CREDIT UNION DEPARTMENT

DATE: **August 4, 2016**

TO: **State Chartered Credit Unions**

SUBJECT: **Change 44 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 vii thru viii	Index – pages vii thru viii	Updated Index
Index – pages ix thru xii	Index – pages ix thru xii	Updated Index
91-19 thru 91-22	91-19 thru 91-22	Amended Rule **91.301**
91-97 thru 91-100	91-97 thru 91-100	Readopted Rule 91.7000
91-101 thru 91-104	91-101 thru 91-104	Readopted Rule 91.8000
97-9 thru 97-12	97-9 thru 97-12	Amended Rule **97.200**
151-1 thru 151-4	151-1 thru 151-4	Readopted Chapter 151
152-1 thru 152-4	152-1 thru 152-4	Readopted Chapter 152
153-1 thru 153-20	153-1 thru 153-20	Readopted Sections 153.1, 153.2, 153.3, 153.4, 153.5, 153.7, 153.9, 153.11, 153.14, 153.16, 153.22, 153.24, 153.25, 153.41, 153.82, 153.84, 153.85, 153.86, 153.87, 153.88, 153.91, 153.92, 153.93, 153.94, 153.95, and 153.96

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 95
SHARE AND DEPOSITOR INSURANCE PROTECTION

CHAPTER 97
COMMISSION POLICIES AND ADMINISTRATIVE RULES

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)

(THIS PAGE WAS INTENTIONALLY LEFT BLANK)

Subchapter C. Members

§91.301. Field of Membership.

(a) General. Membership in a credit union shall be limited to one or more groups, each of which (the Group) has -its own community of interest and is within the credit union's local service area. In this section, local service area generally consists of one or more contiguous political subdivisions that are within reasonable proximity of a credit union's offices. Political subdivision has the meaning assigned by TEX. LOCAL GOV'T CODE §172.003(3). For purposes of field of membership, the Group as a whole will be considered to be within the local service area when:

(1) a majority of the persons in the Group live, work, or gather regularly within the local service area;

(2) the Group's headquarters is located within the local service area; or

(3) the persons in the Group are "paid from" or "supervised from" an office or facility located within the local service area.

The commissioner may impose a geographical limitation on any Group if the commissioner reasonably determines that the applicant credit union does not have the facilities and staffing to serve a larger group or there are other operational or management concerns.

(b) Other persons eligible for membership. A number of persons by virtue of their close relationship to a Group may be included in the field of membership at the option of the applicant credit union. These include:

(1) members of the family or household of a member of the Group;

(2) volunteers performing services for or on behalf of the Group;

(3) organizations owned or controlled by a member or members of the Group, and any employees and members of those organizations;

(4) spouses of persons who died while in the Group;

(5) employees of the credit union;

(6) subsidiaries of the credit union and their employees; and businesses and other organizations whose employees or members are within the Group.

(c) Multiple-groups.

(1) The commissioner may approve a credit union's original articles of incorporation and bylaws or a request for approval of an amendment to a credit union's bylaws to serve one or more communities of interest or a combination of types of communities of interest.

(2) In addition to general requirements, special requirements pertaining to multiple-Group applications may be required before the commissioner will grant such a certificate or approve such an amendment.

(A) Each Group to be included in the proposed field of membership of the credit union must have its own community of interest.

(B) Each associational or occupational Group must individually request inclusion in the proposed credit union's field of membership.

(d) Overlap protection.

(1) The commissioner will only consider the financial effect of an overlap proposed by an application to expand a credit union's field of membership or when a charter application proposes an overlap for a Group of 3,000 members or more.

(2) The commissioner will weigh the information in support of the application and any information provided by a protesting or affected credit union. If the applicant has the financial capacity to serve the financial needs of the proposed members, demonstrates economic feasibility,

complies with the requirements of this rule, and no protestant reasonably establishes a basis for denying the request, it shall be approved.

(3) If a finding is made that overlap protection is warranted, the commissioner shall reject the application or require the applicant to limit or eliminate the overlap by adding exclusionary language to the text of the amendment, e.g., "excluding persons eligible for primary membership in any occupation or association based credit union that has an office within a specified proximity of the applicant credit union at the time membership is sought." Exclusionary clauses are rarely appropriate for inclusion on a geographic community of interest.

(4) Generally, if the overlapped credit union does not submit a notice of protest form, and the department determines that there is no safety and soundness problem, an overlap will be permitted. If, however, a notice of protest is filed, the commissioner will consider the following in performing an overlap analysis:

(A) whether the overlap is incidental in nature, i.e., the group(s) in question is so small as to have no material effect on the overlapped credit union;

(B) whether there is limited participation by members of the group(s) in the overlapped credit union after the expiration of a reasonable period of time;

(C) whether the overlapped credit union provides requested service;

(D) the financial effect on the overlapped credit union;

(E) the desires of the group(s); and

(F) the best interests of the affected group(s) and the credit union members involved.

(5) Where a sponsor organization expands its operations internally, by acquisition or otherwise, the credit union may serve these new entrants to its field of membership if they are part of the community of interest described in the credit union's bylaws. Where acquisitions are made which add a new subsidiary or affiliate, the group cannot be served until the entity is included in the field of membership through the application process.

(6) Credit unions affected by the organizational restructuring or merger of a group within its field of membership must apply for a modification of their fields of membership to reflect the group to be served.

(e) Underserved communities.

(1) All credit unions may include underserved areas or areas designated as a credit union development district in accordance with Subchapter K (related to Credit Union Development Districts) in their fields of membership, without regard to location. More than one credit union can serve the same underserved community.

(2) Once an underserved community has been added to a credit union's field of membership, the credit union must establish and maintain an office or facility in the area under this subsection.

