



1-1-1995

Home Equity Reform in Texas Forum.

Jerry Patterson

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Recommended Citation

Jerry Patterson, *Home Equity Reform in Texas Forum.*, 26 ST. MARY'S L.J. (1995).

Available at: <https://commons.stmarytx.edu/thestmaryslawjournal/vol26/iss2/2>

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HOME EQUITY REFORM IN TEXAS

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I. Introduction	323
II. Basic Concepts in Home Equity Reform	324
A. Defining Equity	325
B. Current Texas Constitutional Provisions	326
1. General Homestead Restrictions	326
2. The Business Homestead	326
III. The Proposed Constitutional Amendment	327
IV. Considerations in the Reform Debate	329
A. General Misconceptions	329
B. The Foreclosure Myth	331
C. Public Opinion	332
D. Consumer Benefits	333
1. Financial Advantages	333
2. Consumer Protections	334
E. Freedom of Choice	336
V. Conclusion	337

I. INTRODUCTION

Most Texans react to any mention of a change to the state homestead laws¹ with skepticism. Few possessions are more personal and precious to Texans than their homes. The history of our great state is filled with struggles to obtain and safeguard homes,

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1. Provisions addressing homesteads are sprinkled liberally throughout the Texas Constitution and statutes. *See, e.g.*, TEX. CONST. art. XVI, §§ 50 (amended 1973), 51 (amended 1970, 1973, 1983), & 52; TEX. PROP. CODE ANN. §§ 41.001-.024, 53.059 (Vernon 1984 & Supp. 1995); TEX. PROB. CODE ANN. §§ 270-293 (Vernon 1980 & Supp. 1995). The home equity reform debate focuses on § 50 of the constitution and Chapter 41 of the Property Code, but the related provisions would obviously be affected if specific parts of § 50 and Chapter 41 were to be amended. In this essay, the Texas homestead provisions will be referred to collectively as the "homestead laws" unless specific reference is made to a particular section.

ranches, and farms. Homestead protection attracted many individuals to Texas; for most, it became the reason they stayed.

Our homestead laws—the first to extend protections from creditors to real estate purchasers—were built on this foundation. Texans were pioneers. Importantly, our state remains one of the few without a dollar limitation on the value of a homestead.

Our homestead laws are broad, extending from real to personal property, and from debtor's rights to probate to business property. Their reach is also extensive. Texas is generous, when compared to other states, in terms of the homestead benefits afforded its residents. Thus, it is no surprise that most Texans greet the suggestion of a change to the homestead laws with skepticism. The concept of Texas homestead protection has grown to near-mythical proportions. Although the majority of Texans support the homestead protection, few thoroughly understand the benefits it conveys and the limitations it imposes.

Altering the sacrosanct homestead laws is often a frustrating proposition. Such proposals typically anger some, annoy others, and initially are ignored by most. However, changes that improve the laws, yet retain the existing homestead protections against foreclosure by all creditors except those with specific, narrowly defined homestead liens, deserve further discussion. Nevertheless, proponents of home equity reform find themselves in an unenviable position—challenging a highly regarded axiom to promote much-needed change.

II. BASIC CONCEPTS IN HOME EQUITY REFORM

Texas is the only state in the nation that prohibits homeowners from using their home equity as they see fit—to educate their children, to start or expand small businesses, or to enjoy their retirement years. Access to homestead equity is a basic property right homeowners enjoy in forty-nine other states. Proponents of home equity reform believe Texans should be given the opportunity to decide for themselves, in a statewide referendum,² whether they desire a wider range of financial options.

2. Proposed amendments to the Texas Constitution are submitted to the voters by the state legislature. A two-thirds vote of both the Texas House of Representatives and the Texas Senate is required to place a proposed amendment on the ballot. A simple majority is required for passage. TEX. CONST. art. XVII, § 1 (amended 1972).

A. *Defining Equity*

“Equity” is the difference between the market value of a homestead and the outstanding balances of the debts, secured by valid encumbrances,³ against it. Correspondingly, an equity loan is a debt that a homestead owner secures by pledging all or part of his equity in the real property as collateral.

