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ALERT

To: Clients & Friends of the Firm
From: Robertson Anschutz Vettters
Subject: Texas Home Equity Update – SJR 60
Date: December 8, 2017

Last month Texas voters approved Proposition 2 by a margin of 68.61% to 31.39%. Prop. 2 as it was often referred brings changes to Section 50, Article XVI of the Texas Constitution as prescribed by Senate Joint Resolution 60 ('SJR 60'). The changes take effect January 1, 2018 therefore lenders that offer Texas home equity loans will need to update their procedures and their forms ahead of the effective date. The Finance Commission of Texas and the Texas Credit Union Commission (the 'Commissions') issued proposed interpretations to implement these changes which appear in the November 24, 2017 issue of the Texas Register.¹ This memorandum offers a summary of the changes and implementation tips, but clients are invited to contact any of RAV's attorneys if they have additional questions.

The 2% Fee Cap

S.J.R. 60 redefines what is and is not included in the calculation of the cap on fees associated with a home equity loan. While interest and bona fide discount points used to buy down the interest rate continue to be excluded, the cap on fees will be lowered from three percent (3%) to two percent (2%) of the principal loan amount, the following fees will be excluded from the 2% fee cap:

- Appraisals prepared by third party appraisers;
- Property surveys prepared by state registered or licensed surveyors;
- State base premiums for a mortgagee policy of title insurance with endorsements established in accordance with state law; and
- A title examination report if its cost is less than the state base premiums for title insurance without endorsements.²

¹ See 42 TexReg 6580.

² Senate Research Bill Analysis dated June 1, 2017 for Tex. S.J. Res. 60, 85th Leg., R.S. (2017).

Appraisal Fee - When excluding the appraisal fee paid to a third-party appraiser, lenders need to be sure and carve out any portion of the fee that covers an Appraisal Management Fee since AMC fees are not excludable from the 2% fee cap.

CAUTION: The proposed Home Equity commentary published in the November 24, 2017 Texas Register³ concludes that fees for Evaluations are not excluded from the 2% Fee Cap. Accordingly the generally higher third-party appraisal fee is excluded but the lower evaluation fee must be included in the 2% Fee Cap.

Survey Fee - Excluding the survey fee is straight forward since the only requirement is that the surveyor be licensed or registered under the Texas Occupations Code Chapter 1071.

Title Insurance with Endorsements – The plain language of SJR 60 clearly excludes the premium for the lender’s title policy (the ‘MTP’), but exactly which endorsements are excluded is not as clear. The text reads, “State base premiums for a mortgagee policy of title insurance with endorsements established in accordance with state law are excluded. Since the MTP for a Texas home equity loan cannot be issued without a T-42 there is no question that the premium for the T-42 is excluded from the 2%. However, whether the premiums for the optional endorsements including the T-42.1, T-17, T-19, T-31, T-31.1, T-33, etc. are excluded is not as clear. Similarly, whether the premiums for tax amendments to the MTP are also unclear. Lenders wanting to avoid any uncertainty on this issue can simply exclude only the premiums for the MTP and the T-42 endorsement from the 2% Fee Cap until more guidance is provided.

Title Report – Fees for title examination reports are excludable provided the cost is less than the state base premiums for title insurance without endorsements for the same loan amount.⁴

Refinancing an existing cash-out as a Non-home equity

Perhaps the most notable change, S.J.R. 60 introduces a new alternative option to refinance a seasoned home equity loan that meets specific requirements as a non-home equity rate and term refinance.⁵ However, the following conditions are required before a home equity loan can be renewed and extended as a non-home equity refinance under Subsections 50(a)(4) & 50(f)(2), Article XVI, Texas Constitution:

- (1) the refinance may not be closed before the first anniversary of the date the previous home equity was closed;
- (2) the refinance may not include the advance of any additional funds other than:

³ See 42 TexReg 6580.

⁴ *Id.*

⁵ *Id.*

- a. funds advanced to refinance a debt described by Sections 50(a)(1) through 50(a)(7), Article XVI, Texas Constitution; and
 - b. actual costs and reserves required by the lender to refinance the debt;
- (3) the principal amount of the new loan when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead may not exceed 80 percent of the fair market value of the homestead on the date the new loan is closed; and
- (4) the lender must provide the owner a new written notice on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed. See attached Exhibit 'A' for a copy of this **NEW § 50(F)(2)(D) DISCLOSURE**. If the lender's discussions with the borrower were conducted primarily in Spanish for a closed-end loan the lender must also provide a Spanish translation of this disclosure. Although not part of their official commentary, the Commissions have drafted a Spanish translation that Lender's may use which is attached as Exhibit 'B'.

CAUTION: Although this NEW 50(f)(2)(D) disclosure must be provided within three days of application and at least 12 days before closing it is not the same disclosure that is currently used for home equity loans that must be provided at least 12 days before closing a 50(a)(6).

