to the homestead;

(D) condemnation proceeds;

(E) fixtures; or

(F) easements necessary or beneficial to the use of the homestead, including access easements for ingress and egress.

(2) A guaranty or surety of an equity loan is not permitted. A guaranty or surety is considered additional property for purposes of Section 50(a)(6)(H). Prohibiting a guaranty or surety is consistent with the prohibition against personal liability in Section 50(a)(6)(C). An equity loan with a guaranty or surety would create indirect liability against the owner. The constitutional home equity lending provisions clearly provide that the homestead is the only allowable collateral for an equity loan. The constitutional home equity provisions prohibit the lender from contracting for recourse of any kind against the owner or owner's spouse, except for provisions providing for recourse against the owner or spouse when the extension of credit is obtained by actual fraud.

(3) A contractual right of offset in an equity loan agreement is prohibited.

(4) A contractual cross-collateralization clause in an equity loan agreement is prohibited.

(5) Any equity loan on an urban homestead that is secured by more than ten acres is secured by additional real property in violation of Section (50)(a)(6)(H).

Source: The provisions of this §153.8 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and amended to be effective November 24, 2016, 41 TexReg 9106; reviewed and amended to be effective November 26, 2020, 45 TexReg 8307.

§153.9. Acceleration: Section 50(a)(6)(J).

An equity loan may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead.

(1) An equity loan agreement may contain a provision that allows the lender to accelerate the loan because of a default under the covenants of the loan agreement. Examples of these provisions include a promise to maintain the property or not remove improvements to the property that indirectly affects the market value of the homestead.

(2) A contractual cross-default clause is permitted only if the lien associated with the equity loan agreement is subordinate to the lien that is referenced by the cross default clause.

Source: The provisions of this §153.9 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.10. Number of Loans: Section 50(a)(6)(K).

An equity loan must be the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Section 50(a)(1)-(a)(5) or (a)(8).

(1) Number of Equity Loans. An owner may have only one equity loan at a time, regardless of the aggregate total outstanding debt against the homestead.

(2) Loss of Homestead Designation. If under Texas law the property ceases to be the homestead of the owner, then the lender, for purposes of Section 50(a)(6)(K), may treat what was previously a home equity mortgage as a non-homestead mortgage.

Source: The provisions of this §153.10 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.11. Repayment Schedule: Section 50(a)(6)(L)(i).

Unless an equity loan is a home equity line of credit under Section 50(a)(6)(t), the loan must be scheduled at closing to be repaid in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment.

(1) Section 50(a)(6)(L)(i) does not prohibit a lender from agreeing with a borrower to modify an equity loan if the modification does not satisfy and replace the original equity loan and does not create a new extension of credit. The modification may include a deferment of the borrower's original obligation, and may include amounts that are past due under the equity loan (e.g., accrued but unpaid interest, taxes and insurance).

(2) The two month time period contained in Section 50(a)(6)(L)(i) begins on the date of closing. A modification described by paragraph (1) of this subsection does not affect the two month time period.

(3) For purposes of Section 50(a)(6)(L)(i), a month is the period from a date in a month to the corresponding date in the succeeding month. For example, if a home equity loan closes on March 1, the first installment must be due no later than May 1. If the succeeding month does not have a corresponding date, the period ends on the last day of the succeeding month. For example, if a home equity loan closes on July 31, the first installment must be due no later than September 30.

(4) For a closed-end equity loan to have substantially equal successive periodic installments, some amount of principal must be reduced with each installment. This requirement prohibits balloon payments.

(5) Section 50(a)(6)(L)(i) does not preclude a lender's recovery of payments as necessary for other amounts such as taxes, adverse liens, insurance premiums, collection costs, and similar items.

Source: The provisions of this §153.11 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and amended to be effective November 13, 2008, 33 TexReg 9074; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and amended to be effective November 26, 2020, 45 TexReg 8308.

§153.12. Closing Date: Section 50(a)(6)(M)(i).

An equity loan may not be closed before the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure. One copy of the required consumer disclosure may be provided to married owners. For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure is the first day of the 12-day waiting period. The equity loan may be closed at any time on or after the 12th calendar day after the later of the date that the owner submits an application for the loan to the lender or the date that the lender provides the owner a copy of the required consumer disclosure.

(1) Submission of a loan application to an agent acting on behalf of the lender is submission to the lender.

(2) A loan application may be given orally or electronically.

Source: The provisions of this §153.12 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and amended to be effective November 13, 2008, 33 TexReg 9075; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.13. Preclosing Disclosure: Section 50(a)(6)(M)(ii).

