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**HELOC LAWS AND  
REGULATIONS OVERVIEW**

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# **TOPICS**

**I. KEY DIFFERENCES BETWEEN HELOCS AND CLOSED-END CREDIT**

**II. REGULATION Z REQUIREMENTS FOR HELOCS**

**III. REQUIREMENTS FOR A HELOC UNDER THE TEXAS CONSTITUTION**

**IV. DOCUMENTING A TEXAS HELOC**

**V. RISKS AND CONSIDERATIONS**



## **KEY DIFFERENCES BETWEEN HELOCS AND CLOSED-END CREDIT**

- **Home equity lines of credit (HELOCs) are open-end revolving real-estate secured loans.**
- **Instead of funds being disbursed upfront, as with closed-end credit, HELOCs are disbursed in one or more draws during a “draw period”.**
- **The borrower can make payments of principal and then draw those funds down again during the draw period.**
- **The promissory note and security instrument for a HELOC must include language reflecting its open-end revolving nature.**
- **In Texas, HELOCS are a type of 50(a)(6) home equity loan and subject to many of the same requirements and restrictions as a closed-end 50(a)(6) loan, with some additional requirements.**

## **KEY DIFFERENCES BETWEEN HELOCS AND CLOSED-END CREDIT**

- **HELOCS are not subject to standard TRID disclosures. The LE and CD are not used.**
- **Also, not subject to RESPA disclosure requirements (GFE, HUD-1).**
- **HELOC disclosures are governed by Reg. Z, Section 1026.6 & 1026.40 and delivery and content requirements are very different than TRID disclosures.**
- **Once originated, HELOCS are serviced differently than closed-end loans.**
- **A lender who originates a HELOC should first confirm that their servicing system is set up to service open-end revolving credit.**



# **REGULATION Z REQUIREMENTS FOR HELOCS**

- **Requirements for open-end credit are found in Subpart B of Regulation Z, Sections 1026.5-1026.16.**
- **Some, but not all, requirements found in Subpart B apply to HELOCS.**
  - **Account-opening disclosures (Section 1026.6)**
  - **Periodic statements (Section 1026.7)**
  - **APR calculation (Section 1026.14)**
  - **Right of rescission (Section 1026.15)**
- **Most requirements for “Home Equity Plans” are found in Subpart E of Regulation Z at Section 1026.40.**
  - **The requirements of 1026.40 apply to all open-end credit plans secured by a dwelling, unless otherwise exempt from Reg. Z (e.g. a business purpose HELOC).**
  - **Early HELOC disclosures (generally required at time of application) (Section 1026.40(b), (d) & (e)).**
  - **Limitations on changing an index and margin used in a variable-rate HELOC (Section 1026.40(f)(1)).**
  - **Limitations on lender’s right to terminate a HELOC, change terms of a HELOC, or suspend or reduce available credit (Section 1026.40(f)(2) & (3)(vi)).**

# **REGULATION Z REQUIREMENTS FOR HELOCS**

- **Regulation Z requires a lender to provide an early HELOC disclosure generally at the time of application.**
  - Not within 3 business days of application except in limited circumstances.
  - A HELOC early disclosure under Regulation Z, Section 1026.40 is program-specific, not transaction-specific (unlike an LE and CD).
- **“Account-opening” disclosures must then be provided as part of the closing package for the HELOC.**
  - Generally, the account-opening disclosures are contained within the HELOC promissory note itself.
- **Once the HELOC is originated, Regulation Z, Section 1026.40 governs the lender’s ability to change the terms of the HELOC, or limit, suspend, or reduce credit under the HELOC.**

# **REQUIREMENTS FOR A HELOC UNDER** **THE TEXAS CONSTITUTION**

- **A HELOC secured by homestead property in Texas is governed by Article XVI, Sections 50(a)(6) and 50(t) of the Texas Constitution.**
- **A HELOC security instrument must include the joinder of each owner and each owner's spouse (Section 50(a)(6)(A)).**
- **The maximum amount that may be extended under a HELOC is subject to the same 80% CLTV requirement as a closed-end home equity loan (Sections 50(a)(6)(B) & 50(t)(5)).**
- **A HELOC is non-recourse and imposes no personal liability absent actual fraud (Section 50(a)(6)(C)).**
- **A HELOC lien may only be foreclosed pursuant to a court order (Section 50(a)(6)(D)).**
- **A HELOC is subject to the home equity 2% fee limitation (Section 50(a)(6)(E)).**

