

Texas Supreme Court Ruling on Home Equity Lending

In June of 2013, the Supreme Court of Texas issued an opinion in the home equity lending case, *Finance Commission, the Credit Union Commission, and Texas Bankers' Association v. Norwood et. al.* The Court recently denied a Motion for Rehearing by Texas Bankers Association, but issued a Supplemental Opinion to further clarify its June 2013 ruling.

The Supreme Court ruled on the validity of several interpretations that were jointly promulgated by the Texas Credit Union Commission and the Texas Finance Commission (the Commissions). In its decision, the Court left no room for doubt that those who had acted in reliance on the overturned interpretations were not subject to liability for those actions.

The Court upheld the Commissions' interpretation creating a rebuttable presumption that a notice is received three days after it was mailed.

The Court invalidated the Commissions' interpretations of the definition of interest for the purpose of determining what charges constitute interest and what charges constitute fees, subject to the 3% cap. The Court stated that the statutory definition of interest in the Finance Code was intended to prevent usury, and proposed a definition of interest it felt was more suited to the home equity lending context: "multiplying the loan principal by the interest rate." The Supplemental Opinion clarified that prepaid, per diem interest and "legitimate discount points" are not subject to the 3% cap on fees.

The Court also invalidated the Commissions' interpretation allowing for the use of a power of attorney to effect closing where the home owner was not physically present at the office of the lender, attorney, or title company. The Court found that this interpretation was contrary to the intent of the constitutional requirement to close at such an office. In the Supplemental Opinion, the Court clarified that its ruling did not prohibit the use of a power of attorney for a home equity closing, but in order to comply with the constitutional requirements for home equity, the power of attorney used at such a closing must be signed at the office of the lender, attorney, or title company.

In response to concerns raised in the Motion for Rehearing and Amici Briefs, the Court pointed out that deployed service members could fulfill this requirement at a JAG office in the area where they are stationed. The Court acknowledged the requirement would still create a barrier for non-military travelers and elderly or disabled borrowers; however, it asserted that this was not an issue for the Court or Commissions to consider, but "must be left to the framers and ratifiers of the Constitution".

The Commissions will review the interpretations that were invalidated by the Supreme Court and consider whether the proposal of new home equity lending interpretations is appropriate, in light of the recent ruling.

Supreme Court Opinion June 13, 2013:

<http://www.supreme.courts.state.tx.us/historical/2013/jun/100121.pdf>

Supplemental Opinion on Motion for Rehearing:

<http://www.supreme.courts.state.tx.us/historical/2014/jan/100121s.pdf>

Link to Case History on the 3rd Court of Appeals website:

<http://www.search.txcourts.gov/Case.aspx?cn=03-06-00273-CV>