An equity loan may not be closed before one business day after the date that the owner of the homestead receives a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing. If a bona fide emergency or another good cause exists and the lender obtains the written consent of the owner, the lender may provide the preclosing disclosure to the owner or the lender may modify the previously provided preclosing disclosure on the date of closing.

(1) For purposes of this section, the "preclosing disclosure" consists of a copy of the loan application, if not previously provided, and a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.

(2) The copy of the loan application submitted to the owner in satisfaction of the preclosing disclosure requirement must be the most current version at the time the document is delivered. The lender is not obligated to provide another copy of the loan application if the only difference from the version previously provided to the owner is formatting. The lender is not obligated to give another copy of the loan application if the information contained on the more recent application is the same as that contained on the application of which the owner has a copy.

(3) A lender must deliver to the owner a final itemized disclosure of the actual fees, points, interest, costs, and charges that will be charged at closing.

(A) For a closed-end equity loan, the lender may satisfy this requirement by delivering a properly completed closing disclosure under Regulation Z, 12 C.F.R. Section 1026.19(f) and Section 1026.38.

(B) For a home equity line of credit, the lender may satisfy this requirement by delivering properly completed account-opening disclosures under Regulation Z, 12 C.F.R. Section 1026.6(a).

(4) Bona fide emergency.

(A) An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing in the case of a bona fide emergency occurring before the date of the extension of credit. An equity loan secured by a homestead in an area designated by Federal Emergency Management Agency (FEMA) as a disaster area is an example of a bona fide emergency if the homestead was damaged during FEMA's declared incident period.

(B) To document a bona fide emergency modification, the lender should obtain a written statement from the owner that:

(i) describes the emergency;

(ii) specifically states that the owner consents to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing;

(iii) bears the signature of all of the owners entitled to receive the preclosing disclosure; and

(iv) affirms the owner has received notice of the owner's right to receive a final itemized disclosure containing all actual fees, points, costs, and charges one day prior to closing.

(5) Good cause. An owner may consent to receive the preclosing disclosure or a modification of the preclosing disclosure on the date of closing if another good cause exists.

(A) Good cause to modify the preclosing disclosure or to receive a subsequent disclosure modifying the preclosing disclosure on the date of closing may only be established by the owner.

(i) The term "good cause" as used in this section means a legitimate or justifiable reason, such as financial impact or an adverse consequence.

(ii) At the owner's election, a good cause to modify the preclosing disclosure may be established if:

(I) the modification does not create a material adverse financial consequence to the owner; or

(II) a delay in the closing would create an adverse consequence to the owner.

(iii) The term "de minimis" as used in this section means a very small or insignificant amount.

(B) At the owner's election, a de minimis good cause standard may be presumed if:

(i) the total actual disclosed fees, costs, points, and charges on the date of closing do not exceed in the aggregate more than the greater of $100 or 0.125 percent of the principal amount of the loan (e.g. 0.125 percent on a $80,000 principal loan amount equals $100) from the initial preclosing disclosure; and

(ii) no itemized fee, cost, point, or charge exceeds more than the greater of $100 or 0.125 percent of the principal amount of the loan than the amount disclosed in the initial preclosing disclosure.

(C) To document a good cause modification of the disclosure, the lender should obtain a written statement from the owner that:

(i) describes the good cause;

(ii) specifically states that the owner consents to receive the preclosing disclosure on the date of closing;

(iii) bears the signature of all of the owners entitled to receive the preclosing disclosure; and

(iv) affirms the owner has received notice of the owner's right to receive a final itemized disclosure containing all fees, costs, points, or charges one day prior to closing.

(6) An equity loan may be closed at any time during normal business hours on the next business day following the calendar day on which the owner receives the preclosing disclosure or any calendar day thereafter.

(7) The owner maintains the right of rescission under Section 50(a)(6)(Q)(viii) even if the owner exercises an emergency or good cause modification of the preclosing disclosure.

Source: The provisions of this §153.13 adopted to be effective June 29, 2006, 31 TexReg 5080; amended to be effective November 9, 2006, 31 TexReg 9022; reviewed and amended to be effective November 13, 2008, 33 TexReg 9075; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and amended to be effective November 24, 2016, 41 TexReg 9106; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.14. One Year Prohibition: Section 50(a)(6)(M)(iii).

An equity loan may not be closed before the first anniversary of the closing date of any other equity loan secured by the same homestead property, unless the owner on oath requests an earlier closing due to a state of emergency that has been declared by the president of the United States or the governor as provided by law, and applies to the area where the homestead is located.

(1) Section 50(a)(6)(M)(iii) prohibits an owner who has obtained an equity loan from:

(A) refinancing the equity loan before one year has elapsed since the loan's closing date; or

(B) obtaining a new equity loan on the same homestead property before one year has elapsed since the previous equity loan's closing date, regardless of whether the previous equity loan has been paid in full.