NEW §50(f)(2)(D) AFFIDAVIT - In addition to the 'new' Section 50(f)(2)(D) disclosure, S.J.R. 60 provides that an affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection 50(f)(2), Article XVI, Texas Constitution have been met *conclusively establishes* that the requirements of Section 50(f)(2), Article XVI, Texas Constitution have been satisfied.⁶ S.J.R. 60 does not provide the affidavit and the Commissions have opted not to promulgate this affidavit, however RAV has prepared a Section 50(f)(2)(D) Affidavit that will be included in applicable loan packages beginning in January, 2018. A copy of this Affidavit is attached as Exhibit 'C'. Even though this affidavit is optional, prudent Lenders will require this form (or one similar) to be executed by the property owners at closing.

REVISED Section 50(g) a/k/a 12-Day Disclosure - Since the Notice Concerning Extensions of Credit Defined by Section 50(g), Article XVI, Texas Constitution (i.e. the 12-Day Notice) will be amended by S.J.R. 60, Lenders must revise their 12-Day Notice and begin using it on January 1, 2018. A copy of the revised disclosure is attached as Exhibit 'D'. For home equity loans in a lender's pipeline that do not close by December 31, 2017, Lenders must issue homestead owners the REVISED 12-Day notice beginning January 1, 2018 and then restart the twelve-day clock to ensure the 12-Day notice is received at least twelve days prior to

⁶ Tex. S.J. Res. 60, 85th Leg., R.S. (2017).

closing. Additionally, lenders should remember that the new 2% Fee Cap will apply to home equity loans closed after January 1, 2018. RAV will deploy the new 2% Fee Cap on home equity loans closing after January 1, 2018. If the lender's discussions with the borrower were conducted primarily in Spanish for a closed-end loan the lender must also provide a Spanish translation of this disclosure. Although not part of their official commentary, the Commissions have drafted a Spanish translation that Lender's may use which is attached as Exhibit 'E'.

Lending Hiatus January 1, 2018 thru January 12, 2018 - Since the new 50(f)(2)(D) disclosure and the amended Section 50(g) 12-Day Notice will not be effective until January 1, 2018, there will be a *hiatus* on all § 50(a)(6) home equity refinance closings and all § 50(f)(2) rate-and-term refinances of home equity loans between January 1, 2018 and January 12, 2018. It is important to note that if the applicable disclosure is not provided in person then additional time is required before the closing may take place as discussed below.

What if Disclosures are not provided in person? – The following is taken directly from the recently proposed Texas Home Equity commentary that appears in the November 24, 2017 issue of the Texas Register.⁷

Subparagraphs (A)-(C) in the proposed §153.45(4) provide guidance to lenders in calculating the three-day and 12-day periods under Section 50(f)(2)(D). These requirements are based on interpretations relating to the closing date and the required 12-day consumer disclosure for home equity loans in current §153.12 and §153.51. In particular, proposed §153.45(4)(C) states that if a lender mails the refinance disclosure to the owner, the lender must allow a reasonable period of time for delivery, and that a period of three calendar days, not including Sundays and federal legal public holidays, constitutes a rebuttable presumption for sufficient mailing and delivery. This subparagraph is nearly identical to current §153.51(1), which provides the same requirement and rebuttable presumption for the 12-day consumer disclosure under Section 50(g). The Texas Supreme Court upheld §153.51(1) in Finance Commission of Texas v. Norwood, 418 S.W.3d 566, 589 (Tex. 2013). The three-day rebuttable presumption is also consistent with similar presumptions for mailed notices, such as Rule 21a(c)-(e) of the Texas Rules of Civil Procedure. Proposed §153.45(4)(C) helps ensure that the borrower receives the important information in the refinance disclosure promptly after filing a loan application, and that the borrower has a full 12 days to consider this information before closing the refinance.⁸

Accordingly, Lender's may establish procedures that rely on the *rebuttable presumption* of delivery when providing the disclosure or Lender's may choose to require actual evidence of delivery such as a signed and dated disclosure. The Commissions specifically reference

⁷ See 42 TexReg 6582.

⁸ *Id.*

electronic disclosures as well as overnight mail as valid alternatives to assist in timely providing the disclosures.

CAUTION: The NEW 50(f)(2)(D) disclosure must be provided within three days of application and at least 12 days before closing. Lenders not providing the disclosure in person that intend to rely upon the rebuttable presumption that the notice is received three days after it is mailed, must MAIL the disclosure on the same day the borrower applies for the loan. Should a lender discover the disclosure was not mailed on the same day of application, the lender must secure evidence of receipt within three calendar days of the application date (excluding Sundays and legal public holidays). Methods for obtaining evidence of receipt include providing the disclosure electronically by e-mail or on a website in compliance with the E-Sign Act, 15 U.S.C. §§7001-7006, or they may deliver the disclosure in person. In addition, overnight U.S. mail or two-day commercial mailing can be used to prove timely delivery.