(3) A credit union desiring to add an underserved community must document that the area meets the applicable definition in §91.101 (relating to Definitions and Interpretations). In addition, the credit union must develop a business plan specifying how it will serve the community. The business plan, at a minimum, must identify the credit and depository needs of the community and detail how the credit union plans to serve those needs. The credit union will be expected to regularly review the business plan to determine if the community is being adequately served. The commissioner may require periodic service status reports from a credit union pertaining to the underserved area to ensure that the needs of the area are being met, as well as requiring such reports before allowing a credit union to add an additional underserved area.

(f) Parity with Federal Credit Unions.
Credit unions will be allowed to have, at a minimum, at least as much flexibility as federal credit unions have in field of membership regulation. If a credit union proposes a type of Group that the National Credit Union Administration has previously determined meets the Federal requirements, the commissioner shall approve the application unless the commissioner finds that the credit union has not demonstrated sufficient managerial and financial capacity to safely and soundly serve such expanded membership.
(g) Application.
In order to request the approval of the commissioner to add a Group to its bylaws, a credit union must submit a written application to the Department. The applicant credit union shall have the burden to show to the Department such facts and data that support the requirements and considerations in this rule. In reviewing such application, the commissioner shall consider:
(1) Whether the Group has adequate unifying characteristics or a mutual interest such that the safety and soundness of the credit union is maintained;
(2) The ability of credit unions to maintain parity and to compete fairly with their counterparts;
(3) Service by the credit union that is responsive to the convenience and needs of prospective members;
(4) Protection for the interest of current and future members of the credit union; and
(5) The encouragement of economic progress in this State by allowing opportunity to expand services and facilities.

Source: The provisions of this §91.301 adopted to be effective February 11, 2001, 26 TexReg 1132; adopted to be effective January 7, 2004, 29 TexReg 82; readopted to be effective June 22, 2004, 29 TexReg 6423; reviewed and amended to be effective July 13, 2008, 33 TexReg 5294; reviewed and readopted to be effective February 17, 2012, 37 TexReg 1518; reviewed and amended to be effective July 31, 2016, 41 TexReg 5413.

§91.302. Election or Other Membership Vote By Electronic Balloting, Early Voting, Absentee Voting, or Mail Balloting.

(a) All credit unions should actively promote member participation in elections and other membership votes as long as the costs are reasonable and the integrity of the vote is not compromised. Any credit union instituting alternative procedures or systems to benefit members who find it difficult or inconvenient to vote at annual or special meetings must ensure that the alternative is thoroughly explained and publicized so that all members will be able to take advantage of those procedures or systems.
(b) The board of directors, before holding an election or other membership vote that uses electronic balloting, early voting, absentee voting, or mail balloting, shall establish written election rules, including procedures to: control, tabulate and retain ballots; identify invalid ballots; and handle disputed election results and tie votes.
(c) Any elections or other membership vote using electronic balloting, early voting, absentee voting, or mail balloting are subject to the following conditions:
(1) The election tellers shall be appointed by the board of directors;

(2) At least 30 days prior to the annual or special meeting, the board of directors will cause either a printed ballot or notice of a ballot, along with appropriate instructions, to be mailed to all members eligible to vote;

(3) Completed electronic or mail ballots cast during early or absentee voting must be received prior to convening the annual or special meeting;

(4) The votes will be tallied by the tellers and the results of the vote will be made public at the annual or special meeting.

(d) In the event of a malfunction of the electronic balloting system, the board of directors may in its discretion order elections or other vote to be held by mail ballot only. The board may make reasonable adjustments to the voting time frames in subsection (c) of this section, or postpone the annual or special meeting if necessary, to complete the elections prior to the annual or special meeting.

Source: The provisions of this §91.302 adopted to be effective November 13, 2000, 25 TexReg 11278; amended to be effective November 14, 2004, 29 TexReg 10253, reviewed and amended to be effective July 13, 2008, 33 TexReg 5295; reviewed and readopted to be effective February 17, 2012, 37 TexReg 1518; reviewed and readopted to be effective March 7, 2016, 41 TexReg 2179.

§91.310. Annual Report to Membership.

(a) Every credit union shall provide to its membership an annual written report, as prescribed below. The report must be updated before the credit union's annual meeting and shall be available on the credit union's website throughout the year. Any credit union that does not maintain a website shall distribute the report at its annual meeting and must notify members at least annually that copies of the report are available upon request.

(b) The annual report shall cover the credit union's operations during the preceding calendar year and shall contain, at a minimum, the following information:

(1) the names and dates of expiration of the terms of office for each director on the credit union's board;

(2) the names of any honorary or advisory directors appointed by the board;

(3) a brief description of any changes, since the last report, to the credit union's:

A. senior management staff;

B. bylaws or articles of incorporation;

C. financial condition and operating results;

D. membership size and services offered; and

(4) the credit union's year end balance sheet and income/expense statement.

(c) For purposes of this rule, senior management staff shall include the chief executive officer, any assistant chief executive officers, including any vice-presidents and above, and the chief financial officer.

Source: The provisions of this §91.310 adopted to be effective November 8, 2009, 34 TexReg 7625; reviewed and readopted to be effective February 17, 2012, 37 TexReg 1518; reviewed and readopted to be effective March 7, 2016, 41 TexReg 2179.

Subchapter P. Other Forms of Equity Capital

§91.7000. Certificates of Indebtedness.

(a) General. No credit union may issue certificates of indebtedness pursuant to this section or amend the terms of such certificates unless it has obtained a written letter from the commissioner stating that the commissioner does not object ("non-objection letter"). All requirements of the provisions of this section must be met before a non-objection letter will be issued.

(b) Form of application; supporting information. Applications must be in the form prescribed by the commissioner and shall include all information and exhibits required by the application instructions.