(2) Section 50(a)(6)(M)(iii) does not prohibit modification of an equity loan before one year has elapsed since the loan's closing date. A modification of a home equity loan occurs when one or more terms of an existing equity loan is modified, but the note is not satisfied and replaced. A home equity loan and a subsequent modification will be considered a single transaction. The home equity requirements of Section 50(a)(6) will be applied to the original loan and the subsequent modification as a single transaction.

(A) A modification of an equity loan must be agreed to in writing by the borrower and lender, unless otherwise required by law. An example of a modification that is not required to be in writing is the modification required under the Servicemembers Civil Relief Act, 50 U.S.C. app. Sections 501-597b.

(B) The advance of additional funds to a borrower is not permitted by modification of an equity loan.

(C) A modification of an equity loan may not provide for new terms that would not have been permitted by applicable law at the date of closing of the extension of credit.

(D) The two percent limitation required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction.

(3) For purposes of Section 50(a)(6)(M)(iii), a state of emergency includes:

(A) a national emergency declared by the president of the United States under the National Emergencies Act, 50 U.S.C. §§1601-1651; and

(B) a state of disaster declared by the governor of Texas under Texas Government Code, Chapter 418.

Source: The provisions of this §153.14 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and amended to be effective November 13, 2008, 33 TexReg 9076; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and amended to be effective November 24, 2016, 41 TexReg 9106, reviewed and amended to be effective March 29, 2018, 43 TexReg 1839; reviewed and amended to be effective November 26, 2020, 45 TexReg 8309.

§153.15. Location of Closing: Section 50(a)(6)(N).

An equity loan may be closed only at an office of the lender, an attorney at law, or a title company. The lender is anyone authorized under Section 50(a)(6)(P) that advances funds directly to the owner or is identified as the payee on the note.

(1) An equity loan must be closed at the permanent physical address of the office or branch office of the lender, attorney, or title company. The closing office must be a permanent physical address so that the closing occurs at an authorized physical location other than the homestead. The closing may occur in any area located at the permanent physical address of the lender, attorney, or title company (e.g., indoor office, parking lot).

(2) Any power of attorney allowing an attorney-in-fact to execute closing documents on behalf of the owner or the owner's spouse must be signed by the owner or the owner's spouse at the permanent physical address of an office of the lender, an attorney at law, or a title company. A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph. For example, this system may include one or more of the following:

(A) a written statement in the power of attorney acknowledging the date and place at which the power of attorney was executed;

(B) an affidavit or written certification of a person who was present when the power of attorney was executed, acknowledging the date and place at which the power of attorney was executed; or

(C) a certificate of acknowledgement signed by a notary public under Chapter 121, Civil Practice and Remedies Code, acknowledging the date and place at which the power of attorney was executed.

(3) The consent required under Section 50(a)(6)(A) must be signed by the owner and the owner's spouse, or an attorney-in-fact described by paragraph (2) of this subsection, at the permanent physical address of an office of the lender, an attorney at law, or a title company.

Source: The provisions of this §153.15 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; amended to be effective January 1, 2015, 39 TexReg 10409 reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and amended to be effective November 26, 2020, 45 TexReg 8309.

§153.16. Rate of Interest: Section 50(a)(6)(O).

A lender may contract for and receive any fixed or variable rate of interest authorized under statute.

(1) An equity loan that provides for interest must comply with constitutional and applicable law. Interest rates on certain first mortgages are not limited on loans subject to the federal Depository Institutions Deregulation and Monetary Control Act of 1980 and the Alternative Mortgage Transaction Parity Act. Chapter 342 of the Texas Finance Code provides

for a maximum rate on certain secondary mortgage loans. Chapter 124 of the Texas Finance Code and federal law provide for maximum rates on certain mortgage loans made by credit unions. These statutes operate in conjunction with Section 50(a) and other constitutional sections.

(2) An equity loan must amortize and contribute to amortization of principal.

(3) The lender may contract to vary the scheduled installment amount when the interest rate adjusts on a variable rate equity loan. A variable-rate loan is a mortgage in which the lender, by contract, can adjust the mortgage's interest rate after closing in accordance with an external index.

(4) The scheduled installment amounts of a variable rate equity loan must be:

(A) substantially equal between each interest rate adjustment; and

(B) sufficient to cover at least the amount of interest scheduled to accrue between each payment date and a portion of the principal.

(5) An equity loan agreement may contain an adjustable rate of interest that provides a maximum fixed rate of interest pursuant to a schedule of steps or tiered rates or provides a lower initial interest rate through the use of a discounted rate at the beginning of the loan.