Elimination of the 50% Limit on Subsequent HELOC Advances

S.J.R. 60 maintains the \$4,000 draw requirements on home equity lines of credit but increases the 50 percent equity provision to an 80 percent requirement to be the same as all home equity loans.⁹

Agricultural Homesteads OK for Texas Home Equity Loans?

S.J.R. 60 allows farm and ranch property owners to secure home-equity loans against their homesteads while maintaining their agricultural valuation. Under current law, only dairymen can encumber homesteads that have an agricultural designation.¹⁰ There is one qualification or caution that lenders will have to consider. Although the constitutional prohibition against encumbering a homestead designated for agricultural use goes away January 1, 2018 there is lingering section of the Texas tax code that lenders will have to consider.

Texas TAX CODE § 23.42(a-1) provides:

On or after January 1, 2008, an individual is not entitled to have land designated for agricultural use if the land secures a home equity loan described by Section 50(a)(6), Article XVI, Texas Constitution.

Question: Can a homestead owner secure their homestead that is currently designated for agricultural use with a home equity loan described by Section 50(a)(6) and comply with Texas TAX CODE § 23.42(a-1)?

If the answer is YES, then no problem but if the answer is no, then what happens? If the origination of a new home equity loan against homestead property that is designated for agricultural use beginning January, 2018 could be deemed impermissible, then the agricultural

⁹ Senate Research Bill Analysis dated June 1, 2017 for Tex. S.J. Res. 60, 85th Leg., R.S. (2017).

¹⁰ *Id.*

designation is at risk of being revoked and the taxes being rolled back. Should this occur the homestead owner will certainly be unhappy with the potential loss of the agricultural designation and increased tax burden, but could this possibility be an event the lender should have taken into consideration when underwriting the borrower's ability-to-repay? Until more clarity is provided, or the tax code is amended, how to proceed is a risk decision for lender's and lender's boards to make. Other than waiting for a special legislative session or the 2019 regular session of the Texas legislature to amend the tax code, another possibility is for the Texas Comptroller to issue an interpretation that clarifies this provision applies only to future applications for 1-d-1 (Open Space) Agricultural Use Appraisals (the so-called Ag Exemption) which we believe was the intent of Texas TAX CODE § 23.42(a-1) when it was passed in 2007.

Should you have any questions or need additional clarification please to contact any of RAV's attorneys at 800-427-2888.

THIS MEMORANDUM IS INTENDED TO PROVIDE GENERAL INFORMATION TO THE CLIENTS AND FRIENDS OF ROBERTSON ANSCHUTZ VETTERS ONLY AND IS NOT INTENDED AS SPECIFIC LEGAL ADVICE. YOU SHOULD NOT RELY UPON THIS INFORMATION ALONE BUT SHOULD CONSULT LEGAL COUNSEL REGARDING THE APPLICATION OF THE LAWS AND REGULATIONS DISCUSSED AND AS APPLIED TO YOUR SPECIFIC CASE OR CIRCUMSTANCE.

EXHIBIT 'A'

NOTICE CONCERNING REFINANCE OF EXISTING HOME EQUITY LOAN TO NON-HOME EQUITY LOAN UNDER SECTION 50(f)(2), ARTICLE XVI, TEXAS CONSTITUTION:

YOUR EXISTING LOAN THAT YOU DESIRE TO REFINANCE IS A HOME EQUITY LOAN. YOU MAY HAVE THE OPTION TO REFINANCE YOUR HOME EQUITY LOAN AS EITHER A HOME EQUITY LOAN OR AS A NON-HOME EQUITY LOAN, IF OFFERED BY YOUR LENDER.

HOME EQUITY LOANS HAVE IMPORTANT CONSUMER PROTECTIONS. A LENDER MAY ONLY FORECLOSE A HOME EQUITY LOAN BASED ON A COURT ORDER. A HOME EQUITY LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE.

IF YOU HAVE APPLIED TO REFINANCE YOUR EXISTING HOME EQUITY LOAN AS A NON-HOME EQUITY LOAN, YOU WILL LOSE CERTAIN CONSUMER PROTECTIONS. A NON-HOME EQUITY REFINANCED LOAN:

- (1) WILL PERMIT THE LENDER TO FORECLOSE WITHOUT A COURT ORDER;
- (2) WILL BE WITH RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE; AND
- (3) MAY ALSO CONTAIN OTHER TERMS OR CONDITIONS THAT MAY NOT BE PERMITTED IN A TRADITIONAL HOME EQUITY LOAN.

BEFORE YOU REFINANCE YOUR EXISTING HOME EQUITY LOAN TO MAKE IT A NON-HOME EQUITY LOAN, YOU SHOULD MAKE SURE YOU UNDERSTAND THAT YOU ARE WAIVING IMPORTANT PROTECTIONS THAT HOME EQUITY LOANS PROVIDE UNDER THE LAW AND SHOULD CONSIDER CONSULTING WITH AN ATTORNEY OF YOUR CHOOSING REGARDING THESE PROTECTIONS.