(c) Requirements as to certificates. Certificates of Indebtedness issued pursuant to this section shall meet all of the following requirements:

(1) Form of certificate. Each certificate evidencing subordinated debt issued by a credit union pursuant to this section shall:

(A) Bear on its face, in bold-face type, the following legends:

(i) "This certificate is not a share account or deposit and it is not insured by the United States or any other insuring organization or fund"; and

(ii) "This certificate is not eligible for purchase by any credit union or a credit union service organization thereof without the prior written approval of the Credit Union Commissioner of the State of Texas."

(B) Clearly state that the certificate –

(i) Is subordinated to all other claims of the credit union's creditors;

(ii) Is totally unsecured; and

(iii) May not be used as collateral for any loan by the issuing credit union.

(C) Shall include within its terms the right of the issuing credit union to prepay the obligation, which shall, at a minimum, include the right to prepay any amount without premium or penalty any time during the fifteen months prior to the maturity date;

(D) Shall contain the following statement:

"Notwithstanding anything to the contrary in this certificate (or in any related documents); (i) if the NCUA or other insuring organization shall be appointed liquidating agent for the issuer of this certificate ("the issuer') and in its capacity as such shall cause the issuer to merge with or into another credit union, or in such capacity shall sell or otherwise convey part or all of the assets of the issuer to another credit union or shall arrange for the assumption of less than all of the liabilities of the issuer by one or more credit unions, the NCUA or other insuring organization shall have no obligation, either in its capacity as liquidating agent or in its corporate capacity, to contract for or to otherwise arrange for the assumption of the obligations represented by this certificate in whole or in part by any credit union or credit unions which results from any such merger or which has purchased or otherwise acquired from the NCUA or other insuring organization as liquidating agent for the issuer, any of the assets of the issuer, or which, pursuant to any arrangement with the NCUA or insuring organization, has assumed less than all of the liabilities of the issuer. To the extent that obligations represented by this certificate have not been assumed in full by a credit union with or into which the issuer may have been merged, as described in this paragraph (A), and/or by one or more credit unions which have succeeded to all or a portion of the assets of the issuer, or which have assumed a portion but not all of the liabilities of the issuer as a result of one or more transactions entered into by the NCUA or other insuring organization as liquidating agent for the issuer, then the holder of this certificate shall be entitled to payments on this obligation in

accordance with the procedures and priorities set forth in any applicable law. (ii) In the event that the obligation represented by this certificate is assumed in full by another credit union, which shall succeed by merger or otherwise to substantially all of the assets and the business of the issuer, or which shall by arrangement with the NCUA or insuring organization assume all or a portion of the liabilities of the issuer, and payment or provision for shall have been made in respect of all matured installments of interests upon the certificates together with all matured installments of principal on such certificates which shall have become due otherwise than by acceleration, than any default caused by the appointment of a liquidating agent for the issuer shall be deemed to have been cured, and any declaration consequent upon such default declaring the principal and interest on the certificate to be immediately due and payable shall be deemed to have been rescinded. (iii) This certificate is not eligible to be purchased or held by any credit union or credit union service organization thereof. The issuer of this certificate may not recognize on its transfer books any transfer made to a credit union or any credit union service organization thereof and will not be obligated to make any payments of principal or interest on this certificate if the owner of this certificate is a credit union or any credit union service organization thereof."

(2) Limitations as to term and prepayment.

(A) No certificate of indebtedness issued by a credit union pursuant to this section shall have an original period to maturity of less than seven years. During the first six years that such a certificate is outstanding, the total of all required sinking fund payments, other required prepayments, and required reserve allocations with respect to the portion of such six years as have elapsed shall at no time exceed the original principal amount or original redemption price, thereof multiplied by a fraction, the numerator of which is the number of years that have elapsed since the issuance of the certificate and the denominator of which is the number of years covered by the original period to maturity.

(B) No voluntary prepayment of principal shall be made and no payment of principal shall be accelerated without the approval of the commissioner if the credit union's net worth ratio is below 6% or, if after giving effect to such payment, the credit union's net worth ratio would fall below 6%.

(d) Offering circular. The credit union shall submit the proposed offering circular to the Department. The offering circular must state the following in bold print:

"These certificates have not been approved by the Texas Credit Union Department nor has the Texas Credit Union Department approved this offering circular."

(e) Supervisory objection. Generally, the commissioner will not issue a non-objection letter where:

(1) The proposed issue fails to transfer risk away from the National Credit Union Share Insurance Fund or other insuring organization and onto the certificate holders.

(2) Information submitted in connection with the application or otherwise available to the Department indicates that the credit union will not be able to service the proposed debt. Evaluation of the issuer's ability to service debt should be prospective, based upon the issuer's business plan.

(3) The ratio of subordinated debt included as equity capital to the credit union's net worth requirements exceeds one-third, after giving effect to the proposed issue.

(4) The proposed deployment of the proceeds of the proposed issue is contrary to the credit union's business plan, is unrealistic in its assumptions, or is inconsistent with the principles of safety and soundness.

(5) The credit union has failed to comply with the terms and conditions imposed upon previous subordinated debt issuances, or has failed to comply with any outstanding enforcement action, written agreement or any other significant supervisory requirement.

(f) Additional requirements. The commissioner may impose on the credit union such requirements or conditions with regard to certificates or the offering or issuance thereof as the commissioner may deem necessary or desirable for the protection of purchasers, the credit union, the National Credit Union Share Insurance Fund, or other insuring organization, as the case may be.

(g) Limitation on offering period. Following the date of the issuance of a non-objection letter, the credit union shall have an offering period of not more than one year in which to complete the sale of the certificates of indebtedness issued pursuant to this section. The commissioner may in his discretion extend such offering period if a written request showing good cause for such extension is filed with the Department not later than 30 days before the expiration of such offering period or any previous extension thereof.