Three types of home equity loans currently exist. The first is a closed-end loan for a certain period of time, such as a \$25,000 college tuition loan that is repaid over ten years. Closed-end loans are structured like purchase money mortgages. The borrower makes monthly principal and interest payments, repaying the principal and interest in full by the end of the loan term.

The second type of home equity loan is a line of credit that the borrower may access as needed. The lender establishes the maximum loan amount that can be outstanding at any given time. The borrower may borrow and repay various amounts repeatedly so long as the total amount owed does not exceed the line-of-credit cap.

A reverse mortgage represents the third type of home equity loan. Reverse mortgages help house-rich, cash-poor senior citizens unlock their equity and convert it to income without selling their homes. Elderly Americans own approximately 12.5 million homes; 85 percent own their homes free and clear of any debt. For the majority of older homeowners, home equity represents their largest single asset. Using reverse mortgages, these homeowners may improve the quality of their lives by increasing their income or may draw on their equity to pay for repairs or other expenses. Unlike an equity loan, which requires the borrowers to make monthly payments, the makers of a reverse mortgage receive payments from the lender. Under most reverse mortgages, no repayment is due until the owners sell their home or die. Moreover, since borrowers do not make monthly payments, they cannot default on a reverse mortgage because of missed payments.

3. Liens may be placed on Texas homesteads to secure purchase money mortgages, home improvement loans, and loans to pay taxes due on the property. TEX. CONST. art. XVI, § 50 (amended 1973); TEX. PROP. CODE ANN. § 41.001(b) (Vernon Supp. 1995).

B. *Current Texas Constitutional Provisions*

1. General Homestead Restrictions

Article XVI, Section 50 of the Texas Constitution prohibits the forced sale of a homestead unless the owner has failed to pay property taxes, failed to repay a first mortgage, or failed to repay a home improvement mortgage.⁴ This provision prevents homeowners from using their homes as collateral for any loan except a loan to pay property taxes, a first mortgage, or a home improvement loan. These three types of debt are usually secured by a lien on the homestead. If the borrower defaults, the lender is entitled to use the Article XVI forced-sale provision to foreclose on the property.⁵

The language of Section 50 prevents homeowners from using their equity as collateral for reverse mortgages or equity loans. Because the constitution prohibits the use of liens to secure these two types of debt, lenders cannot accept homesteads as collateral to protect themselves if reverse mortgage or home equity loan borrowers default.

2. The Business Homestead

Texas is the only state that includes business property in its homestead restrictions. Section 51, which first appeared in the 1876 Texas Constitution, included business property within the definition of the urban homestead.⁶ Texas law allows one acre, regardless of value, to each single person or head of a family as an urban homestead.⁷ This type of homestead may consist of either a single lot or a series of lots as long as the total area does not exceed one acre. If more than one lot qualifies as an urban homestead, the lots need not be contiguous, but need only be located in the same city.

The lots that compose the one-acre urban homestead can be used for a residence or a business. Many urban Texans have homes on half-acre pieces of property and small businesses on separate half-acre lots in the same city. Texas law prohibits borrowing

4. TEX. CONST. art. XVI, § 50 (amended 1973).

5. *Id.*; TEX. PROP. CODE ANN. § 51.002 (Vernon Supp. 1995).

6. TEX. CONST. art. XVI, § 51 (amended 1970, 1973, 1983).

7. *See* TEX. PROP. CODE ANN. § 41.002 (Vernon Supp. 1995) (defining urban homestead as one acre of land); *see also In re Mitchell*, 132 B.R. 553, 567 (Bankr. W.D. Tex. 1991) (explaining that urban homestead is dictated by size and not value).

against either piece of property for any reason except for purchasing the property, improving the property, and paying property taxes. The law applies automatically—a small business owner cannot waive the homestead designation on the business property and borrow against it to promote the business. However, small business owners in every other state enjoy the benefit of using home equity to support their businesses.

