

APPENDICES

APPENDIX A

FILE COPY

RE: Case No. 22-0770 DATE: 12/30/2022
COA #: 02-21-00035-CV TC#: 236-307178-19
STYLE: BURCH v. NAT'L MORT. HOLDINGS, INC.

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

MR. WILLIAM PAUL BURCH
* DELIVERED VIA E-MAIL *

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DISTRICT CLERK TARRANT COUNTY
TARRANT COUNTY COURT
TOM VANDERGRIFF CIVIL COURTS BLDG
100 N. CALHOUN ST, 2ND FLOOR
FORT WORTH, TX 76196-0402
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APPENDIX B

FILE COPY

RE: Case No. 22-0770

DATE: 11/18/2022

COA #: 02-21-00035-CV

TC#: 236-307178-19

STYLE: BURCH v. NAT'L MORT. HOLDINGS, INC.

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MR. WILLIAM PAUL BURCH

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RE: Case No. 22-0770

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RE: Case No. 22-0770

DATE: 11/18/2022

COA #: 02-21-00035-CV

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STYLE: BURCH v. NAT'L MORT. HOLDINGS, INC.

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FILE COPY

RE: Case No. 22-0770

DATE: 11/18/2022

COA #: 02-21-00035-CV

TC#: 236-307178-19

STYLE: BURCH v. NAT'L MORT. HOLDINGS, INC.

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

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APPENDIX C

No. 22-0770

In the Supreme Court of Texas

WILLIAM PAUL BURCH
Petitioner,

v.

NATIONSTAR MORTGAGE HOLDING, INC.
Respondent

From the Second Court of Appeals, Cause No 02-21-00035-CV,
and the 236th Court for Tarrant County, Cause No 236-307175-19

Honorable Ray Wheless

PETITION FOR REVIEW

/s/William Paul Burch
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Pro Se

IDENTITY OF PARTIES AND COUNSEL

The following constitutes a list of all parties to the trial court's final judgment and the names and addresses of all trial and appellate counsel:

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STATEMENT OF THE CASE

Nature of the case: The Respondent, Nationstar Mortgage Holdings, Inc. (NMHI) refused to follow a court order and threatened to foreclose on a homestead they had no valid lien on owned by Petitioner, William Paul Burch (Burch). This resulted in Burch losing millions of dollars in assets and income. The trial court and the appeals court ruled that Burch lacked standing because he did not sign either the Promissory Note or the Deed of Trust. Additionally, a non-Article III Court judge ruled that he had exclusive power to oversee and dictate what actions could take place in Texas Courts.

Trial Court The Honorable Ray Wheless of the 236th District Court of Tarrant County, Texas. (Assigned the case by Texas Supreme Court Chief Justice Nathan Hecht)

Disposition in the trial court: Dismissed on lack of standing and summary judgment.

Disposition in the court of appeals: The case was dismissed on lack of standing

STATEMENT OF JURISDICTION

The opinion below presents a question of law that is important to the jurisprudence of this State. **TEX. GOV'T CODE § 22.001(a)**. That section provides that the Supreme Court has jurisdiction of cases arising from the courts of appeals in a case in which one of the courts of appeals holds differently from a prior decision of another court of appeals or of the supreme court on a question of law material to a decision of the case and the court of appeals has committed an error of law of such importance to the state's jurisprudence that it should be corrected. The issues are standing, comity, and liens.

A plaintiff has standing when it is personally aggrieved, regardless of whether it is acting with legal authority; a party has capacity when it has the legal authority to act, regardless of whether it has a justiciable interest in the controversy. **See *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex.1984); *Pledger v. Schoellkopf*, 762 S.W.2d 145, 146 (Tex. 1988).**

In adopting this separation of powers principle, we were careful to observe that state courts retain jurisdiction over "ordinary tort suits" capable of judicial management. ***Preston v. M1 Support Services, LP*, Tex: Supreme Court 2022.**

***Moser v. Dillion Investments, LLC*, Tex: Court of Appeals, 5th Dist. 2022.**

The movant has the burden of showing that no genuine issue of material fact exists

and that it is entitled to judgment as a matter of law. **TEX. R. CIV. P. 166a(c)**. In deciding whether a disputed material fact issue exists precluding summary judgment, the court considers evidence favorable to the nonmovant to be true. **In re Estate of Berry, 280 S.W.3d 478, 480 (Tex. App.-Dallas 2009, no pet.)**. Every reasonable inference must be indulged in favor of the nonmovant and any doubts resolved in its favor. **City of Keller v. Wilson, 168 S.W.3d 802, 824 (Tex. 2005)**.