(h) Policies and Procedures. Before any offers or sales of the certificates are made on the premises of the credit union or its credit union service organization, the credit union shall submit to the Department a set of policies and procedures for such sale of certificates that is satisfactory to the Department.

(i) Records. A credit union shall establish and maintain certificate of indebtedness documentation practices and records that demonstrate the credit union appropriately administers and monitors certificate of indebtedness-related activities. The credit union's records should adequately evidence ownership, balances, and all transactions involving each certificate. The credit union may maintain records on certificate of indebtedness activities in any format that is consistent with standard business practices.

(j) Disclosures.

(1) In connection with the purchase of a certificate of indebtedness by a person from the issuing credit union or its credit union service organization, the credit union and/or the credit union service organization must disclose to the person that:

(A) The certificate of indebtedness is not a share or deposit;

(B) The certificate of indebtedness is not insured by the National Credit Union Share Insurance Fund or any other insuring organization;

(C) There is investment risk associated with the certificate of indebtedness, including the possible loss of value; and

(D) The credit union may not condition an extension of credit on a person's purchase of a certificate of indebtedness.

(2) The disclosures required by paragraph (1) above must be provided orally and in writing before the completion of the sale of a certificate of indebtedness. If the sale of a certificate of indebtedness is conducted by telephone, the credit union may provide the written disclosure required by paragraph (1) by mail within three business days beginning the first business day after the sale, solicitation, or offer.

(3) A credit union may provide the written disclosures required by paragraph (1) through electronic media instead of on paper, if the person affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the person may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

(4) The disclosures provided shall be conspicuous and designed to call attention to the nature and significance of the information provided.

(k) Sales Activities. A credit union must, to the extent practicable:

(1) Keep the area where the credit union conducts transactions involving certificate of indebtedness physically segregated from areas where shares and deposits are routinely accepted from members;

(2) Identify the area where certificate of indebtedness activities occur; and

(3) Clearly delineate and distinguish those areas from the areas where the credit union's share- and deposit-taking activities occur.

(l) Referrals. Any person who accepts deposits from members in an area where such transactions are routinely conducted in a credit union may refer a member who seeks to purchase a certificate of indebtedness to a qualified person who sells that product only if the person making the referral receives no additional compensation for making the referral.

(m) Reports. Within 30 days after completion of the sale of the subordinated debt issued pursuant to this section, the credit union shall transmit a written report to the Department stating the number of purchases, the total dollar amount of certificates sold, and the amount of net proceeds received by the credit union. The credit union's report shall clearly state the amount of subordinated debt, net of all expenses that the credit union intends to have counted as equity capital. In addition, the credit union, shall submit to the Department, certification of compliance with all applicable laws and regulations in connection with the offering, issuance, and sale of the certificates.

(n) Equity capital. When a certificate of indebtedness has a remaining maturity of 5 years, the amount of the certificates that may be considered equity capital shall be reduced by a minimum of 20% of the original amount of the certificate per year. The equity capital shall be reduced by a constant monthly amortization to ensure the recognition of subordinated debt is fully amortized when the certificate matures or is prepaid.

(o) Prohibited practices.

(1) A credit union may not engage in any practice or use any advertisement at any office of, or on behalf of, a credit union that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

(A) the fact that a certificate of indebtedness a credit union sells or offers for sale is not insured by the National Credit Union Share Insurance Fund or other insuring organization;

(B) the fact that there is an investment risk, including the potential that principal may be lost and that the certificate may decline in value; or

(C) the fact that the approval of an extension of credit to a person by the credit union or credit union service organization may not be conditioned on the purchase of a certificate of indebtedness from the credit union or credit union service organization.

(2) No credit union shall directly or indirectly:

(A) employ any device, scheme or artifice to defraud,

(B) make any untrue statement of a material fact or omit to state a material fact necessary in order to make statements made, in light of the circumstances under which they were made, not misleading, or

(C) engage in any act, practice, or course of business which operates as a fraud or deceit upon any person, in connection with the purchase or sale of any certificate of indebtedness.

Source: The provisions of this §91.7000 adopted to be effective March 14, 2004, 29 TexReg 2638; reviewed and readopted to be effective June 23, 2008, 33 TexReg 5352; reviewed and readopted to be effective July 18, 2012, 37 TexReg 4958; reviewed and readopted to be effective July 31, 2016, 41 TexReg 5448.

Subchapter Q. Access to Confidential Information

§91.8000. Discovery of Confidential Information.

(a) Policy. The legislature has determined that certain information is confidential and, with limited exceptions, should not be disclosed. See Texas Finance Code, §126.002. Non-disclosure under this section protects the stability of credit unions by preventing disclosures that could adversely impact the institutions. Inappropriate disclosures can result in substantial harm to credit unions and to those persons and entities (including other financial institutions) that have relationships with them. For example, the department may criticize a credit union in an examination report for a financial weakness that does not currently threaten the solvency of the credit union. If improperly disclosed, the criticism can lead to adverse impacts such as the possibility of a "run," short-term liquidity problems, or volatility in costs of funds, which in turn can exacerbate the problem and cause the failure of the credit union. These failures lead to reduced access to credit and greater risk to depositors. Further, since specific loans may be criticized in an examination report, confidentiality of the information protects the financial privacy of borrowers. Finally, protecting confidential information from disclosure facilitates the free exchange of information between the credit union and the regulator, encourages candor, and promotes regulatory responsiveness and effectiveness. Information that does not fall within the meaning of confidential information as defined in this section may be confidential under other definitions and controlled by other laws, and is not subject to this section.

(b) Disclosure prohibited. Pursuant to Finance Code §126.002, the department has an absolute privilege against disclosure of its confidential information. Discovery of confidential information from a person subject to §126.002 must comply with subsection (c) of this section. Only a person to whom confidential information has been released pursuant to §126.002 or this rule may disclose that information to another, and only in accordance with that section and this rule.

