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To: Clients and Friends of the Firm

From: Polunsky Beitel Green, LLP

Date: May 8, 2017

Subject: Recent Legislative Action Regarding Texas Home Equity Lending

We wish to advise you of the passage of SJR 60 by the Texas House and Senate. SJR 60, in the form of a constitutional amendment, would liberalize home equity lending in Texas. The amendment will be on the ballot November 7th. PLEASE NOTE THAT THIS AMENDMENT MUST STILL BE PASSED BY THE VOTERS OF TEXAS TO BECOME EFFECTIVE. However, in our view, it has a good chance of approval. Without question, the passage of this amendment would be beneficial to Texas consumers and to residential mortgage lenders in Texas. We recommend that all Texas lenders and citizens of Texas work toward its approval by the voters.

The constitutional amendment proposes the following changes:

- The amendment ELIMINATES the prohibition on a lender taking a lien property designated for agricultural use in connection with a home equity loan under Article XVI, Section 50(a)(6) of the Texas Constitution;
- The amendment CHANGES the FEE LIMITATION calculation under 50(a)(6) to facilitate home equity loans with lower loan amounts. The current fee limitation is 3% of the loan amount (bona fide discount, prepaid interest and taxes, and hazard insurance are excluded). The proposed change reduces the fee percentage to 2% of the loan amount, but allows the lender to also EXCLUDE from the calculation third party fees for title insurance and endorsements, appraisal, and survey, in addition to existing excluded amounts;
- The amendment ALLOWS for a rate/term refinance of an existing 50(a)(6) loan if (i) at least one year has passed since the 50(a)(6) loan was originated, (ii) no additional funds are advanced over and above any closing costs advanced and reserves required by the lender, (iii) the combined loan to value after the refinance does not exceed 80% of the fair market value of the property, and (iv) a new required disclosure is provided to the borrower within 3 business days of application (and at least 12 days prior to closing) advising the borrower that, by refinancing the debt, the borrower will be foregoing judicial foreclosure and will be waiving the non-recourse provisions that apply to a 50(a)(6) loan. This is a change to the current “once a home equity, always a home equity” rule;

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- The amendment would clarify various interpretations of the existing home equity rules, including (i) a codification of the exclusion from the fee limitation for bona fide discount points paid to buy down the rate and (ii) explicitly providing that subsidiaries of depository institutions would be permissible lenders authorized to originate 50(a)(6) loans and updating the references to “mortgage banker” and “mortgage company” as permissible lenders authorized to originate 50(a)(6) loans to conform to the current Texas licensing terms; and
- The amendment makes a change to the future draw percentage for a HELOC so that draws are permitted as long as the combined loan to value, after such draw, does not exceed 80% of the fair market value of the home as of the date the HELOC was established. Under the current provisions, future draws are only permitted if the combined loan to value does not exceed 50%.

Please note that, if passed, these changes will go into effect for NEW LOANS originated on or after January 1, 2018. Please also note that the amendments, if adopted, would necessitate changes to the current required 12-Day Notice that lenders are required to make when originating a 50(a)(6) loan. Again, we believe that these changes should be beneficial to residential mortgage lenders in Texas and look forward to the good citizens of Texas approving them in November.

A copy of the proposed amendments is attached, which highlights the changes to the provisions of Article XVI, Section 50 of the Texas Constitution.

If you have any questions regarding this memorandum, please contact any of our firm attorneys or representatives below. We will provide an update regarding the approval (or rejection) of the proposed constitutional amendment after the election.

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