YOU MAY WISH TO ASK YOUR LENDER TO REFINANCE YOUR LOAN AS A HOME EQUITY LOAN. HOWEVER, A HOME EQUITY LOAN MAY HAVE A HIGHER INTEREST RATE AND CLOSING COSTS THAN A NON-HOME EQUITY LOAN.

EXHIBIT 'B'

AVISO SOBRE LA REFINANCIACIÓN DE SU PRÉSTAMO EXISTENTE SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA A UN PRÉSTAMO QUE NO-SEA SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA DEFINIDO POR LA SECCIÓN 50(f)(2), ARTICULO XVI, CONSTITUCIÓN DE TEXAS:

SU PRÉSTAMO EXISTENTE QUE USTED DESEA REFINANCIAR ES UN PRÉSTAMO SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA. USTED QUIZAS TENGA LA OPCIÓN DE REFINANCIAR SU PRÉSTAMO SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA COMO UN PRÉSTAMO SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA O UN PRÉSTAMO QUE NO-SEA SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA, SI ES OFRECIDO POR SU PRESTAMISTA.

PRÉSTAMOS SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA TIENEN PROTECCIONES IMPORTANTES PARA EL CONSUMIDOR. UN PRESTAMISTA QUIZAS PUEDA HACER UNA EJECUCION HIPOTECARIA DE SU PRÉSTAMO SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA BASADO SOBRE UNA ORDEN DE LA CORTE. UN PRÉSTAMO SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA DEBE SER SIN REMEDIO DE RESPONSABILIDAD PERSONAL CONTRA USTED Y SU CÓNYUGE.

SI USTED APLICO PARA REFINANCIAR SU PRÉSTAMO SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA A UN PRÉSTAMO QUE NO-SEA SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA, USTED PERDERÁ CIERTAS PROTECCIONES AL CONSUMIDOR. UN PRÉSTAMO QUE NO-SEA SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA:

- (1) LE PERMITIRÁ AL PRESTAMISTA HACER LA EJECUCIÓN DE HIPOTECA SIN UNA ORDEN DE LA CORTE;
- (2) SERA CON REMEDIO DE RESPONSABILIDAD PERSONAL CONTRA USTED Y SU CÓNYUGE; Y
- (3) PUEDE TAMBIÉN INCLUIR OTROS TÉRMINOS Y CONDICIONES QUE QUIZAS NO SEAN PERMITIDOS EN UN PRÉSTAMO SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA.

ANTES DE REFINANCIAR SU PRÉSTAMO EXISTENTE SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA PARA HACERLO UN PRÉSTAMO QUE NO-SEA SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA, USTED DEBE ASEGURARSE DE QUE ENTIENDE QUE USTED ESTA RENUNCIANDO A LAS PROTECCIONES IMPORTANTES PROPORCIONADAS BAJO LA LEY A PRÉSTAMOS SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA Y DEBA CONSIDERAR CONSULTAR CON UN ABOGADO DE SU ELECCIÓN REFERENTE A ESTAS PROTECCIONES.

USTED QUIZAS QUIERA PEDIRLE AL PRESTAMISTA QUE REFINANCIE SU PRÉSTAMO COMO UN PRÉSTAMO SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA. PERO, UN PRÉSTAMO SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA QUIZAS TENGA UNA TASA DE INTERÉS MAYOR Y COSTOS DE CIERRE QUE UN PRÉSTAMO QUE NO-SEA SOBRE EL VALOR LÍQUIDO DE LA VIVIENDA.

EXHIBIT 'C'

Compliance Affidavit Regarding the Refinance of an Existing Texas 50(a)(6), Article XVI, Texas Constitution Home Equity Loan to a Non-Home Equity Loan Pursuant to Section 50(f)(2) and Not Subject to Section 50(a)(6)

Lender: **ABC Lender Corporation**
Borrower(s): **John Doe and Jane Doe**
Property: **Test documents. Not valid for loan transaction., Houston, TX 77042**
Loan No.: **1703006285**
Date: **January 15, 2018**

The State of Texas §
County of _____ §

Before me, the undersigned authority, a Notary Public in and for the State of Texas, on this day personally appeared _____, and on oath said individual(s) swears the following statements are true and correct.

By signing below, I/we the undersigned persons (whether one or more) acknowledge and affirm that the statements set forth below are true and correct and it is my/our intention for the Lender to rely upon these statements in making a loan that will be secured by the homestead Property referenced herein.