III. THE PROPOSED CONSTITUTIONAL AMENDMENT

The scope of the Texas Legislature's current reform proposal is surprisingly narrow. Although the enabling provisions⁸ create a complete framework for regulating equity loans by adding a new chapter to the Texas Credit Code,⁹ the proposed constitutional amendment¹⁰ does not eliminate or repeal any of the existing homestead language. Article XVI, Section 50 of the Texas Constitution presently reads as follows:

Sec. 50. The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for the purchase money thereof, or a part of such purchase money, the taxes due thereon, or for work and material used in constructing improvements thereon, and in this last case only when the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead; nor may the owner or claimant of the property claimed as homestead, if married, sell or abandon the homestead without the consent of the other spouse, given in such manner as may be prescribed by law. No mortgage, trust deed, or other lien on the homestead shall ever be valid, except for the purchase money therefor, or improvements made thereon, as hereinbefore provided, whether such mortgage, or trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.¹¹

8. Tex. S.B. 301, 74th Leg., R.S. (1995); Tex. H.B. 749, 74th Leg., R.S. (1995).

9. TEX. REV. CIV. STAT. ANN. art. 5069 (Vernon 1987 & Supp. 1995).

10. Tex. S.J. Res. 25, 74th Leg., R.S. (1995); Tex. H.R.J. Res. 59, 74th Leg., R.S. (1995).

11. TEX. CONST. art. XVI § 50 (amended 1973).

In comparison, the proposed amendment to Article XVI, Section 50 provides (new language underlined):

Sec. 50. (a) The homestead of a family, or of a single adult person, shall be, and is hereby protected from forced sale, for the payment of all debts except for:

(1) the purchase money thereof, or a part of such purchase money;

(2) ~~;~~ the taxes due thereon;

(3) ~~[, or for]~~ work and material used in constructing improvements thereon, if ~~[and in this last case only when]~~ the work and material are contracted for in writing, with the consent of both spouses, in the case of a family homestead, given in the same manner as is required in making a sale and conveyance of the homestead; or

(4) an equity loan.

(b) The ~~[nor may the]~~ owner or claimant of the property claimed as homestead, if married, may not sell or abandon the homestead without the consent of each owner and the other spouse, given in such manner as may be prescribed by law.

(c) No mortgage, trust deed, or other lien on the homestead shall ever be valid, unless it secures a debt described by this section ~~[except for the purchase money therefor, or improvements made thereon, as hereinbefore provided]~~, whether such mortgage, or trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.¹²

A detailed examination of the proposed amendment's language leads to several immediate conclusions. First and foremost, the proposal does not repeal the existing Texas homestead protections. Critics of reform continually attempt to confuse the debate by misrepresenting the effect of the proposed change. Claims that the reform proposal repeals the homestead law only play upon the emotions and fears of concerned Texans.¹³

Second, Texas homeowners are currently permitted to pledge all or part of their homesteads for three types of loans: purchase

12. Tex. S.J. Res. 25, 74th Leg., R.S. (1995); Tex. H.R.J. Res. 59, 74th Leg., R.S. (1995).

13. See also discussion *infra* Part IV (A)-(B).

money, home improvement, and property taxes.¹⁴ The proposed amendment simply provides a fourth option: a voluntary equity loan. All existing protections against judgment creditors and involuntary liens remain unchanged. Under this proposal, the only creditor that could place a lien on the homestead of a home equity borrower is the lender who makes the equity loan.

Third, because the operative language of the existing homestead provision would remain, the provision would continue to protect Texas homestead owners in the same fashion it does today. A borrower could not be coerced into “taking” a home equity loan, and a lien could not be “force-placed” on a homestead. Equity loans would be completely voluntary, at the sole discretion of the borrower.

A home equity loan borrower would not put his home at risk to other creditors under this proposal. Credit card companies, automobile dealers, and retailers would still be prohibited from placing a lien on the homestead if the owner defaults on an extension of credit made by these creditors. A home equity loan borrower’s home would be at risk, but only to the holder of the home equity loan note.

IV. CONSIDERATIONS IN THE REFORM DEBATE

A. *General Misconceptions*

Various misconceptions about the Texas homestead law confuse the public and distort the issue. Some have arisen from folklore, substantiated by frequent repetition over time. Others stem from confusion regarding the intricacies of negative issues such as bankruptcy, foreclosure, and involuntary liens. Furthermore, opponents of reform, both purposely and unintentionally, have nurtured and spread fallacies concerning homestead protections.

