

Bills Filed to Allow Home Equity Loans

Three bills filed in the Texas Legislature would finally end this state's constitutional ban against homeowner's borrowing against home equity for purposes other than home improvement.

Sen. Jerry Patterson (R-Pasadena) filed SB 173, also known as the "Bankers Bill." Its companion legislation is HB 1188, files by Rep. Debra Danburg (D-Houston), and SJR 12. (The Bankers Bill got its name because it contains language that is more favorable to the lender.)

The second bill, SB 210, known as the "Realtors Bill," comes out of Sen. Chris Harris's (R-Arlington) office. Its corresponding House version is HB 447, submitted by Rep. Steve Wolens (D-Dallas) and the corresponding resolution is SJR 13.

A third bill regarding home equity, SB 214 filed by Sen. Drew Nixon (R-Carthage) allows the loan only for a business homestead.

Should any of these bills pass, qualified voters in Texas would have the opportunity to vote on a constitutional amendment that would enable homeowners to use their homestead as collateral to secure the payment of an equity loan.

The Realtors Bill prohibits a lender from demanding earlier payment on a loan if the homestead value decreases in market value. The Bankers Bill has the same provision but qualifies the statement by saying that a lender cannot demand earlier payment if the value decreases, unless the decrease is caused by 1) substantial damage or destruction to the property, 2) a condemnation or taking of the property, 3) the discovery of an environmental hazard on the property, or 4) the use of the property in a manner that constitutes waste on the property or a nuisance.

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The Bankers Bill also allows lenders to refuse additional advances if the borrower has defaulted in another loan – regardless of whether the homestead secures that loan or whether the indebtedness owed is to the lender or to another creditor.

Under the Realtors Bill, however, the lender could possibly forfeit all principal and interest on the equity loan and pay court-set attorney fees if the lender fails to make the loan advances required by the loan documents

The two bills have many more compelling differences. Both bills impose a limit as to how much debt can accrue against a homestead. Under the Bankers Bill, the sum of all debts against a home cannot exceed 90 percent of the value, whereas the Realtors Bill stops the debt at 80 percent.

The Bankers Bill also allows the borrower three days to change his/her mind once the loan is executed, without facing further obligation, while the Realtors Bill allows the borrower five days.

The Realtors Bill also makes the loan much harder to obtain. The bill defines an equity loan as a loan that can only be made if:

- 1) the lender directly pays an educational institution for the education of the borrower or a member of the borrower's family, or
- 2) the lender directly pays a medical institution for medical treatment of the borrower or a member of the borrower's family, or
- 3) it is a reverse mortgage to the borrower, or, if it is not for the purpose of one of the three aforementioned conditions then
- 4) it can only be an extension of credit which is the only debt secured by the homestead and requires that any debt secured by the homestead be paid in full prior to the closing of the equity loan.

The Bankers Bill defines the loan as an extension of credit that is secured by a voluntary lien or other consensual security interest in a homestead created with the consent of each owner and each owner's spouse, if married.

Besides the fundamental differences in the definition of an equity loan, the bills differ in that the Bankers Bill also has a lot more administrative provisions spelled out. First, all lenders must report their home-equity activity annually. Second, the Consumer Credit Commissioner shall establish an equity-loan recovery fund financed by the lenders for the purpose of reimbursing borrowers whose problems arise from the dishonesty/misrepresentation of an authorized lender or for fees ordered by a court against a lender who is unable to make the payment.

The Bankers Bill also creates the Division of Access to Financial Services to monitor the availability and quality of the home-equity loans.

Allowing a homeowner to borrow against home equity is a law that 49 other states already enjoy.