



ROUTE TO:

Kelly Goulart, Regulatory Compliance Manager
kgoulart@ibat.org | 512.275.2231

Janie Daniel, Regulatory Compliance Adviser
jdaniel@ibat.org | 512.275.2221

Home Improvement and Home Equity Loans – Bona Fide Emergencies

Home Improvement Loans

A loan secured by an applicant’s homestead requires a 5-day waiting period under the Texas Constitution at Article XVI, Section 50(a)(5)(B). It is further fleshed out in 7 Texas Administrative Code §152.9. If the applicant is repairing or improving existing improvements, then the contract for work and materials can’t be executed before the fifth calendar day after the owner makes written application for the extension of credit for the work and materials.

A loan secured by an applicant’s homestead that also serves as the applicant’s ‘principal dwelling’ would be subject to the Right of Rescission under Regulation Z found at §1026.23.

Analysis:

- *Both the 5-day waiting period and/or the 3-day rescission period (contained in Rule §152.11) may be waived under 7 TAC §152.13, if the homeowner signs a statement: (1) describing why the homestead needs immediate repairs, (2) describing how it affects the health and safety of the owner or resident, and (3) stating that the owner is waiving the 5-day waiting period, the 3-day rescission period, or both.*
- *The 3-day rescission period provided under §1025.23 of Regulation Z may also be waived in the case of a bona fide personal emergency.*

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SECTION 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: http://txrules.elaws.us/rule/title7_chapter152_sec.152.13

Regulation Z – Waiver of Right to Rescind

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e. Consumer’s waiver of right to rescind. The consumer may modify or waive the right to rescind if the consumer determines that the extension of credit is needed to meet a bona fide personal financial emergency. To modify or waive the right, the consumer shall give the creditor a dated written statement that describes the emergency, specifically modifies or waives the right to rescind, and bears the signature of all the consumers entitled to rescind. Printed forms for this purpose are prohibited.

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23(e) Consumer’s Waiver of Right to Rescind

1. **NEED FOR WAIVER.** To waive the right to rescind, the consumer must have a bona fide personal financial emergency that must be met before the end of the rescission period. The existence of the consumer’s waiver will not, of itself, automatically insulate the creditor from liability for failing to provide the right of rescission.
2. **PROCEDURE.** To waive or modify the right to rescind, the consumer must give a written statement that specifically waives or modifies the right, and also includes a brief description of the emergency. Each consumer entitled to rescind must sign the waiver statement. In a transaction involving multiple consumers, such as a husband and wife using their home as collateral, the waiver must bear the signatures of both spouses.

Source: https://www.consumerfinance.gov/eregulations/1026-23/2016-14782_20160627#1026-23-f

Home Equity Loans

A loan secured by an applicant’s homestead made under the Texas Constitution at Article XVI, Section 50(a)(6) – a home equity loan – has several rules regarding notice and timing. Specifically TAC 153.12 requires that 12 calendar days pass between the submission of an application and closing a home equity loan; TAC 153.13 requires certain preclosing disclosures be provided one business day before closing a home equity loans; and finally TAC 153.25 grants a statutory right of rescission.

Analysis:

- *An applicant could not waive the 12-day waiting period between the application and the closing date under §153.12 under any circumstance;*
- *An applicant may waive the one business day preclosing disclosure requirement under §153.13 for a bona fide emergency;*

- *An applicant may not waive the statutory right of rescission under §153.25 under any circumstance.*
 - *An applicant's ability to waive the 3-day rescission period provided under §1025.23 of Regulation Z does not impact the applicants right of rescission under §153.25.*

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RULE §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.

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RULE §153.13 Preclosing Disclosures: 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.

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(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 fees, costs, points, or charges one day prior to closing.

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(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.

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RULE §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.

Publish: 9/17

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