1. I/We acknowledge and affirm that:

(a) The Property referenced herein is my/our Texas homestead and I/we intend to pledge the Property as collateral for a loan from the Lender. I am the Borrower on the Note or the Owner or Spouse of an Owner of the Property in the Deed of Trust, both dated _____, and securing the refinance of an extension of credit as described in Sections 50(a)(4) and 50(f)(2), Article XVI, Texas Constitution (herein the "Refinance of Extension of Credit") providing a lien of the following described Property:

See Exhibit "A" attached hereto and made a part hereof for all purposes

(b) The Refinance of Extension of Credit refinances a Texas Home Equity loan originated under Section 50(a)(6), Article XVI, Texas Constitution ("Home Equity Loan") and/or any other loan allowed to be secured by the homestead under the Constitution.

2. I/We acknowledge and affirm that the following constitutionally required conditions have been met:

(a) This Refinance of Extension of Credit is not being closed before the first anniversary of the closing date of the Home Equity Loan which is secured by the same homestead property.

- (b) This Refinance of Extension of Credit does not include the advance of any additional funds other than:
- (i) funds advanced to refinance a debt set out in Subsections 50(a)(1) through (a)(7), Article XVI, Texas Constitution; or
 - (ii) actual costs and reserves required by the Lender to refinance the debt.
- (c) The Refinance of Extension of Credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the Refinance of Extension of Credit is made; and
- (d) The Lender provided the owner the following written notice on a separate document not later than the third business day after the date the owner submitted the loan application to the Lender and at least 12 days before the date the Refinance of Extension of Credit is closed:

YOUR EXISTING LOAN THAT YOU DESIRE TO REFINANCE IS A HOME EQUITY LOAN. YOU MAY HAVE THE OPTION TO REFINANCE YOUR HOME EQUITY LOAN AS EITHER A HOME EQUITY LOAN OR AS A NON-HOME EQUITY LOAN, IF OFFERED BY YOUR LENDER.

HOME EQUITY LOANS HAVE IMPORTANT CONSUMER PROTECTIONS. A LENDER MAY ONLY FORECLOSE A HOME EQUITY LOAN BASED ON A COURT ORDER. A HOME EQUITY LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE.

IF YOU HAVE APPLIED TO REFINANCE YOUR EXISTING HOME EQUITY LOAN AS A NON-HOME EQUITY LOAN, YOU WILL LOSE CERTAIN CONSUMER PROTECTIONS. A NON-HOME EQUITY REFINANCED LOAN:

- (1) WILL PERMIT THE LENDER TO FORECLOSE WITHOUT A COURT ORDER;
- (2) WILL BE WITH RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE; AND
- (3) MAY ALSO CONTAIN OTHER TERMS OR CONDITIONS THAT MAY NOT BE PERMITTED IN A TRADITIONAL HOME EQUITY LOAN.

BEFORE YOU REFINANCE YOUR EXISTING HOME EQUITY LOAN TO MAKE IT A NON-HOME EQUITY LOAN, YOU SHOULD MAKE SURE YOU UNDERSTAND THAT YOU ARE WAIVING IMPORTANT PROTECTIONS THAT HOME EQUITY LOANS PROVIDE UNDER THE LAW AND SHOULD CONSIDER CONSULTING WITH AN ATTORNEY OF YOUR CHOOSING REGARDING THESE PROTECTIONS.

YOU MAY WISH TO ASK YOUR LENDER TO REFINANCE YOUR LOAN AS A HOME EQUITY LOAN. HOWEVER, A HOME EQUITY LOAN MAY HAVE A HIGHER INTEREST RATE AND CLOSING COSTS THAN A NON-HOME EQUITY LOAN."

I/We acknowledge that this Compliance Affidavit is given as a material inducement to cause Lender to make the Non-Home Equity Loan to Borrower(s). I/We also understand that any false statements, misrepresentations or material omissions may result in civil and criminal penalties and the agreements and covenants contained herein shall survive the closing of this Loan transaction.

I/We hereby swear under oath that the representations set forth herein are true and correct.

[Signature Page to Follow]

Executed this _____ day of _____.

John Doe

Date

Jane Doe

Date

State of Texas §

County of _____ §

SWORN to and SUBSCRIBED before me this the _____ day of _____,
by **John Doe and Jane Doe**.

Notary Public, State of Texas

EXHIBIT 'D'

NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

- (A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;
- (B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;
- (C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;
- (D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;
- (E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 2 PERCENT OF THE LOAN AMOUNT, EXCEPT FOR A FEE OR CHARGE FOR AN APPRAISAL PERFORMED BY A THIRD PARTY APPRAISER, A PROPERTY SURVEY PERFORMED BY A STATE REGISTERED OR LICENSED SURVEYOR, A STATE BASE PREMIUM FOR A MORTGAGEE POLICY OF TITLE INSURANCE WITH ENDORSEMENTS, OR A TITLE EXAMINATION REPORT;
- (F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;
- (G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;
- (H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;
- (I) (repealed);
- (J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A LOAN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND MAY NOT WITHOUT YOUR CONSENT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH YOU RECEIVE A COPY OF YOUR 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; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN, UNLESS ON OATH YOU REQUEST AN EARLIER CLOSING DUE TO A DECLARED STATE OF EMERGENCY;