One of the most troubling and confusing aspects of the reform debate is that the term “homestead” may be used in different contexts. For example, home equity loans and property taxes would appear to have little in common. However, homestead exemptions, for property tax purposes, are crucial to many Texans. Fortu-

14. TEX. CONST. art. XVI, §§ 50 (amended 1973), 51 (amended 1970, 1973, 1983) & 52; TEX. PROP. CODE ANN. §§ 41.001-.024, 53.001-.240 (Vernon 1984 & Supp. 1995); TEX. PROB. CODE ANN. §§ 270-293 (Vernon 1980 & Supp. 1995).

nately, the home equity reform proposal has nothing to do with property taxes—the two are completely separate and distinct. If equity loans become available in Texas, homeowners, particularly senior citizen homeowners, will continue to enjoy the current property tax exemptions.

Unfounded rumors occasionally circulate claiming that any change to the constitutional prohibition against access to homeowner equity will lead to unwanted federal government intrusion. The involuntary Medicaid lien recently proposed by the Clinton Administration represents one such misconception.¹⁵ The approval of equity loans in Texas prevents the state from seizing and selling the homesteads of nursing-home residents whose care is funded by Medicaid. The repayment of federal Medicaid funds by the involuntary sale of nursing-home residents' homes is a federal issue completely unrelated to home equity loans.¹⁶ Nevertheless, the rumors persist, tainting the reform discussions.

Ironically, some Texans insist that a homeowner can simply waive the strict homestead laws. Their argument "logically" concludes that a constitutional amendment is unnecessary because any homeowner who seeks to borrow against his home equity may do so simply by waiving his homestead designation and, in turn, his homestead protections. However, Texas courts have consistently ruled that a waiver or disclaimer of homestead rights is not enforceable when the claimant has, at any time, established the homestead nature of the property by actual use and possession.¹⁷ In short, a property owner cannot waive homestead rights in the

15. See generally Michele Kay, *State Seeks Medicaid Plan Exemption*, AUSTIN AM.-STATESMAN, Aug. 17, 1994, at A3 (discussing Texas's opposition to Medicaid lien proposal).

16. See *id.* (noting that Texas Attorney General is examining federal law to determine whether Texas should enact legislation to protect senior citizens and other nursing-home residents).

17. See, e.g., *Bradley v. Pacific Southwest Bank (In re Bradley)*, 960 F.2d 502, 507 (5th Cir. 1992) (explaining that Texas courts presume homestead claimant possesses requisite intent when evidence exists that claimant used property for homestead), *cert. denied*, 113 S. Ct. 1412 (1993); *Smith v. Moody (In re Moody)*, 862 F.2d 1194, 1199 (5th Cir. 1989) (finding that owner's short absences did not constitute abandonment), *cert. denied*, 112 S. Ct. 1562 (1992); *First Interstate Bank v. Bland*, 810 S.W.2d 277, 283 (Tex. App.—Fort Worth 1991, no writ) (stating that claimant's sole act of disclaiming property as homestead will not later preclude claimant from homestead exemption); *Gerrard v. Henderson*, 209 S.W.2d 225, 229 (Tex. Civ. App.—Dallas 1948, no writ) (listing death, abandonment, and alienation as only means by which property may lose homestead characteristics).

property on which he lives. Unfortunately for lenders, Texas courts have further refused to enforce homestead waivers or disclaimers executed solely to obtain a homestead-secured loan for an impermissible purpose.¹⁸

B. *The Foreclosure Myth*

Additionally, critics of the campaign to modernize Texas's home equity prohibition have perpetuated the myth that equity loans would trigger an increase in foreclosure rates. During good economic times, the critics contend, Texans will be encouraged to borrow aggressively against their homes. When times are hard, the critics assert, overextended debtors will default on their loans, triggering collection proceedings and, ultimately, foreclosure by lenders. The assertion that equity lending would increase Texas foreclosure rates cannot be documented. Moreover, in other states, no evidence exists indicating any correlation between equity loans and higher foreclosure rates.

The table below compares Texas's home mortgage foreclosure rate for 1992 to the rates of the ten states with the highest volume of equity loans. If equity loans cause foreclosures, Texas's foreclosure rate should be dramatically lower than the rates of other states. As indicated, Texas's foreclosure rate is not significantly lower than any of the top ten equity loan states, but instead falls in the middle of the list. Regional economic conditions, rather than the existence of equity loans, drive foreclosure rates. States whose economies were relatively stronger in 1992 had lower foreclosure rates; those with weaker economies had higher rates.