Because these rulings were made by this court and the Fifth District and have a major impact of fairness to cases in Texas and an influence throughout the United States, it is important that this case be heard.

ISSUES PRESENTED

In Texas laws pertaining to the homestead have been of great importance since before Texas was a Republic. The Constitution of the United States was written to protect life, liberty, and property. “The moment the idea is admitted into society, that property is not as sacred as the law of God, and that there is not a force of law and public justice to protect it, anarchy and tyranny commence,” (John Adams, Defense of the Constitution of the United States (1787)). Under the Texas Constitution, **Article 16, section 50**, should a Texas homestead owner be denied standing, and the case dismissed on summary judgment in a lawsuit because the homeowner had not signed the loan or deed of trust and is the lien void?

Under the fourth amendment of the United States Constitution there is a clear separation of powers known as comity. In the interest of comity, does a non-**Article III** federal court have the authority to determine if a citizen of Texas can file a petition in a Texas Court on Texas issues and, if a case is filed, dictate to the Texas Court what motions can be filed by the citizen of Texas, effectively overseeing, and directing the actions of a Texas Court?

STATEMENT OF FACTS

Burch and his spouse, Juanita "Jane" Burch, bought the homestead property located at 5947 Waterford Dr., Grand Prairie, Texas 75052 on June 26, 2007. The loan was granted by Lehman Brothers and the loan (CR.19-25) and deed of trust (CR.26-40) were signed by Juanita Burch but not by Burch.

The Burch's were in the business of buying, renovating, and selling the properties when the recession of 2007 to 2009 struck. During this period the lender for Burch's homestead, Lehman Brothers, transferred the loan to their subsidiary, Aurora Bank, before filing for bankruptcy. Burch was current on the mortgage payments but was enticed to enter chapter 11 bankruptcy because the property values were below the loan balances and Burch was told they were subject to foreclosure.

In the bankruptcy it was agreed that Burch would continue with the loan payments but would pay the insurance and taxes direct without escrow (CR.239). One reason for this was that the Burch's had a blanket insurance policy that covered all twenty-two of their properties.

The bankruptcy plan was approved on December 9, 2009. (CR.225-246). The Burch's made their payments as per the bankruptcy plan but Aurora Bank refused to accept the payments without the escrow. Burch paid the escrow, resulting in double

payments for the insurance. Burch insisted that the escrow payments be returned to Burch and that Aurora comply with the bankruptcy plan. An attorney friend of the Burch's, Richard Hays of Denton, Texas, advised Burch to send Aurora Bank a presentment letter which was done on July 13, 2011. (CR.257).

Upon receipt of the letter, Aurora returned the thousands of dollars in overpayment to Burch. (CR.258-262). Because Burch had initiated the action and Aurora responded that shows that Burch had standing in the eyes of Aurora. A month after the payment was received Aurora Bank was absorbed by Nationstar Mortgage Holdings, Inc. (NMHI). (CR.263-265) NMHI Contacted Burch asking about absence of escrow payments. Burch responded and sent NHMI a copy of the bankruptcy plan (CR.269). NMHI then informed Burch that they were not part of the bankruptcy plan, and that Burch would have to repay all the refunded money plus a year in advance or they would foreclose on the homestead.