# **REQUIREMENTS FOR A HELOC UNDER** **THE TEXAS CONSTITUTION**

- **A HELOC must be the only debt secured by the homestead unless the other debt is a valid lien under Article XVI, Sections 50(a)(1)-(5) or (a)(8) (Section 50(a)(6)(K)).**
- **The lender must provide the owner with a 12-day notice and may not close the HELOC for at least 12 days after the notice or application is provided (whichever is later) (Section 50(a)(6)(M)(i)).**
- **A HELOC may not be closed for at least one year from the closing date of any prior home equity lien under 50(a)(6) absent a declared state of emergency (Section 50(a)(6)(M)(iii)).**
- **A HELOC may only be closed at an office of the lender, a title company, or an attorney-at-law (Section 50(a)(6)(N)).**
- **A HELOC may only be originated by a lender who is authorized under the Texas Constitution to originate 50(a)(6) loans (Section 50(a)(6)(P)).**



# **REQUIREMENTS FOR A HELOC UNDER** **THE TEXAS CONSTITUTION**

- **A HELOC includes a 3-day right of rescission (Section 50(a)(6)(Q)(viii)).**
- **The homestead owner and the lender must both sign an acknowledgment of fair market value on the date the HELOC is closed (Section 50(a)(6)(Q)(ix)).**
- **The only payoffs using HELOC proceeds that a lender may require are debts owed to that lender that are secured by the homestead or debts owed to another lender (Section 50(a)(6)(Q)(i)).**
- **Section 50(t) requires that any single advance under a HELOC must be at least \$4,000.00 (Section 50(t)(2)).**
- **The lender may not structure the HELOC so that advances are made via credit cards, debit cards, or preprinted checks (Section 50(t)(3)).**
- **Repayment under the plan must be in regular installments beginning no later than two months after the HELOC is established**
  - **During the draw period, each payment must cover the interest due; and**
  - **During the repayment period, each payment must include both P&I (Section 50(t)(8)).**

# **DOCUMENTING A TEXAS HELOC**

- **HELOCS are not documented with a Loan Estimate or Closing Disclosure.**
- **Reg Z requires that an early HELOC disclosure must be provided at the time of application.**
  - It is not required to be transaction-specific, but rather, program specific.
- **The HELOC early disclosure can be produced through our system, but because the disclosure must be provided at the time of application, it may not be possible to timely disclose unless generated from a lender's own system.**
- **As HELOCs are governed by Section 50(a)(6) of the Texas Constitution, a 12-day letter must be provided at least 12 calendar days before closing.**
  - The 12-day letter must be provided to all owners and spouses. Signatures are not required, but signature can be the easiest way to evidence that the letter was provided and received.
  - Same 12-day letter as a closed-end 50(a)(6) loan.

# **DOCUMENTING A TEXAS HELOC**

- **A HELOC closing package in Texas is required to include the following:**
  - **Promissory Note containing account-opening disclosures required by Reg Z**
  - **Security Instrument**
  - **Acknowledgment of Fair Market Value**
  - **Rescission Documents**
- **We include other documents (such as the Affidavit & Agreement and Owner's Affidavit of Compliance) to evidence that the loan meets various requirements found in Section 50(a)(6) and 50(t) of the Texas Constitution.**
  - **Inclusion of these documents has become customary in closing Texas HELOCs and some or all may be required by a title company to insure.**

# **RISKS AND CONSIDERATIONS**

- **The required timing and form of disclosures is different than with a closed-end loan.**
  - **The early HELOC disclosure must be provided at the time of application.**
- **The program found in the HELOC note must match the program disclosed in the early disclosure.**
- **Servicing a HELOC is significantly different than servicing a closed-end loan.**
  - **Lenders need to ensure that their LOS and/or servicing software is set-up to handle an open-end loan.**
- **Lender must decide whether to get title insurance.**
  - **A HELOC commitment/policy is similar to a closed-end loan, but there may be different endorsements available.**
- **Market Overview.**

# **HELOC LAWS AND REGULATIONS OVERVIEW**

- **THIS PRESENTATION IS FOR GENERAL INFORMATIONAL PURPOSES ONLY.**
- **IT IS INTENTIONALLY HIGH-LEVEL, AND IS NOT INTENDED TO REPRESENT AN EXHAUSTIVE LIST OF ALL LEGAL REQUIREMENTS THAT MAY APPLY TO A HELOC IN TEXAS OR ANY OTHER STATE.**
- **IF YOU ARE INTERESTED IN STARTING A HELOC PROGRAM, OUR LEGAL AND COMPLIANCE TEAMS ARE AVAILABLE TO ANSWER QUESTIONS ABOUT APPLICABLE LEGAL AND REGULATORY REQUIREMENTS.**
- **YOU MAY EMAIL QUESTIONS TO [LEGAL@PPDOCS.COM](mailto:LEGAL@PPDOCS.COM) OR [COMPLIANCE@PPDOCS.COM](mailto:COMPLIANCE@PPDOCS.COM), OR CALL ONE OF OUR ATTORNEYS OR COMPLIANCE SPECIALISTS WITH YOUR HELOC QUESTIONS.**





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