18. See, e.g., *Bradley*, 960 F.2d at 510 (providing that courts will not enforce homestead disclaimer when lender should have known of disclaimer's falsity); *Truman v. Deason (In re Niland)*, 825 F.2d 801, 809 (5th Cir. 1987) (explaining that, because individuals in financial difficulty would sign anything to obtain money from lenders, lenders have duty to inquire about homestead disclaimer); *NCNB Texas Nat'l Bank v. Carpenter*, 849 S.W.2d 875, 879 (Tex. App.—Fort Worth 1993, no writ) (asserting that rural property owner must reside on property and use property as home to establish homestead claim); *Texas Land & Loan Co. v. Blalock*, 76 Tex. 85, 13 S.W. 12, 13 (1890) (emphasizing that constitution prohibits lender from placing lien on homestead).

TABLE 1: FORECLOSURE RATES IN THE TEN HIGHEST VOLUME EQUITY LOAN STATES AND TEXAS¹⁹

STATE	EQUITY LINES OF CREDIT (IN MILLIONS)	RESIDENTIAL LOAN FORECLOSURE RATE
North Carolina	\$ 2,624	0.64%
Maryland	2,361	0.85
Ohio	3,603	0.87
Illinois	4,200	0.97
Texas	—	1.04
Florida	2,301	1.22
California	14,405	1.26
Pennsylvania	4,429	1.29
Massachusetts	2,823	1.61
New York	6,983	1.67
New Jersey	5,424	2.38

C. *Public Opinion*

Despite the mythical nature of the Texas homestead law and the misconceptions about the home equity loan proposal, public opinion increasingly favors reform. Several public opinion polls conducted during the past ten years have measured the attitudes of Texas voters toward home equity loans. During the months of September and October 1994, three polls were conducted. A comparison of poll results indicates a change in Texans' attitudes about home equity borrowing. More and more Texans believe that home equity loans present a viable borrowing choice.

The Mason-Dixon Texas Poll, conducted by Mason-Dixon Political/Media Research, Inc. and commissioned by the Texas Conference for Homeowners' Rights, showed that 61 percent of those interviewed agreed with the following statement: "Texas homeowners should be allowed to put the equity in their homes up as collateral, to borrow money for medical emergencies, education, or business development." Only 28 percent disagreed. On a related question, 81 percent of those interviewed indicated a belief that

19. TEXAS CONFERENCE FOR HOMEOWNERS' RIGHTS, FACT BOOK: EQUITY BORROWING, EQUITY LOANS, AND REVERSE MORTGAGES 22 (1994).

they should be given the right to vote on whether Texas law should allow home equity borrowing. Only 16 percent disagreed.²⁰

The Harte-Hanks Texas Poll, conducted by the University of Texas, revealed that an increasing number of those surveyed—43 percent—believed that Texans should be able to take out second mortgages on their homes. Although 48 percent of those polled were opposed to second mortgages, the gap between the opponents and supporters of home equity loans narrowed to five percentage points, down from nineteen percentage points when pollsters posed this same question in 1987.²¹ This decrease reflects a significant shift in attitude by Texas homeowners.

A third survey, the Tarrance Group Poll, asked a question regarding home equity reform as a part of a broader statewide poll. The survey asked respondents whether, if the issue were put to a vote on a statewide referendum, they would vote to allow Texas homeowners to borrow on the equity in their homes. Of those polled, 37 percent responded strongly in favor and 26 percent responded somewhat in favor of putting the issue to a vote. Only 14 percent strongly opposed home equity reform.²²

D. *Consumer Benefits*

1. Financial Advantages

In addition to providing a degree of financial flexibility beyond that presently available, home equity reform offers a variety of financial benefits to Texas homeowners. Equity loans offer low-interest credit options to the responsible homeowner.

In an independent study, University of Texas business professor George Gau analyzed U.S. census data and information provided

20. Mason-Dixon Political/Media Research, Inc., Mason-Dixon Texas Poll (conducted Oct. 15-17, 1994) (copy on file with the *St. Mary's Law Journal*).