Out of fear of losing his homestead Burch filed again for bankruptcy so that he could stop the foreclosure. The lawyer for Nationstar at this point was Michael Weems of HWA LLP. Burch wanted the prior chapter 11 plan reopened but his lawyer, Steve Stasio, insisted that the filing be for a chapter 13 plan. In 2016 the chapter 13 trustee insisted that the plan be converted to a chapter 11 plan due to its size. On February 1, 2016, the plan was approved. (CR.807-820)

The NMHI attorney, Michael Weems filed to have the plan converted from a nearly complete Chapter 11 plan to a chapter 7 plan. The bankruptcy court ruled to convert the plan to a chapter 7 plan On January 20, 2028. (CR.822-823). On June 25, 2018, the homestead was exempted per 11 U.S.C. § 522(b)(3) (CR.840). Burch filed a lawsuit against the NMHI attorney for lying to the court. The case was removed to the Bankruptcy court where the court granted the NMHI attorney immunity (**Appendix 4**).

By this time, NMHI's stock was falling, their executives were leaving, and they had over 14,000 complaints with the Better Business Bureau. To try to turn things around, NMHI changed their name to Nationstar Mortgage Holdings, Inc. d/b/a Mr. Cooper. (CR.660) Due to the actions of NHMI's Michael Weems, Burch lost millions of dollars in assets that were removed to the bankruptcy estate. The Homestead was exempt and removed from the bankruptcy estate. (CR.840).

On April 4, 2019, Burch filed suit against NHMI for quiet title and damages due to the actions of NHMI. (CR.569-580). The case was assigned to the 48th District Court in Tarrant County, Judge David presiding as 048-307178-19. NMHI was served on April 5, 2019. (CR.107) Burch filed a Motion for Default Judgement on April 29, 2019 (CR.101-107). Thirty-two days after being served, on May 6, 2019, NHMI's new Attorney, Joshua Gelman, and new law firm, McGuire Woods LLP

filed a Rule 91a Motion to Dismiss Plaintiff's Petition (CR.108-115) and on June 17, 2019, NMHI responded to Burch's Application for entry of default judgment but none of Burch's issues were addressed. Instead issues that were not in Burch's petition were addressed. (CR.129-131)

Burch was told by the court that an answer to Burch's Default Judgement and the NHMI response would be given on June 19, 2019. Instead Judge David L. Evans recused himself (CR.159) and sent the case to the Administrative Judge for reassignment. The Administrative Judge was Judge David Evans who again recused himself and appointed Judge Wallace as the acting Administrative Judge (CR.160). Judge Wallace then assigned the case to the 236th District Court, Judge Robert Lowe presiding. On July 2, 2019, Judge Lowe recused himself and returned the case to Judge Wallace (CR.161). Judge Wallace then recused himself and the case was sent to Chief Judge Nathan Hecht who assigned the case to Administrative Judge Roy Wheless of Collin County but kept the case in the 236th District Court. (CR.163-164)

This was during the Covid shut down and it was difficult to get a hearing. Burch requested a hearing but instead Judge Wheless ruled against Burch's Default Judgement without the hearing. (CR.166) Burch requested a finding of fact and conclusions of law but the request went unanswered (CR.169-170). NHMI replaced their attorney but kept the law firm. The initial attorneys wanted to settle the case,

but nothing happened. Only one of their attorneys was from Texas. The rest were from Pennsylvania, North Carolina, and the last three from California.

Nationstar Mortgage Holdings, Inc. d/b/a Mr. Cooper (a Texas company) was bought out by Seattle based Washington Mutual Mortgage Acquisitions, who changed their name to Mr. Cooper Mortgage Acquisitions, Inc. NMHI made a motion to dismiss based on Burch's bankruptcy and Burch not signing the loan and the deed of trust. The District Court refused to hear the case even though Burch had made the request and instead ruled to dismiss the case on summary judgment due to a lack of standing and res judicata. Burch's motion for summary judgement was dismissed for lack of legal capacity. (CR.912)

The District Court denied Burch's Motion for Reconsideration on February 1, 2021 (CR.964) where there was no basis for the dismissal, Burch made a request for findings of fact and conclusions of law on the dismissal but there was no response. (CR.969-970)). The case was appealed to the Second District Court of Appeals on February 10, 2021, (CR,971-973) where the questions dealt with standing, void lien and summary judgment. On May 12, 2022, the Court ruled against Burch based on standing and brought up the ruling by the Bankruptcy Court that Burch was not allowed to file motions in a state trial court without the bankruptcy court permission, even if it meant that the filing would be out of time if approved. (Appendix 2) The