(c) Discovery of confidential information. A credit union, governmental agency, credit union service organization, service provider, or insuring organization that receives a subpoena or other form of discovery for the release of information that is confidential under §126.002 of the Act shall promptly:

(1) notify the department of the request;

(2) provide the department with a copy of the discovery documentation and, if requested by the department, a copy of the requested information; and

(3) move for a protective order, or its equivalent under applicable rules of procedure.

In addition, prior to the release of confidential information, such credit union, governmental agency, credit union service organization, service provider, or insuring organization must obtain a ruling on its motion in accordance with this section. Confidential information may be released only pursuant to a protective order, or its equivalent, in a form consistent with that set out in this section and only if a court with jurisdiction has found that:

(A) the party seeking the information has a substantial need for the information;

(B) the information is directly relevant to the legal dispute in issue; and

(C) the party seeking the information is unable without undue hardship to obtain its substantial equivalent by other means.

(d) Discretionary filings by department. On receipt of notice under subsection (c) of this section, the department may take action as may be appropriate to protect confidential information. The department has standing to intervene in a suit or administrative hearing for the purpose of filing a motion for protective order and in camera inspection in accordance with this section.

(e) Motion for protective order, or equivalent, and in camera inspection. The movant shall ask the court to enter an order in accordance with this section regarding the release of confidential information. If necessary to resolve a dispute regarding the confidential status or direct relevance of any information sought to be released, the party seeking the order shall move for an in camera inspection of the pertinent information. Until subject to a protective order, or its equivalent, confidential information may not be released, and, if necessary, the party seeking an order shall request the court officer to deny discovery of such confidential information.

(f) Protective order or equivalent. An order obtained pursuant to the terms of this section must:

(1) specifically bind each party to the litigation, including one who becomes a party to the suit after the order is entered, each attorney of record, and each person who becomes privy to the confidential information as a result of its disclosure under the terms of the order;

(2) describe in general terms the confidential information to be produced;

(3) state substantially the following in the body of the order:

(A) absent court order to the contrary, only the court reporter and attorneys of record in the cause may copy confidential information produced under the order in whole or part;

(B) the attorneys of record are custodians responsible for all originals and copies of confidential information produced under the order and must insure that disclosure is limited to those persons specified in the order;

(C) confidential information subject to the order and all information derived there from may be used only for the purposes of the trial, appeal, or other proceedings in the case in which it is produced;

(D) confidential information to be filed or included in a filing in the case must be filed with the clerk separately in a sealed envelope bearing suitable identification, and is available only to the court and to those persons authorized by the order to receive confidential information, and all originals and copies made of such documents and records must be kept under seal and disclosed only in accordance with the term of the protective order;

(E) confidential information produced under the order may be disclosed only to the following persons and only after counsel has explained the terms of the order to the person who will receive the information and provided that person with a copy of the order;

(i) to a party and to an officer, employee, or representative of a party, to a party's attorneys (including other members and associates of the respective law firms and contract attorneys in connection with work on the case) and, to the extent an attorney of record in good faith determines disclosure is necessary or appropriate for the conduct of the litigation, legal assistants, office clerks and secretaries working under the attorney's supervision;

(ii) to a witness or potential witness in the case;

(iii) to an outside expert retained for consultation or for testimony, provided the expert agrees to be bound by the terms of the order and the party employing the expert agrees to be responsible for the compliance by its expert with this confidentiality obligation; and

(iv) to the court or to an appellate officer or body with jurisdiction of an appeal in the case;

(F) at the request of the department or a party, only the court, the parties and their attorneys, and other persons the court reasonably determines should be present may attend the live testimony of a witness or discussions or oral arguments before the court that may include confidential information or relate to such confidential information. The parties shall request the court to instruct all persons present at such testimony, discussions, or arguments that release of confidential information is strictly forbidden;

(G) a transcript, including a deposition transcript, that may include confidential information subject to non-disclosure is subject to the order. The party requesting the testimony of a current or former department officer, employee, or agent shall, at its expense, furnish the department a copy of the transcript of the testimony once it has been transcribed.

(H) Upon ultimate conclusion of the case by final judgment and the expiration of time to appeal, or by settlement or otherwise, counsel for each party shall return all copies of every document subject to the order for which the counsel is custodian to the party that produced the confidential information; and

(I) Production of documents subject to the order does not waive a claim of privilege or right to withhold the documents from a person not subject to the order.

(4) Paragraph (3)(A), (B) and (E) - (H) of this subsection are subject to modification by the court for good cause before the conclusion of the proceeding, after giving the department notice and an opportunity to appear.

Source: The provisions of this §91.8000 adopted to be effective March 14, 2004, 29 TexReg 2638; reviewed and readopted to be effective June 23, 2008, 33 TexReg 5352, amended to be effective July 12, 2009, 34 TexReg 4513; reviewed and readopted to be effective July 18, 2012, 37 TexReg 4958; reviewed and readopted to be effective July 31, 2016, 41 TexReg 5448.

(THIS PAGE WAS INTENTIONALLY LEFT BLANK)

Subchapter C. Department Operations

§97.200. Employee Training Program.

(a) Components of program. The employee training program for the department consists of one or more of the following components:

(1) Agency-sponsored training to include in-house training sessions and on-the-job training;

(2) Formal training program conducted through the National Credit Union Administration as administrator of the National Credit Union Share Insurance Fund.

(3) Seminars and conferences; and

(4) Formal course of study at an accredited institution of higher education.

(b) In order for the cost of training and the time related to that training to be reimbursed by the department, the employee must demonstrate that the course has direct applicability to the employee's job with the department. Attendance at an approved training session described in subsection (a)(1)-(3) will be considered part of the employee's normal work duties and will not require the employee to use accrued leave to attend.