Source: The provisions of this §153.16 adopted to be effective January 7, 2004, 29 TexReg 86; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.17. Authorized Lenders: Section 50(a)(6)(P).

An equity loan must be made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area: a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States; including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this section; a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans; a person licensed to make regulated loans, as provided by statute of this state; a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase; a person who is related to the homestead owner within the second degree of affinity and consanguinity; or a person regulated by this state as a mortgage banker or mortgage company.

(1) An authorized lender under Texas Finance Code, Chapter 341 must meet both constitutional and statutory qualifications to make an equity loan.

(2) A HUD-approved mortgagee is a person approved as a mortgagee by the United States government to make federally insured loans for purposes of Section 50(a)(6)(P)(ii). Loan correspondents to a HUD-approved mortgage are not authorized lenders of equity loans unless qualifying under another provision of Section 50(a)(6)(P).

(3) A person who is licensed under Texas Finance Code, Chapter 156 is a person regulated by this state as a mortgage company for purposes of Section 50(a)(6)(P)(vi). A person who is registered under Texas Finance Code, Chapter 157 is a person regulated by this state as a mortgage banker for purposes of Section 50(a)(6)(P)(vi).

(4) A person who is licensed under Texas Finance Code, Chapter 342 is a person licensed to make regulated loans for purposes of Section 50(a)(6)(P)(iii). If a person is not described by Section 50(a)(6)(P)(i),(ii),(iv),(v), or (vi), then the person must obtain a license under Texas Finance Code, Chapter 342 in order to be authorized to make an equity loan under Section 50(a)(6)(P)(iii).

Source: The provisions of this §153.17 adopted to be effective January 7, 2004, 29 TexReg 87; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and amended to be effective November 24, 2016, 41 TexReg 9106; reviewed and amended to be effective March 29, 2017, 43 TexReg 1839; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.18. Limitation on Application of Proceeds: Section 50(a)(6)(Q)(i).

An equity loan must be made on the condition that the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender.

(1) The lender may not require an owner to repay a debt owed to the lender, unless it is a debt secured by the homestead. The lender may require debt secured by the homestead or debt to another lender or creditor be paid out of the proceeds of an equity loan.

(2) An owner may apply for an equity loan for any purpose. An owner is not precluded from voluntarily using the proceeds of an equity loan to pay on a debt owed to the lender making the equity loan.

Source: The provisions of this §153.18 adopted to be effective June 29, 2006, 31 TexReg 5080; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.20. No Blanks in Any Instrument: Section 50(a)(6)(Q)(iii).

A home equity loan must be made on the condition that the owner of the homestead not sign any instrument in which blanks are left to be filled in.

(1) This Section of the Constitution prohibits the owner of the homestead from signing any instrument in which blanks are "left to be filled in". This Section is intended to prohibit a person other than the owner from completing one or more blanks in an instrument after the owner has signed the instrument and delivered it to the lender, thereby altering a party's obligation created in the instrument. Not all documents or records executed in connection with an equity loan are instruments, and not all blanks contained in an instrument are "blanks that are left to be filled in" as contemplated by this Section.

(2) As used in this Section, the term instrument means a document or record that creates or alters a legal obligation of a party. A disclosure required under state or federal law is not an instrument if the disclosure does not create or alter the obligation of a party.

(3) If at the time the owner signs an instrument, a blank is completed or box checked which indicates the owner's election to select one of multiple options offered (such as an election to select a fixed rate instead of an adjustable rate) and the owner therefore by implication has excluded the non-selected options, the instrument does not contain "blanks left to be filled in" when the non-selected option is left blank.

Source: The provisions of this §153.20 adopted to be effective June 29, 2006, 31 TexReg 5080; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.22. Copies of Documents: Section 50(a)(6)(Q)(v).

At closing, the lender must provide the owner with a copy of the final loan application and all executed documents that are signed by the owner at closing in connection with the equity loan.

(1) One copy of these documents may be provided to married owners.

(2) This requirement does not obligate the lender to give the owner copies of documents that were signed by the owner prior to or after closing.

(3) A lender may provide documents electronically in accordance with state and federal law governing electronic signatures and delivery of electronic documents. The Texas Business & Commerce Code, Chapter 322, and the federal E-Sign Act, 15 U.S.C. §§7001-7006, include requirements for electronic signatures and delivery.

Source: The provisions of this §153.22 adopted to be effective January 7, 2004, 29 TexReg 87, reviewed and amended to be effective July 10, 2008, 33 TexReg 5295; reviewed and amended to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and amended to be effective November 26, 2020, 45 TexReg 8309.