21. Office of Survey Research, College of Communications, University of Texas at Austin, Harte-Hanks Texas Poll (conducted Oct. 6-15, 1994) (summary on file with the *St. Mary's Law Journal*). The question posed to those polled was phrased as follows:

Texas has homestead protection laws that make borrowing money against your home for other than a mortgage impossible. Some people argue this should be changed to make it easier to borrow money and to take advantage of federal tax law. Others say that it is important to protect people so that banks cannot take their homes. What do you think—should Texas allow loans of this type or not?

Id.

22. The Tarrance Group, Tarrance Group Poll (conducted Sept. 6-8, 1994) (copy on file with the *St. Mary's Law Journal*).

by the Property Tax Division of the Texas State Comptroller of Public Accounts. Professor Gau estimated that unencumbered equity in Texas homes totalled approximately \$116 billion in late 1992.²³ In addition, he found that a Texas homeowner with an average level of consumer debt could save from \$443 to \$544 per year by substituting equity borrowing for other forms of consumer debt.²⁴ These savings would result from the lower interest rate on home equity loans compared to other forms of consumer debt and from the federal income tax deduction of interest payments on home equity loans.²⁵ Professor Gau concluded that statewide equity lending would save Texas consumers \$1.7 billion to \$2.1 billion per year.²⁶

In the second part of his study, Professor Gau estimated, based on actual data from other states, that if home equity borrowing were allowed in Texas, 12 percent of Texas homeowners could be expected to take out home equity loans.²⁷ This loan activity would translate into a total of \$8.12 billion in home equity loans under amended homestead laws and would result in a direct increase in Texas consumer spending of \$4.34 billion per year.²⁸ As a result, more than 192,000 new Texas jobs could be created, specifically in the area of retail trade and in selected service sectors.²⁹ Professor Gau estimated that this growth in spending from home equity lending would also generate more than \$220 million in tax revenue for state and local governments.³⁰

2. Consumer Protections

Consumer and small business credit transactions are generally regulated by a multitude of federal laws. Home equity loans are specifically addressed by the Home Equity Consumer Protection

23. George W. Gau, *Home Equity Loans in Texas: Existing Equity and Cost Savings* 1 (Aug. 1992) (unpublished study, on file with the *St. Mary's Law Journal*).

24. *Id.* at 2.

25. *Id.* at 8.

26. *Id.* at 2.

27. George W. Gau & James E. Jarrett, *An Economic Impact Study of Home Equity Loans in Texas* 6 (Oct. 1992) (unpublished study, on file with the *St. Mary's Law Journal*).

28. *Id.* at 6-7.

29. *Id.* at 8.

30. *Id.* at 10.

Act of 1988,³¹ which requires full disclosure of the terms and other details of loans secured by real property and mandates truth-in-advertising standards for lenders. In addition to the heavy federal regulation of licensed home equity lenders,³² proposed Texas legislation contains the most stringent set of consumer protections in the country. To protect consumers from fly-by-night lenders and unscrupulous brokers, reverse mortgages and equity loans may only be originated by credit unions, savings associations, banks, mortgage banks, and other lenders regulated by the Texas Consumer Credit Commissioner.³³

As previously mentioned, the existing Texas homestead protections from judgment creditors will be continued under the legislative proposal. All liens securing equity loans will be voluntary at the borrower's discretion. Moreover, a lender may not accelerate payment or demand payment in full of another loan if a borrower defaults on an equity loan. Furthermore, a lender may not require a borrower to pledge collateral securing another loan as additional collateral on an equity loan or to pledge the equity in his home as additional collateral for an existing or new loan. The enabling legislation specifically prohibits the stacking of equity loans. Each Texas homestead owner will be permitted only one equity loan.