(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT EXCEPT A DEBT THAT IS SECURED BY YOUR HOME OR OWED TO ANOTHER LENDER;

(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS FOR SUBSTANTIVE TERMS OF AGREEMENT LEFT TO BE FILLED IN;

(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

(5) PROVIDE THAT YOU RECEIVE A COPY OF YOUR FINAL LOAN APPLICATION AND ALL EXECUTED DOCUMENTS YOU SIGN AT CLOSING;

(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW MONEY UNDER THE LINE OF CREDIT;

(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN AMOUNT OF AT LEAST \$4,000;

(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, OR SIMILAR DEVICE, OR PREPRINTED CHECK THAT YOU DID NOT SOLICIT, TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF CREDIT IS ESTABLISHED;

(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEEDS 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 80 PERCENT OF THE FAIR MARKET VALUE; AND

(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE LINE OF CREDIT.

THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE.

EXHIBIT 'E'

AVISO SOBRE EL CRÉDITO QUE SE CONCEDE:

DEFINIDO POR LA SECCIÓN 50(A) (6), ARTICULO XVI, CONSTITUCIÓN DE TEXAS:

SECCIÓN 50(A) (6), ARTÍCULO XVI, DE LA CONSTITUCIÓN DE TEXAS PERMITE QUE CIERTOS PRÉSTAMOS SE PUEDAN GARANTIZAR POR EL VALOR LIQUIDO DE SU HOGAR. TALES PRÉSTAMOS GENERALMENTE SE CONOCEN COMO PRÉSTAMOS SOBRE VALOR LÍQUIDO. SI USTED NO PAGA EL PRÉSTAMO O SI USTED NO CUMPLE CON LAS CONDICIONES DEL PRÉSTAMO, EL PRESTAMISTA PUEDE EJECUTAR UN JUICIO HIPOTECARIO Y VENDER SU HOGAR. LA CONSTITUCIÓN DISPONE QUE:

(A) EL PRÉSTAMO DEBE SER INICIADO VOLUNTARIAMENTE CON EL CONSENTIMIENTO DE CADA PROPIETARIO DE SU HOGAR, Y DE CADA CÓNYUGE DE CADA PROPIETARIO:

(B) LA CANTIDAD DEL PRINCIPAL DEL PRÉSTAMO AL HACERSE EL PRÉSTAMO NO DEBE EXCEDER UNA CANTIDAD QUE, AGREGÁNDOSE AL BALANCE DEL PRINCIPAL DE TODOS LOS OTROS EMBARGOS SOBRE SU HOGAR, SEA MÁS DEL 80 POR CIENTO DEL VALOR JUSTO DE VENTA DE SU HOGAR;

(C) EL PRÉSTAMO DEBE SER SIN REMEDIO DE RESPONSABILIDAD PERSONAL CONTRA USTED Y SU CÓNYUGE A NO SER QUE USTED O SU CÓNYUGE CONSIGUIÓ QUE SE LE CONCEDIERA EL CRÉDITO POR FRAUDE;

(D) EL DERECHO PRENDARIO (LIEN) QUE GARANTIZA EL PRÉSTAMO SE PUEDE EJECUTAR SOLO CON ORDEN JUDICIAL;

(E) LOS HONORARIOS Y EL COSTO DE HACER EL PRÉSTAMO NO DEBEN EXCEDER EL 2 POR CIENTO DE LA CANTIDAD DEL PRÉSTAMO, EXCEPTO CUANDO SEA UN CARGO O COSTO POR UNA TASACIÓN EFECTUADA POR UN TASADOR DE TERCEROS, UNA ENCUESTA DE PROPIEDAD REALIZADA POR UN TOPÓGRAFO REGISTRADO O LICENCIADO POR EL ESTADO, UNA PRIMA DE BASE ESTATAL PARA UNA POLIZA HIPOTECARIA DEL SEGURO DE TÍTULO CON ENDOSOS A BENEFICIO DEL ACREEDOR HIPOTECARIO, O UN INFORME DE EXAMEN DE TÍTULO;

(F) EL PRÉSTAMO NO DEBE SER CUENTA ABIERTA EN LA CUAL SE PUEDE CARGAR DE VEZ EN CUANDO O EN LA CUAL SE PUEDE EXTENDER CRÉDITO DE VEZ EN CUANDO; A MENOS QUE SEA UNA LÍNEA DE CRÉDITO SOBRE EL VALOR LÍQUIDO.