(c) Requests to attend an external training program, seminar or conference pursuant to this section must be approved by the commissioner. Approval of a request is contingent upon availability of funds. If limited funds are available, and more than one employee wishes to participate, a decision regarding who will attend will be based upon the extent of their previous use of funds, the training's merit and its value to the department's operations.

(d) Continuing education courses. Continuing education courses required by licensing or certifying bodies for employees to maintain a professional license or designation will only be reimbursed if such courses relate directly to the employee's job duties with the department and there are funds available.

(e) Tuition reimbursement. The Commissioner must authorize in writing the reimbursement of tuition in accordance with this subsection.

(1) The department may reimburse full-time employees for part or all of tuition and required fees for formal courses of study described in subsection (a)(4) provided the eligibility criteria set forth below are met.

(A) An employee must have completed 24 consecutive months of full-time employment with the department prior to requesting approval to receive tuition reimbursement. However, the 24-month requirement may be waived if the commissioner finds that the employee needs a particular course to fulfill his or her work duties.

(B) An employee must be performing consistently above that normally expected or required and must have achieved an overall performance rating of at least 3.50 on the employee's most recent performance evaluation.

(C) An employee must not have been subject to formal disciplinary action for at least twelve months prior to requesting approval. As used in this section, "disciplinary action" includes a formal written reprimand, suspension without pay, or salary reduction for disciplinary reasons.

(D) The course work must be related to a current or prospective duty assignment within the department.

(E) An employee, before the course begins, must agree in writing to the repayment requirement stated in this subsection.

(F) At the time of the request for approval to receive tuition reimbursement, comparable training must not be scheduled to be offered in-house or through the National Credit Union Administration during the period of time covered by the tuition reimbursement.

(G) The employee's participation must not adversely affect workload or performance.

(H) The employee must complete the course within the semester for which tuition reimbursement was requested.

(I) The employee must receive a passing grade in the course. A passing grade is a grade which will entitle the employee to receive credit for the course from the educational institution offering the course.

(2) Reimbursable costs. Criteria addressing the extent to which cost of tuition may be reimbursed are as follows:

(A) The maximum amount an employee may be reimbursed for an approved tuition reimbursement request is $250 per semester, not to exceed $500 per fiscal year. The maximum amount of reimbursement may be increased up to $400 per semester for good cause shown upon approval by the commissioner.

(B) Reimbursable costs include tuition, related fees, and required textbooks and workbooks. Employees will not be reimbursed for auditing a course.

(C) Costs described in subparagraph (B) of this paragraph will be paid to the employee at the completion of the course upon the employee submitting proof that the course was completed and a passing grade was received.

(3) Repayment. Should an employee separate from department service within 12 months of completion of the course, the employee must reimburse the department for all reimbursable costs expended by the department for that course in accordance with section 656.103 of the Texas Government Code (relating to Restrictions on Certain Training Costs). The commission may adopt an order waiving this requirement upon finding that such action is in the best interest of the department or is warranted because of an extreme personal hardship suffered by the employee.

(4) Prohibition on use of state resources. Employees may not use department equipment, such as computers, calculators or typewriters to complete course work.

Source: The provisions of this §97.200 adopted to be effective February 16, 2000, 25 TexReg 91099; readopted to be effective June 19, 2001, 26 TexReg 4886; readopted to be effective February 14, 2005, 30 TexReg 1091; reviewed and readopted to be effective February 12, 2009, 34 TexReg 1452; reviewed and readopted to be effective February 15, 2013, 38 TexReg 1378; reviewed and amended to be effective July 31, 2016, 41 TexReg 5415.

§97.205. Use of Historically Underutilized Businesses.

Pursuant to Chapter 2161 of the Government Code, the Department hereby incorporates by reference the rules of the Comptroller of Public Accounts, 34 TAC §§20.11-20.28 (relating to Historically Underutilized Business Program), or any successor rules, regarding historically underutilized businesses. The Department shall comply, to the extent applicable, with the requirements of these rules when purchasing goods and services that are paid for with State appropriated money.

Source: The provisions of this §97.205 adopted to be effective November 13, 2000, 25 TexReg 11279; readopted to be effective June 22, 2004, 29 TexReg 6423; readopted to be effective February 14, 2005, 30 TexReg 1091; reviewed and amended to be effective July 12, 2009, 34 TexReg 4515; reviewed and readopted to be effective February 15, 2013, 38 TexReg 1378.

§97.206. Posting Of Certain Contracts: Enhanced Contracts And Performance Monitoring.

(a) Pursuant to section 2261.253 of the Texas Government Code, the Department will implement the following procedures for contracts for the purchase of goods or services from private vendors:

(1) The Department will list information pertaining to its contract with private vendors on its website. The information will include:

(A) The name of the vendor with whom the contract is made;

(B) A description of the competitive bidding process for the contract, or, if the contract did not involve competitive bidding, a citation and explanation of the legal authority supporting exemption from the competitive bidding process;

(C) A link to a copy of the request for proposal for the contract, if applicable until the contract expires or is completed; and

(D) A link to a copy of the contract with the vendor until the contract expires or is completed.

(2) Enhanced contract or performance monitoring procedure until the contract expires or is completed.

(A) For each contract whose value is greater than $25,000, the Commissioner and the Department Procurement Director will evaluate whether enhanced contract or performance monitoring is appropriate. Criteria that may be considered include:

(i) Total cost of the contract.

(ii) Risk of loss to the Department under the contract.

(iii) Department resources available for enhanced contract or performance monitoring.

(B) After evaluation of the contract, the Commissioner will immediately report to the Commission Members:

(i) The basis for determination as to whether enhanced contract or performance monitoring is appropriate;

(ii) Include any serious issues or risks identified with the contract, if applicable; and

(iii) If enhanced contract or performance monitoring is appropriate, the Department's plan for carrying out the enhanced contract or performance monitoring.