To give homeowners time to reflect or reconsider their decision to receive a home equity loan, a fifteen-day cooling off period will be required between the date the borrower applies for an equity

31. Pub. L. No. 100-709, 102 Stat. 4725, 4725 (1988) (codified as amended in scattered Sections of 15 U.S.C.).

32. The federal government affords many protections to borrowers. *See, e.g.*, Competitive Equality Banking Act of 1987, 12 U.S.C. § 1841 (1988); Real Estate Settlement Procedures Act of 1974, 12 U.S.C. §§ 2601-2617 (1988 & Supp. V 1993); Community Reinvestment Act of 1977, 12 U.S.C. §§ 2901-2906 (1988 & Supp. V 1993); Federal Truth in Lending Act of 1968, 15 U.S.C. §§ 1601-1666 (1988 & Supp. V 1993); Home Equity Loan Consumer Protection Act of 1988, 15 U.S.C. § 1637a (1988); Fair Credit Billing Act of 1968, 15 U.S.C. §§ 1666-1666j (1988); Fair Credit Reporting Act of 1968, 15 U.S.C. §§ 1681-1681t (1988 & Supp. V 1993); Equal Credit Opportunity Act of 1974, 15 U.S.C. §§ 1691-1691f (1988 & Supp. V 1993); Fair Debt Collection Practices Act of 1968, 15 U.S.C. §§ 1692-1692o (1988 & Supp. V 1993); Electronic Fund Transfer Act of 1978, 15 U.S.C. §§ 1693-1693r (1988 & Supp. V 1993); Fair Housing Act of 1968, 42 U.S.C. §§ 3601-3619 (1988 & Supp. V 1993); Flood Disaster Protection Act of 1973, 42 U.S.C. §§ 4001-4128 (1988 & Supp. V 1993).

33. Tex. S.B. 301, 74th Leg., R.S. (1995); Tex. H.B. 749, 74th Leg., R.S. (1995); *see* TEX. REV. CIV. STAT. ANN. art. 5069, §§ 3.01-.21 (Vernon 1987 & Supp. 1995) (establishing regulations for "authorized lenders").

loan and the date the loan documents are signed. A borrower may decide, at any time during that period, to decline the loan without penalty. The fifteen-day cooling off period may not be waived by the borrower for any reason. In addition, a three-day right of rescission, as defined in federal truth-in-lending laws and regulations,³⁴ will apply to reverse mortgages and equity loans, including equity loans for business purposes. This provision gives borrowers three days after the loan documents are signed to cancel the loan and likewise may not be waived by the borrower for any reason.

To protect against high-pressure sales tactics and door-to-door solicitations, the proposed legislation requires that all equity loans be closed at an office of the lender, a title company, a title search company, or of a licensed Texas attorney. Equity loans specifically may not be closed at the residence of the borrower. If the value of the equity used as collateral for a reverse mortgage or an equity loan declines, the lender cannot demand full payment, declare a default, or require additional collateral.

Interest rates on equity loans will be governed by the maximum rate allowed by the Texas Credit Code.³⁵ Lenders are explicitly prohibited from charging interest rates above the ceiling established by the Code. Each owner of the homestead property, along with that person's spouse, must sign the collateral documents. For example, if a homestead is owned by a married person, both spouses must execute the documents regardless of how the title to the home is held. The documents must contain a bold-faced notice to the borrower of the consequences of pledging the homestead as collateral.

E. *Freedom of Choice*

Access to home equity is a fundamental property right that Texans are denied. Restrictions on home equity use amount to a "taking" of a homeowner's property without just compensation. Such constraints are philosophically similar to denying the use or the ability to sell one's property because of government-imposed environmental restrictions.

34. 15 U.S.C. § 1635 (1993); 12 C.F.R. § 226 (1994).

35. See TEX. REV. CIV. STAT. ANN. art. 5069, § 1.01 (Vernon 1987) (establishing maximum rate of interest at 10% per annum unless otherwise fixed by law).

In the final analysis, all of the equity in a homestead belongs to the homeowner. It represents the money saved for the down payment when the homestead was purchased, the money earned and paid each month as the principal part of mortgage payments, and any increase in the value of the property. Texans work hard to buy and pay for their homes. Why should a state law tell us what we can or cannot do with our money?

V. CONCLUSION

Texas citizens should decide for themselves whether they desire the benefits of home equity borrowing, an option afforded residents of every other state. Texas has a long tradition of protecting the homestead. No one proposes to take that tradition away. The proposed constitutional amendment will retain the current homestead protections and provide consumer safeguards that are the most stringent in the nation. At the same time, the amendment will provide Texans the option of obtaining tax-deductible, low-interest, low-risk loans. It is our money, and the freedom to use it should be our choice. Texans should vote on home equity reform.