



Home Equity Modification Advisory Bulletin

Office of Consumer
Credit Commissioner

Texas Credit Union
Department



Texas Department of
Banking

Texas Department of Savings
and Mortgage Lending

This statement on Article XVI Section 50(a)(6)(L) is not meant to negate the applicability or legality of any other method of modifying a home equity loan. This statement is solely meant to endorse the permissibility of the following method. Any modification must also comply with any applicable federal and state laws. This statement is not an interpretation of the Texas Constitution and is not being issued under Texas Finance Code, §11.308 and §15.413.

Permissible Modification

Borrower pays the lender whatever is necessary to bring the home equity loan current on or before the date that the home equity loan is modified. The modification schedules installments that are:

- substantially equal in amount,
- successive and periodic, and
- scheduled to equal or exceed the amount of accrued interest as of the date of the installment.

This method may change the amount of the scheduled installment or it may change the remaining term of the loan or both.

Constitutional Issues Associated with Modification

Subsection (L) provides the following limitations for any home equity loan made under Article XVI Section 50(a). Any modification must comply with these limitations:

- (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:
 - (6) an extension of credit that:

- (L) is scheduled to be repaid:
 - (i) in substantially equal successive periodic installments, not more often than every 14 days and not less often than monthly, beginning no later than two months from the date the extension of credit is made, each of which equals or exceeds the amount of accrued interest as of the date of the scheduled installment;
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Amount of Each Installment

Each installment must equal or exceed the amount of accrued interest. The issue of whether the scheduled installment equals or exceeds the amount of accrued interest may be addressed by having the owner bring the loan current either before the modification is signed or when it is signed. This could also be accomplished by having the lender waive the accrued interest as of the date the home equity loan is modified. Additionally, the first scheduled installment may not be scheduled so far in the future that it violates this provision. This will generally mean that the first payment will be scheduled within 60 days of the modification.

Substantially Equal Successive Periodic Installments

The constitutional language requires that the loan be scheduled to be repaid in substantially equal successive periodic installments. Therefore, the parties should be able to modify a home equity loan by providing a new schedule of installments so long as the schedule provides for successive periodic installments, not more often than every 14 days and not less often than monthly.

First Installment Due Date

The parties may schedule the modification so that the first payment is due more than two months after the modification. The constitution limits the first payment of a home equity loan to begin "no later than two months from the date the extension of credit is made." This provision applies to the original closing or refinance of the loan. The date of the modification is not the date that the original extension of credit is made. A modification simply changes certain terms of an existing obligation. As referenced above, most of the time the terms of the loan will require the first payment to be scheduled within two months so that the first installment after the modification will equal or exceed the amount of accrued interest.