(C) Commission members may agree to convene a special commission meeting for the purposes of discussion or deciding upon matters related to enhanced contract or performance monitoring of Department contracts. This meeting would be conducted in conformity with the Texas Open Meetings Act.

(b) This rule applies only to contracts for which the request for bids or proposals is made public on or after September 1, 2015; or, if the contract is exempt from competitive bidding, where the contract is entered into on or after September 1, 2015. This rule does not apply to memorandums of understanding, interagency contracts, interlocal agreements or contracts that do not involve a cost to the Department.

Source: The provisions of this §97.206 adopted to be effective November 8, 2015, 40 TexReg 7667.

§97.207. Contracts for Professional or Personal Service.

(a) In connection with the authority granted to the commissioner to negotiate, contract or enter into an agreement for professional or personal services under §15.414, Texas Finance Code, the Department hereby incorporates by reference the procurement rules of the Comptroller of Public Accounts, 34 TAC Chapter 20 (relating to Texas Procurement and Support Services), or any successor rules, regarding soliciting and awarding contracts. The Department shall comply, to the extent applicable, with the requirements of these rules when contracting for professional or personal services that are paid for with State appropriated money or paid by credit unions pursuant to 7 TAC §97.113(l) of this title (relating to Fees and Charges).

(b) Any professional or personal service contracts between the Department and entities that receive funds from the State of Texas shall contain the following language regarding the authority of the State Auditor's Office to conduct an audit or investigation in connection with those funds: "Contractor understands that acceptance of funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to conduct an audit or investigation in connection with those funds. Contractor further agrees to cooperate fully with the State Auditor's office or its successor in the conduct of the audit or investigation, including providing all records requested. Contractor will ensure that this clause concerning the authority to audit funds received indirectly by subcontractors through Contractor and the requirements to cooperate is included in any subcontract it awards."

(c) Any professional or personal service contracts between the Department and entities that receive funds from the State of Texas shall contain the following language regarding dispute resolution: "The parties shall attempt to resolve any dispute arising under this contract by using the Department's dispute resolution process." The Department hereby incorporates by reference as its dispute resolution process the rules found in 1 TAC Chapter 68 (relating to Negotiation and Mediation of Certain Contract Disputes), or any successor rules.

Source: The provisions of this §97.207 adopted to be effective March 14, 2004, 29 TexReg 2639; readopted to be effective February 14, 2005, 30 TexReg 1091; reviewed and amended to be effective July 12, 2009, 34 TexReg 4516; reviewed and amended to be effective July 14, 2013, 38 TexReg 4318.

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. Application for Interpretation.

(a) 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.

(b) An interested person may submit a request for an interpretation of Section 50(a) (5)-(7), (e)-(p), and (t), Article XVI of the Texas Constitution. All requests must:

(1) be directed to the general counsel for the Office of Consumer Credit Commissioner who will promptly distribute it to the general counsels for the Department of Banking, the Department of Savings and Mortgage Lending, and the Credit Union Department;

(2) contain an explicit statement that an interpretation approved by the Finance Commission and Credit Union Commission is desired;

(3) contain the reference to the specific applicable section, subsection and paragraph of the Texas Constitution of which the interpretation is requested;

(4) state with sufficient particularity the factual and legal context to which the application of the provision is vague or ambiguous; and

(5) indicate the requestor's opinion of how the legal issue should be resolved, the basis for that opinion, an analysis of any relevant court decisions, and all prior interpretations to which the request relates.

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.

§151.2. Review of Request.

(a) The request for interpretation shall be evaluated to determine:

(1) whether the requestor has complied with the requirements of §151.1(b);

(2) the significance and general application of the interpretation; and

(3) the ambiguity of the constitutional provision.

(b) Reasons for a denial of a request for interpretation will be stated in writing.

Source: The provisions of this §151.2 adopted to be effective January 7, 2004, 29 TexReg 83; 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.

§151.3. Initiation of Interpretation Procedure.

(a) If an interpretation is initiated, the requestor shall be notified in writing.

(b) To ensure that clear and concise formal interpretations are made, it may be necessary to rephrase the original interpretation request. A requestor will be notified in writing if a request is rephrased and a copy of the rephrased request shall be provided to the requestor.

(c) Copies of the request for interpretation will be sent to parties requesting advance notice for their input.

(d) The parties requesting advance notice may provide their input indicating an opinion of how the legal issue should be resolved, the basis for that opinion, an analysis of any relevant court decisions and all prior interpretations to which the request relates.

(e) The input of the parties requesting advance notice will be considered.

Source: The provisions of this §151.3 adopted to be effective January 7, 2004, 29 TexReg 83; reviewed and amended to be effective November 13, 2008, 33 TexReg 9073; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448.

§151.4. Notice of Proposed Interpretation.

If the Finance Commission and the Credit Union Commission propose an interpretation, notice of the proposed interpretation will be published in the Texas Register. The notice of the proposed interpretation shall contain:

(1) A brief explanation of the proposed interpretation;

(2) The text of the proposed interpretation, except any portion omitted under Section 2002.014, Government Code, prepared in a manner to indicate any words to be added or deleted from the current text;

(3) A reference to the section of the constitution interpreted; and

(4) A statement of whether the interpretation is inconsistent with any other interpretations and an explanation of the justification for any inconsistency.

Source: The provisions of this §151.4 adopted to be effective January 7, 2004, 29 TexReg 83; 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.

§151.5. Public Comment.

Any person may submit comments, briefs or proposals pertaining to the proposed interpretation not later than 30 days following the publication of the proposed interpretation in the Texas Register. The Finance Commission and Credit Union Commission will allow the opportunity for public comment and public hearing as required by Section 2001.029, Government Code.

