

Texas Home Equity Loan Document Spouse Joinder Requirements Matrix

Documents

Scenario	Spouse Vested in Title	Spouse is Borrower	Note	Mortgage & Attached Affidavit	TIL	Right to Cancel	Application	12 Day Notice	All Other Docs
1) Regular loan	Yes	Yes	Yes	Yes (1)	Yes	Yes (2)	Yes (3)	Yes (3)	Yes
2)Bad Credit of Non-Borrowing Spouse	Yes	No	No	Yes (1) & (5)	Yes (4)	Yes (2)(4)	Yes (3)(5)(7)	Yes (3)(7)	Yes (8)
3) Borrower Separate Property	No	No	No	Yes (1) & (6)	Yes (4)	Yes (2)(4)	Yes (3)(6)(7)	Yes (3)(7)	No

Foot Notes

- (1) Texas Constitution Article 16, Sect 50a(6)(A) in pertinent part provides: (A) is secured by a voluntary lien on the homestead created under a written agreement with the consent of **each owner and each owner's spouse**
- (2) Texas Constitution Article 16, Sect 50a(6)(Q)(viii) in pertinent part provides: (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
- (3) Texas Constitution Article 16, Sect 50a(6)(M)(i) in pertinent part provides: (M) is closed not before: (i) the 12th day after the later of the date that **the owner** of the homestead submits an application to the lender for the extension of credit or the date that the lender provides the owner a copy of the notice prescribed by Subsection (g) of this section
- (4) Texas Constitution "owner" vs TILA/Reg Z "ownership interest". Reg Z 226.23(a)(1) in pertinent part provides: In a credit transaction in which a security interest is or will be retained or acquired in a consumer's principal dwelling, **each consumer whose ownership interest is or will be subject to the security interest shall have the right to rescind the transaction**, (Texas Practice Note: In Texas a non-vested spouse in a Texas homestead loan transaction may never-the-less have an "ownership interest" that is enough for TILA/Reg Z purposes i.e. homestead right of survivorship ("ownership interest" per TILA/Reg Z? certainly incident to ownership). See Texas Constitution, Article XVI, Sect 52 which provides: On the death of the husband or wife, or both, the homestead shall descend and vest in like manner as other real property of the deceased, and shall be governed by the same laws of descent and distribution, but it shall not be partitioned among the heirs of the deceased during the lifetime of the surviving husband or wife, or so long as the survivor may elect to use or occupy the same as a homestead, or so long as the guardian of the minor children of the deceased may be permitted, under the order of the proper court having the jurisdiction, to use and occupy the same.
- (5) May sign proforma "Executing herein to perfect the security interest in the Property, but not to be otherwise be liable."
- (6) May sign with limiting liability and ownership representation language like the following "Executing herein to perfect the security interest in the Property, but not to otherwise be liable or to represent or create any ownership interest in the Property" (or whatever other reasonable alternative language provided by Borrower or Borrower's attorney).
- (7) Even though the Non-Borrowing Spouse is not applying for credit the Texas Constitution could be construed to require the Non-Borrowing Spouse (owner? See fn 3&4) to make loan application and receive the 12 day notice per Article 16, Sect 50a(6)(M)(i)fn(3) above]. Suggest either joinder, separate loan applications or other evidence of consent to submitting a loan application until a final litigated outcome or other regulatory guidance is available.
- (8) Signature on some documents may be negotiable.

Other:

a. **DO NOT REQUIRE VESTED SPOUSE TO DEED INTEREST TO NON-VESTED SPOUSE.(Could affect separate property rights of non-vested spouse.)**

b. **DO NOT REQUIRE A NON-BORROWING SPOUSE TO SIGN NOTE IF BORROWING SPOUSE OTHERWISE QUALIFIES.(ECOA Violation)**