§153.24. Release of Lien: Section 50(a)(6)(Q)(vii).

The lender must cancel and return the note to the owner and give the owner a release of lien or a copy of an endorsement and assignment of the lien to another lender refinancing the loan within a reasonable time after termination and full payment of the loan. The lender or holder, at its option, may provide the owner a release of lien or an endorsement and assignment of the lien to another lender refinancing the loan.

(1) The lender will perform these services and provide the documents required in 50(a)(6)(Q)(vii) without charge.

(2) This section does not require the lender to record or pay for the recordation of the release of lien.

(3) Thirty days is a reasonable time for the lender to perform the duties required under this section.

(4) An affidavit of lost or imaged note, or equivalent, may be returned to the owner in lieu of the original note, if the original note has been lost or imaged.

Source: The provisions of this §153.24 adopted to be effective January 7, 2004, 29 TexReg 87; reviewed and readopted to be effective June 20, 2008 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.25. Right of Rescission: Section 50(a)(6)(Q)(viii).

The owner of the homestead and any spouse of the owner may, within three days after the extension of credit is made, rescind the extension of credit without penalty or charge.

(1) This provision gives the owner's spouse, who may not be in record title or have community property ownership, the right to rescind the transaction.

(2) The owner and owner's spouse may rescind the extension of credit within three calendar days. If the third calendar day falls on a Sunday or federal legal public holiday then the right of rescission is extended to the next calendar day that is not a Sunday or federal legal public holiday.

(3) A lender must comply with the provisions of the Truth-in-Lending Act permitting the borrower three business days to rescind a mortgage loan in applicable transactions. Lender compliance with the right of rescission procedures in the Truth-in-Lending Act and Regulation Z, satisfies the requirements of this section if the notices required by Truth-in-Lending and Regulation Z are given to each owner and to each owner's spouse.

Source: The provisions of this §153.25 adopted to be effective January 7, 2004, 29 TexReg 87; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.26. Acknowledgement of Fair Market Value: Section 50(a)(6)(Q)(ix).

The owner of the homestead and the lender must sign a written acknowledgement as to the fair market value of the homestead property on the date the extension of credit is made.

(1) For purposes of Section 50(a)(6)(Q)(ix), the phrase "on the date the extension of credit is made" modifies only the immediately preceding phrase "the fair market value of the homestead property", in accordance with the doctrine of last antecedent.

(2) A lender may sign the written acknowledgement before or at closing.

(3) An authorized agent may sign the written acknowledgement on behalf of the lender.

Source: The provisions of this §153.26 adopted to be effective November 26, 2020, 45 TexReg 8310.

§153.41. Refinance of a Debt Secured by a Homestead: Section 50(e).

A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) of Section 50 of the Texas Constitution that includes the advance of additional funds may not be secured by a valid lien against the homestead unless the refinance of the debt is an extension of credit described by Subsection (a)(6) of Section 50 of the Texas Constitution, or the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of Section 50 of the Texas Constitution.

(1) Reasonableness and necessity of costs relate to the type and amount of the costs.

(2) In a secondary mortgage loan, reasonable costs are those costs which are lawful in light of the governing or applicable law that authorizes the assessment of particular costs. In the context of other mortgage loans, reasonable costs are those costs which are lawful in light of other governing or applicable law.

(3) Reasonable and necessary costs to refinance may include reserves or impounds (escrow trust accounts) for taxes and insurance, if the reserves comply with applicable law.

Source: The provisions of this §153.41 adopted to be effective January 7, 2004, 29 TexReg 87; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and amended to be effective November 26, 2020, 45 TexReg 8310.

§153.45. Refinance of an Equity Loan: Section 50(f).

A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of Section 50, may not be secured by a valid lien against the homestead unless either the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of Section 50, or all of the conditions in Section 50(f)(2) are met.

(1) One Year Prohibition. To meet the condition in Section 50(f)(2)(A), the refinance may not be closed before the first anniversary of the closing date of the equity loan. For purposes of this section, the closing date of the refinance is the date on which the owner signs the loan agreement for the refinance.

(2) Advance of Additional Funds. To meet the condition in Section 50(f)(2)(B), the refinance may not include the advance of any additional funds other than funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of Section 50, or actual costs and reserves required by the lender to refinance the debt.

(A) In order to be included in the funds advanced for the refinance, actual costs must be identifiable, must be actually required by the lender to refinance the debt, and must comply with any applicable limitations on costs.

(B) In order to be included in the funds advanced for the refinance, reserves (e.g., an escrow account for taxes and insurance) must be actually required by the lender to refinance the debt, and must comply with applicable law.