Source: The provisions of this §151.5 adopted to be effective January 7, 2004, 29 TexReg 83; reviewed and readopted to be effective June 20, 2008, 33 TexReg 5352; reviewed and readopted to be effective June 21, 2013, 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448.

§151.6. Action on Proposed Interpretation.

The Finance Commission and the Credit Union Commission may adopt or decline to adopt the proposed interpretation or remand the proposed interpretation for modification, revision, or additional comment. This action will be conducted at a public meeting.

Source: The provisions of this §151.6 adopted to be effective January 7, 2004, 29 TexReg 83; 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.

§151.7. Adoption of Interpretation.

The interpretation as finally adopted by the Finance Commission and Credit Union Commission, will include:

(1) a reasoned justification for the interpretation as adopted consisting solely of:

(A) a summary of comments received from parties interested in the interpretation that shows the names of interested parties or associations offering comment on the interpretation and whether they were for or against its adoption;

(B) a summary of the factual basis for the interpretation as adopted which demonstrates a rational connection between the factual basis for the interpretation and the interpretation as adopted; and

(C) the reasons why the Finance Commission and Credit Union Commission disagree with party submissions and proposals;

(2) a concise restatement of the particular constitutional provisions under which the interpretation is adopted and of how the Finance Commission and Credit Union Commission interpret the provisions as authorizing or requiring the interpretation; and

(3) a certification that the interpretation, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the Finance Commission's and Credit Union Commission's legal authority.

Source: The provisions of this §151.7 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.

§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.

(THIS PAGE WAS INTENTIONALLY LEFT BLANK)

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.

§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.

§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.

§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.

§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.

§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.

§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.

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

(a) The persons granting or acknowledging the encumberance 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.

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) Three 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; reviewed and amended to be effective January 1, 2015, 39 TexReg 10407 reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448.

§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; reviewed and readopted to be effective June 21, 2013, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448.

§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.

§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.

§153.5. Three 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, fees to any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, three percent of the original principal amount of the extension of credit.

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

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

(B) Legitimate discount points are interest and are not subject to the three percent limitation. Discount points are legitimate if the discount points truly correspond to a reduced

interest rate and are not necessary to originate, evaluate, maintain, record, insure, or service the loan. A lender may rely on an established system of verifiable procedures to evidence that the discount points it offers are legitimate. 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 three 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 three 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 three 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 a loan are fees subject to the three percent limitation. Charges those 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 three percent limitation. Examples of these charges include attorneys' fees for document preparation and mortgage brokers' fees to the extent authorized by applicable law.

(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 three percent limitation. Examples of these charges include fees collected to cover the expenses of a credit report, survey, flood zone determination, tax certificate, title report, inspection, or appraisal.

(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 three 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 three 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 three percent limitation. Examples of these charges include title insurance and mortgage insurance protection.

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

(14) 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 three 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).

(15) Subsequent Events. The three 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 three 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.

(16) 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 three 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; reviewed and amended to be effective January 1, 2015, 39 TexReg 10408; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448.

§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.

§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)(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.

§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.

§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.

§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 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) The two month time period contained in Section 50(a)(6)(L)(i) begins on the date of closing.

(2) 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.

(3) 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.

(4) 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, 203, 38 TexReg 4393; reviewed and readopted to be effective July 28, 2016, 41 TexReg 5448.

§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.

§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 may satisfy the disclosure requirement of providing a final itemized disclosure of the actual fees, points, interests, costs, and charges that will be charged at closing by delivery to the borrower of a properly completed Department of Housing and Urban Development (HUD) disclosure Form HUD-1 or HUD-1A.

(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.

§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.

(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 Soldiers' and Sailors' Civil Relief Act.

(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 3% fee cap required by Section 50(a)(6)(E) applies to the original home equity loan and any subsequent modification as a single transaction.

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 readopted to be effective July 28, 2016, 41 TexReg 5448.

§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.

(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 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 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; reviewed and amended to be effective January 1, 2015, 39 TexReg 10409.

§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.

§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; 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 broker.

(1) An authorized lender under Chapter 341, Texas Finance Code, 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. Approved correspondents to a HUD-approved mortgage are not authorized lenders of equity loans unless qualifying under another section of (a)(6)(P).

(3) A non-depository lender or broker that makes, negotiates, arranges, or transacts a secondary mortgage loan that is governed by Chapter 342, Texas Finance Code, must comply with the licensing provisions of Chapter 342, Texas Finance Code.

(4) A lender who does not meet the definition of Section 50(a)(6)(P)(i), (ii), (iv), (v), or (vi), must obtain a regulated loan license under Chapter 342 of the Texas Finance Code to meet the provisions of subsection (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.

§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.

§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.

§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. One copy of these documents may be provided to married owners. 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.

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.

§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.

§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.

§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: (1) the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of Section 50 of the Texas Constitution; or (2) 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.

§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; reviewed and amended to be effective January 1, 2015, 39 TexReg 10409.

§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.

§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);

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

(C) the debit or advance limits in Section 50(t)(6).

(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.

§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.

§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 limits and thresholds under Section 50(t)(5) and (6), 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.

§153.87. Maximum Principal Amount of Additional Advances under a HELOC: Section 50(t)(6).

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 no additional debits or advances can be made if the total principal amount outstanding exceeds an amount equal to 50 percent of the fair market value of the homestead as determined on the date the account is established.

(1) A subsequent advance may be made only when the outstanding principal amount of the HELOC is 50 percent or less of the fair market value.

(2) A subsequent advance is prohibited if the outstanding principal amount of the HELOC exceeds 50 percent of the fair market value.

(3) If the outstanding principal amount exceeds 50 percent of the fair market value and then is repaid to an amount equal to or below the 50 percent of the fair market value, subsequent advances are permitted subject to the requirements of Sections 50(t)(2) and (5).

Source: The provisions of this §153.87 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.

§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.

§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.

§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.

§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.

§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.

§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.

§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.