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To: Clients and Friends of the Firm

From: Polunsky Beitel Green, LLP

Date: November 8, 2017

Subject: **TEXAS VOTERS PASS CHANGES TO TEXAS HOME EQUITY LENDING**

We are pleased to inform you that Texas voters **APPROVED** Proposition 2, which will liberalize home equity lending in Texas. **PLEASE NOTE THAT THIS AMENDMENT DOES NOT TAKE EFFECT UNTIL JANUARY 1, 2018 and will apply to loans having note dates on or after January 1, 2018.**

The constitutional amendment makes 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 amendment 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 premiums and endorsements, appraisal, and survey, in addition to existing excluded amounts. Please note that (i) title escrow fees and charges other than for title policy and endorsement premiums and (ii) appraisal management fees are still included in the 2% calculation. **PLEASE NOTE THAT THIS CHANGE WILL REQUIRE MODIFICATIONS TO THE EXISTING 12 DAY NOTICE TO CONSUMERS;**
- 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

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judicial foreclosure and will be waiving the non-recourse provisions that apply to a 50(a)(6) loan. This amendment is a change to the current “once a home equity, always a home equity” rule. **Lenders should begin programming of the new disclosure to ensure that it is ready to go for applications taken on or after January 1, 2018 for those borrowers who wish to convert an existing 50(a)(6) loan to a rate/term refinance;**

- The amendment clarifies 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 banks 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%.

Again, these amendments apply to NEW LOANS originated with a note date on or after January 1, 2018. Because the new advance disclosures would not be applicable until the Constitutional Amendments become effective on January 1, we do not believe that a lender will be able to close 50(a)(6) loans between January 1, 2018 and January 12, 2018. Also, if a lender has a 50(a)(6) loan that was set to close on or before December 31, 2017 and the closing is delayed until after December 31, the lender would need to provide a new 12 notice to the borrower based on the constitutional changes and would have to wait an additional 12 calendar days from the date the new notice is delivered before closing the transaction.

A copy of the amendments is attached, which shows the changes to the provisions of Article XVI, Section 50 of the Texas Constitution. Please note that the Texas Finance Commission will not have sufficient time to adopt interpretive guidance prior to the effective date of the new rules. We anticipate guidance will be adopted by the Texas Finance Commission during the first several months of 2018 and we will share that information with you as it becomes available.

For our clients, we welcome the opportunity to assist you with your training needs on these constitutional changes.

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If you have any questions regarding this memorandum, please contact any of our firm attorneys or representatives below.

Allan Polunsky at Allan.Polunsky@mortgagelaw.com

Jay Beitel at Jay.Beitel@mortgagelaw.com

Marty Green at Marty.Green@mortgagelaw.com

Lauren Polunsky Dreszer at Lauren.Polunsky@mortgagelaw.com

Jonathan Jaskot at Jonathan.Jaskot@mortgagelaw.com

Doug Foster¹ at Doug.Foster@mortgagelaw.com

¹ Doug Foster is a non-lawyer and is not admitted to practice law in any state.