(C) Amounts that the owner pays before or at closing (e.g., through cash, check, or electronic funds transfer) are not advanced by the lender, and are not subject to the limitation on the advance of additional funds.

(3) 80 Percent Limitation on Loan Amount. To meet the condition in Section 50(f)(2)(C), the refinance of the extension of credit must be of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made.

(A) The principal amount of the refinance is the sum of the amount advanced and any charges at the inception of the refinance, to the extent these charges are financed in the principal amount of the refinance.

(B) The principal balance of all outstanding debt secured by the homestead on the date the refinance is made determines the maximum principal amount of the refinance.

(C) The principal amount of the refinance does not include interest accrued after the date the refinance is made (other than any interest capitalized and added to the principal balance on the date the refinance is made), or other amounts advanced by the lender after closing as a result of default, including for example, ad valorem taxes, hazard insurance premiums, and authorized collection costs, including reasonable attorney's fees.

(4) Refinance Disclosure. To meet the condition in Section 50(f)(2)(D), the lender must provide the refinance disclosure described in Section 50(f)(2)(D) to the owner on a separate document not later than the third business day after the date the owner submits the loan

application to the lender and at least 12 days before the date the refinance of the extension of credit is closed.

(A) Submission of a loan application to an agent acting on behalf of the lender is submission to the lender. A loan application may be given orally or electronically.

(B) For purposes of Section 50(f)(2)(D), the application is submitted on the date the owner submits a loan application specifically for a refinance of a home equity loan to a non-home-equity loan. If the owner initially applies for another type of loan, then the application is considered submitted on the earliest of:

(i) the date the owner modifies the application, orally or in writing, to specify that it is for a refinance of a home equity loan to a non-home-equity loan; or

(ii) the date the owner submits a new application specifically for a refinance of a home equity loan to a non-home-equity loan.

(C) For purposes of determining the earliest permitted closing date, the next succeeding calendar day after the date that the lender provides the owner a copy of the required refinance disclosure is the first day of the 12-day waiting period. The refinance may be closed at any time on or after the 12th calendar day after the lender provides the owner a copy of the required refinance disclosure.

(D) The lender must deliver the refinance disclosure or place it in the mail no later than the third business day after the owner submits the loan application. The refinance disclosure must be delivered to the owner at least 12 days before the refinance is closed. If a lender mails the refinance disclosure to the owner, the lender must allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(E) One copy of the required refinance disclosure may be provided to married owners.

(F) The refinance disclosure is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan or refinance. A lender may supplement the refinance disclosure to clarify any discrepancies or inconsistencies.

(G) A lender may rely on an established system of verifiable procedures to evidence compliance with this paragraph.

(H) The Finance Commission will publish a Spanish translation of the refinance disclosure on its website. A lender whose discussions with the owner are conducted primarily in Spanish may provide the Finance Commission's Spanish translation to the owner, although the Spanish translation is not required by Section 50(f)(2).

Source: The provisions of this §153.45 adopted to be effective March 29, 2018, 43 TexReg 1839; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.51. Consumer Disclosure: Section 50(g).

An equity loan may not be closed before the 12th day after the lender provides the owner with the consumer disclosure on a separate instrument.

(1) If a lender mails the consumer disclosure to the owner, the lender shall allow a reasonable period of time for delivery. A period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery.

(2) Certain provisions of the consumer disclosure do not contain the exact identical language concerning requirements of the equity loan that have been used to create the substantive requirements of the loan. The consumer notice is only a summary of the owner's rights, which are governed by the substantive terms of the constitution. The substantive requirements prevail regarding a lender's responsibilities in an equity loan transaction. A lender may supplement the consumer disclosure to clarify any discrepancies or inconsistencies.

(3) A lender may rely on an established system of verifiable procedures to evidence compliance with this section.

(4) A lender whose discussions with the borrower are conducted primarily in Spanish for a close-end loan may rely on the translation of the consumer notice developed under the requirements of Texas Finance Code, §341.502. Such notice shall be made available to the public through publication on the Finance Commission's webpage.

(5) If the owner has executed a power of attorney described by §153.15(2) of this title (relating to Location of Closing: Section 50(a)(6)(N)), then the lender may provide the consumer disclosure to the attorney-in-fact instead of providing it to the owner.

Source: The provisions of this §153.51 adopted to be effective January 7, 2004, 29 TexReg 87; reviewed and amended to be effective November 13, 2008, 33 TexReg 9076; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; amended to be effective January 1, 2015, 39 TexReg 10409; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.82. Owner Requests for HELOC Advance: Section 50(t)(1).

A home equity line of credit (HELOC) is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which the owner requests advances, repays money, and reborrows money. Any owner who is also a named borrower on the HELOC may request an advance. A HELOC agreement may contain provisions that restrict which borrowers may request an advance or require all borrowers to consent to the request.