(G) PUEDE USTED PAGAR EL PRÉSTAMO ANTES DE SU VENCIMIENTO SIN CARGOS (MULTAS) NI COSTO;

(H) NO DEBE HABER SEGURIDAD COLATERAL ADICIONAL PARA EL PRÉSTAMO;

(I) (revocado);

(J) NO ES REQUISIDO QUE USTED PAGUE EL PRÉSTAMO ANTES DE LA FECHA DE VENCIMIENTO ACORDADA, SIMPLEMENTE PORQUE EL VALOR JUSTO DE MERCADO DE SU HOGAR HA DECAÍDO O PORQUE USTED ESTÁ EN INCUMPLIMIENTO DE OTRO PRÉSTAMO QUE NO ESTÁ GARANTIZADO POR SU HOGAR;

(K) DE ACUERDO CON LA SECCIÓN 50(A)(6), ARTÍCULO XVI DE LA CONSTITUCIÓN DE TEXAS SU HOGAR SE PUEDE USAR COMO GARANTÍA SOLO EN UN PRÉSTAMO A LA VEZ;

(L) EL PRÉSTAMO DEBE ESTAR PREVISTO PARA PAGARSE EN PAGOS QUE EQUIVALEN AL INTERÉS O QUE EXCEDEN LA CANTIDAD DE INTERÉS ACUMULADO EN CADA PERÍODO DE PAGO;

(M) LA CONCLUSIÓN DEL TRÁMITE DEL PRÉSTAMO NO PUEDE SER ANTES DE HABERSE CUMPLIDO 12 DÍAS DE CUANDO USTED SOMETE LA SOLICITUD PRESTAMISTA O ANTES DE HABERSE CUMPLIDO 12 DÍAS DESPUÉS DE HABER RECIBIDO USTED ESTE AVISO, DEPENDIENDO DE CUAL FECHA SEA DESPUÉS; Y NO SE PUEDE CONCLUIR TRÁMITES DEL PRÉSTAMO SIN SU PERMISO ANTES DE HABERSE CUMPLIDO UN DÍA DE NEGOCIO DEPUÉS DE LA FECHA CUANDO SE RECIBE UNA COPIA DE LA SOLICITUD DE PRÉSTAMO, SI NO ERA RECIBIDO ANTES Y UNA DIVULGACIÓN DETALLADA Y FINAL DE LAS CUOTAS ACTUALES, PUNTOS DE DESCUENTO, INTERÉS, COSTOS, Y CARGAS DE CIERRE; Y SI SU HOGAR SE USA PARA GARANTIZAR EL MISMO TIPO DE PRÉSTAMO EN EL ULTIMO AÑO, NO SE PUEDE CONCLUIR TRÁMITES DE UN PRÉSTAMO NUEVO GARANTIZADO POR LA MISMA PROPIEDAD ANTES DE HABER PASADO UN AÑO DE LA FECHA DE CONCLUSIÓN DE TRÁMITES DEL OTRO PRÉSTAMO, A AUNQUE SE PIDE BAJO JURAMENTO UN CONCLUSIÓN DEL TRÁMITE TEMPRANO DEBIDO DE UN ESTADO DE EMERGENCIA DECLARADO;

(N) LA CONCLUSIÓN DE TRÁMITES DEL PRÉSTAMO SOLO DEBE HACERSE EN EL DESPACHO DEL PRESTAMISTA, EN LA COMPAÑÍA DE TÍTULOS, O EN EL DESPACHO DE ALGÚN ABOGADO;

(O) EL PRESTAMISTA PUEDE COBRAR CUALQUIER ÍNDICE DE INTERÉS FIJO O VARIABLE AUTORIZADO POR LOS ESTATUTOS;

(P) SOLO UN PRESTAMISTA LEGALMENTE AUTORIZADO PUEDE HACER PRESTAMOS DE ACUERDO CON LA SECCIÓN 50(A) (6), ARTÍCULO XVI, DE LA CONSTITUCIÓN DE TEXAS;

(Q) PRÉSTAMOS INDICADOS EN LA SECCIÓN 50(A) (6), ARTÍCULO XVI, DE LA CONSTITUCIÓN DE TEXAS DEBEN:

(1) NO REQUERIR QUE USTED USE EL DINERO DEL PRÉSTAMO PARA OTRA DEUDA EXCEPTO UNA DEUDA QUE ESTÉ GARANTIZADA POR SU HOGAR O QUE LE DEBA A OTRO PRESTAMISTA;

(2) NO REQUERIR QUE USTED CEDA SU SALARIO COMO GARANTÍA;

(3) NO REQUERIR QUE USTED EJECUTE DOCUMENTOS QUE TENGAN ESPACIOS EN BLANCO PARA LOS TÉRMINOS DE ACUERDO SUBSTANTIVOS PARA QUE OTROS LOS LLENEN;

(4) NO REQUERIR QUE USTED FIRME UNA ADMISIÓN DE SENTENCIA O PODER A OTRA PERSONA PARA QUE ESA PERSONA HAGA LA ADMISIÓN DE SENTENCIA O PARA QUE SE PRESENTE EN ALGÚN PROCESO LEGAL EN SU NOMBRE;