Source: The provisions of this §153.82 adopted to be effective March 11, 2004, 29 TexReg 2310; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.84. Restrictions on Devices and Methods to Obtain a HELOC Advance: Section 50(t)(3).

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which an owner is prohibited from using a credit card, debit card, or similar device, or preprinted check unsolicited by the borrower to obtain a HELOC advance.

(1) A lender may offer one or more non-prohibited devices or methods for use by the owner to request an advance. Permissible methods include contacting the lender directly for an advance, telephonic fund transfers, and electronic fund transfers. Examples of devices that are not prohibited include prearranged drafts, preprinted checks requested by the borrower, or written transfer instructions. Regardless of the permissible method or device used to obtain a HELOC advance, the amount of the advance must comply with:

(A) the advance requirements in Section 50(t)(2); and

(B) the loan to value limits in Section 50(t)(5).

(2) A borrower may from time to time specifically request preprinted checks for use in obtaining a HELOC advance but may not request the lender to periodically send preprinted checks to the borrower. A borrower may use a check reorder form, which may be included with preprinted checks, as a means of requesting a specific number of preprinted checks.

(3) An owner may, but is not required to, make in-person contact with the lender to request preprinted checks or to obtain a HELOC advance.

Source: The provisions of this §153.84 adopted to be effective March 11, 2004, 29 TexReg 2310; reviewed and amended to be effective July 10, 2008, 33 TexReg 5295; reviewed and amended to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and amended to be effective March 29, 2018, 43 TexReg 1839; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.85. Time the Extension of Credit is Established: Section 50(t)(4).

(a) A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which fees described in Section 50(a)(6)(E) are charged and collected only at the time the extension of credit is established and no fee is charged or collected in connection with any debit or advance.

(b) For the purpose of this section, the time the extension of credit is established for a HELOC refers to the date of closing.

Source: The provisions of this §153.85 adopted to be effective March 11, 2004, 29 TexReg 2310; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.86. Maximum Principal Amount Extended under a HELOC: Section 50(t)(5).

A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which the maximum principal amount that may be extended under the account, when added to the aggregated total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, cannot exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made.

(1) At the time the initial or subsequent advance is made, the principal amount of the advance must comply with Section 50(t)(5). The following amounts when added together must be equal to or less than 80 percent of the fair market value:

(A) the amount of the advance;

(B) the amount of the principal balance of the HELOC at the time of the advance; and

(C) the principal balance outstanding of all other debts secured by the homestead on the date of the closing of the HELOC.

(2) An advance under Section 50(t)(5) must meet the requirements of Section 50(t)(2).

(3) The maximum principal balance of the HELOC that may be outstanding at any time must be determined on the date of closing and will not change through the term of the HELOC.

(4) For purposes of calculating the maximum principal balance under Section 50(t)(5), the outstanding principal balance of all other debts secured by the homestead is the principal balance outstanding of all other debts secured by the homestead on the date of the closing of the HELOC.

Source: The provisions of this §153.86 adopted to be effective March 11, 2004, 29 TexReg 2310; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5449; reviewed and amended to be effective March 29, 2018, 43 TexReg 1839; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.88. Repayment Terms of a HELOC: Section 50(t)(8).

(a) A HELOC is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which repayment is to be made in regular periodic installments, not more often than every 14 days and not less often than monthly, beginning not later than two months from the date the extension of credit is established, and during the period during which the owner may request advances, each installment equals or exceeds the amount of accrued interest; and after the period during which the owner may request advances, installments are substantially equal.

(b) Repayment of a HELOC is not required to begin until two months after the initial advance. For example, if an advance is not made at the time of closing, the repayment period is not required to begin until after the first advance. If there is no outstanding balance, then a payment is not required.

(c) Nothing in this section prohibits a borrower from voluntarily making payments on a schedule that is more frequent or earlier than is required by a lender.

Source: The provisions of this §153.88 adopted to be effective March 11, 2004, 29 TexReg 2311; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.91. Adequate Notice of Failure to Comply.

(a) A borrower notifies a lender or holder of its alleged failure to comply with an obligation by taking reasonable steps to notify the lender or holder of the alleged failure to comply. The notification must include a reasonable:

(1) identification of the borrower;

(2) identification of the loan; and

(3) description of the alleged failure to comply.

(b) A borrower is not required to cite in the notification the section of the Constitution that the lender or holder allegedly violated.

Source: The provisions of this §153.91 adopted to be effective November 11, 2004, 29 TexReg 10259; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.92. Counting the 60-Day Cure Period.

(a) For purposes of Section 50(a)(6)(Q)(x), the day after the lender or holder receives the borrower's notification is day one of the 60-day period. All calendar days thereafter are counted up to day 60. If day 60 is a Sunday or federal legal public holiday, the period is extended to include the next day that is not a Sunday or federal legal public holiday.
(b) If the borrower provides the lender or holder inadequate notice, the 60-day period does not begin to run.

Source: The provisions of this §153.92 adopted to be effective November 11, 2004, 29 TexReg 10259; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.93. Methods of Notification.

(a) At closing, the lender or holder may make a reasonably conspicuous designation in writing of the location where the borrower may deliver a written or oral notice of a violation under 50(a)(6)(Q)(x). The designation may include a mailing address, physical address, and telephone number. In addition, the lender or holder may designate an email address or other point of contact for delivery of a notice.
(b) If the lender or holder chooses to change the designated delivery location as provided in subsection (a) of this section, the address change does not become effective until the lender or holder sends conspicuous written notice of the address change to the borrower.
(c) The borrower may always deliver written notice to the registered agent of the lender or holder even if the lender or holder has named a delivery location.
(d) If the lender or holder does not designate a location where the borrower may deliver a notice of violation, the borrower may deliver the notice to any physical address or mailing address of the lender or holder.
(e) Delivery of the notice by borrower to lender or holder's designated delivery location or registered agent by certified mail return receipt or other carrier delivery receipt, signed by the lender or holder, constitutes a rebuttable presumption of receipt by the lender or holder.
(f) If the borrower opts for a location or method of delivery other than set out in subsection (e), the borrower has the burden of proving that the location and method of delivery were reasonably calculated to put the lender or holder on notice of the default.

Source: The provisions of this §153.93 adopted to be effective March 3, 2005, 30 TexReg 1068; reviewed and adopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.94. Methods of Curing a Violation Under Section 50(a)(6)(Q)(x)(a)-(e).

(a) The lender or holder may correct a failure to comply under Section 50(a)(6)(Q)(x)(a) – (e), on or before the 60th day after the lender or holder receives the notice from an owner, if the lender or holder delivers required documents, notices, acknowledgements, or pays funds by:

(1) placing in the mail, placing with other delivery carrier, or delivering in person the required documents, notices, acknowledgements, or funds;

(2) crediting the amount to borrower's account; or

(3) using any other delivery method that the borrower agrees to in writing after the lender or holder receives the notice.

(b) The lender or holder has the burden of proving compliance with this section.

Source: The provisions of this §153.94 adopted to be effective November 11, 2004, 29 TexReg 10259; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.95. Cure a Violation Under Section 50(a)(6)(Q)(x).

(a) If the lender or holder timely corrects a violation of Section 50(a)(6) as provided in Section 50(a)(6)(Q)(x), then the violation does not invalidate the lien.

(b) A lender or holder who complies with Section 50(a)(6)(Q)(x) to cure a violation before receiving notice of the violation from the borrower receives the same protection as if the lender had timely cured after receiving notice.

(c) A borrower's refusal to cooperate fully with an offer that complies with Section 50(a)(6)(Q)(x) to modify or refinance an equity loan does not invalidate the lender's protection for correcting a failure to comply.

Source: The provisions of this §153.95 adopted to be effective November 11, 2004, 29 TexReg 10259; reviewed and amended to be effective November 13, 2008, 33 TexReg 9077; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.

§153.96. Correcting Failures Under Section 50(a)(6)(Q)(x)(f).

(a) To correct a failure to comply under Section 50(a)(6)(Q)(x)(f), on or before the 60th day after the lender or holder receives the notice from the borrower the lender or holder may:

(1) refund or credit the $1,000 to the account of the borrower; and

(2) make an offer to modify or an offer to refinance the extension of credit on the terms provided in Section 50(a)(6)(Q)(x)(f) by placing the offer in the mail, other delivery carrier, or delivering the offer in person to the owner.

(b) To correct a failure to comply under Section 50(a)(6)(Q)(x)(f):

(1) the lender or holder has the option to either refund or credit $1,000; and

(2) the lender or holder and borrower may:

(A) modify the equity loan without completing the requirements of a refinance; or

(B) refinance with an extension of credit that complies with Section 50(a)(6).

(c) The lender or holder has the burden of proving compliance with this section.

(d) After the borrower accepts an offer to modify or refinance, the lender must make a good faith attempt to modify or refinance within a reasonable time not to exceed 90 days.

Source: The provisions of this §153.96 adopted to be effective November 11, 2004, 29 TexReg 10260; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448; reviewed and readopted to be effective November 26, 2020, 45 TexReg 8307.