(5) DISPONER QUE USTED RECIBA COPIA DE LA SOLICITUD FINAL Y TODOS LOS DOCUMENTOS EJECUTADOS QUE FIRME AL CONCLUIR EL TRÁMITE;

(6) DISPONER QUE LOS DOCUMENTOS DE GARANTÍA INCLUYAN LA DECLARACIÓN QUE ESTE PRÉSTAMO ES PRÉSTAMO DEFINIDO POR LA SECCIÓN 50(A) (6), ARTÍCULO XVI, DE LA CONSTITUCIÓN DE TEXAS;

(7) DISPONER QUE CUANDO EL PRÉSTAMO SE PAGUE TOTALMENTE, EL PRESTAMISTA FIRMARÁ Y LE DARÁ LA LIBERACIÓN DEL DERECHO PRENDARIO O LA CESIÓN DEL DERECHO PRENDARIO, CUALQUIERA DE LOS DOS QUE SEA APROPIADO AL CASO;

(8) DISPONER QUE USTED PUEDA, DURANTE EL PLAZO DE 3 DÍAS DESPUÉS DE CONCLUIR EL TRÁMITE, DESHACER EL PRÉSTAMO SIN PAGAR CARGOS (MULTAS) NI COSTO ALGUNO;

(9) DISPONER QUE USTED Y EL PRESTAMISTA RECONOCEN EL VALOR JUSTO DE MERCADO DE SU HOGAR EN LA FECHA DE CONCLUIR EL TRÁMITE DEL PRÉSTAMO;

(10) DISPONER QUE EL PRESTAMISTA PERDERÁ TODO PRINCIPAL E INTERÉS SI EL PRESTAMISTA NO CUMPLE CON SUS OBLICACIONES SALVO QUE EL PRESTAMISTA CORRIJE SU INCUMPLIMIENTO SEGÚN LO DISPUESTO EN LA SECCIÓN 50(A) (6) (Q) (X), ARTÍCULO XVI, DE LA CONSTITUCIÓN DE TEXAS; Y

(R) SI EL PRÉSTAMO ES UNA LÍNEA DE CRÉDITO SOBRE EL VALOR LIQUIDO:

- (1) PODRÁ SOLICITAR ADELANTOS, LIQUIDAR DEUDA O VOLVER A PEDIR CRÉDITO DE CONFORMIDAD CON LA LÍNEA DE CRÉDITO;
- (2) CADA ADELANTO DE ACUERDO CON LA LÍNEA DE CRÉDITO NO PODRÁ SER INFERIOR A UN MONTO DE \$4,000;
- (3) NO PODRÁ UTILIZAR UNA TARJETA DE CRÉDITO, TARJETA DE DÉBITO NI NINGÚN OTRO MÉTODO SIMILAR, O UN CHEQUE PREGRABADO QUE NO SE SOLÍCITA, PARA OBTENER ADELANTOS EN VIRTUD DE LA LÍNEA DE CRÉDITO;
- (4) EL PRESTAMISTA SÓLO PODRÁ CARGAR Y COBRAR CUOTAS EN EL MOMENTO EN QUE SE CONCEDE LA LÍNEA DE CRÉDITO Y NO PODRÁ IMPONER CUOTA ALGUNA EN RELACIÓN CON NINGÚN ADELANTO;
- (5) EL PRINCIPAL MÁXIMO QUE PUEDE CONCEDERSE, UNA VEZ SUMADO AL RESTO DE DEUDAS AVALADAS POR SU HOGAR, NO PODRÁ SOBREPASAR EL 80 POR CIENTO DEL VALOR EN EL MERCADO DE SU HOGAR EN LA FECHA DE CONCESIÓN DE LA LÍNEA DE CRÉDITO;
- (6) SI EL MONTO DEL PRINCIPAL DE LA LÍNEA DE CRÉDITO SOBREPASA, EN CUALQUIER MOMENTO, EL 80 POR CIENTO DEL VALOR EN EL MERCADO DE SU HOGAR EN LA FECHA DE LA CONCESIÓN DE LA LÍNEA DE CRÉDITO, NO PODRÁ CONTINUAR SOLICITANDO ADELANTOS DE LA LÍNEA DE CRÉDITO HASTA QUE DICHO MONTO SEA INFERIOR AL 80 POR CIENTO DEL VALOR DE MERCADO DE SU HOGAR; Y
- (7) EL PRESTAMISTA NO PODRÁ MODIFICAR DE UNILATERALMENTE LAS CONDICIONES DE LA LÍNEA DE CRÉDITO.

ESTE ES SÓLO UN RESUMEN DE LOS DERECHOS QUE LE ASISTEN SEGÚN LA CONSTITUCIÓN DEL ESTADO DE TEXAS. SUS DERECHOS SE RIGEN POR LA SECCIÓN 50, ARTÍCULO XVI, DE LA CONSTITUCIÓN DEL ESTADO DE TEXAS Y NO POR ESTE AVISO.