Court also did not rule on the void lien because of their ruling on standing. Burch filed a motion for reconsideration on the ruling on Standing as well as comity, the void lien, and summary judgment. Burch also requested that a new judge be assigned to hear the case if remanded to the district court. Judge Wheless is retired and does not have full staff and would have to travel 125 miles round trip which creates a great deal of difficulty for all parties. The motion for rehearing was denied on July 21, 2022. (Appendix 3)

STATEMENT OF JURISPRUDENTIAL IMPORTANCE

Therapeutic jurisprudence (TJ) studies law as a social force (or agent) which inevitably gives rise to unintended consequences, which may be either beneficial (therapeutic) or harmful (anti-therapeutic). It envisions lawyers practicing with an ethic of care and heightened interpersonal skills, who value the psychological wellbeing of their clients as well as their legal rights and interests, and to actively seek to prevent legal problems through creative drafting and problem-solving approaches. In this case anti-therapeutic jurisprudence due to the actions of the NMHI and their representative on behalf of NMHI cost Burch millions of dollars in assets and all his income. NMHI refused to follow the first bankruptcy plan and tried to foreclose on Burch's homestead even though the lien was void. They then lied in court to get a change to a chapter 7 plan, thus stripping Burch of his assets

and income. They convinced the bankruptcy court to grant them immunity for their actions and were the basis for Burch and separately Juanita Burch to be sua sponte declared vexatious litigants without either having filed a case pro-se in the court.

The actions of NMHI and their representative, Michael Weems is the definition of anti-therapeutic jurisdiction and the basis of all subsequent legal actions by Burch.

Burch is not the only one taken advantage of by NMHI. The actions of NMHI have occurred throughout the United States (CR.933-938).

SUMMARY OF THE ARGUMENT

There were problems at the beginning of this case. This was apparent with the filing of the Default Judgement and the resulting recusal of three judges and the refusal of the final judge to hold hearings. There were many distractions that Burch believes weighed in on the erroneous ruling by the district court. First there was the Covid pandemic and the travel distance for the judge was 125 miles round trip. Also, the judge retired from trial work right after the case was assigned to him thus robbing him of his staff. As seen in his rulings, there was no findings of fact or conclusions of law in any opinion even when requested by Burch. The judge is mainly a criminal court judge, and this case is a complicated civil real estate matter. The issues in this case center around the actions of Lehman Brothers not having Burch sign the loan and the deed of trust, clearly a violation of the **Texas Constitution, Article 16,**

Section 50 that results in a void the lien. As Burch later learned, by the lien being void and because neither party can reverse the status, there was no security on the property going into or out of the second bankruptcy. The referenced loan was an unsecured debt. It should be noted that Burch received the Homestead reduction due to his reaching age 65 (Burch is now 70) and his being a Vietnam era disabled veteran thus giving further proof of standing.

Regardless of the debt status, Burch had standing in the community property homestead. This misinterpretation of the law was further erred by the Second District Court of Appeals. By ruling that Burch did not have standing they removed themselves from needing to address the Texas constitutional issues regarding **Article 16 section 50**. In so doing Burch was denied his due process rights under **Article 1, Section 19 of the Texas Constitution**, “Sec. 19. DEPRIVATION OF LIFE, LIBERTY, PROPERTY, ETC. BY DUE COURSE OF LAW. No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land.

Further encompassing these issues was the bankruptcy judge’s unconstitutional ruling declaring Burch a vexatious litigant because Burch upset the NMHI attorney, Michael Weems, by suing him for lying to the court in his written motions. (CR.869-870) Although Burch, as a Pro-se, never filed a case in the

bankruptcy court but did challenge the removal of his legally filed cases in Texas courts by motions to remand. The bankruptcy court sua sponte decided that it was superior to Texas Judges and required that Burch get the bankruptcy courts permission to file a case in state court or to file a motion in an already files state case. The bankruptcy court refused to place Burch on a vexatious litigant list in Texas supposedly because he believed, correctly, that Burch would challenge it in state court and thus undo his actions. NMHI's actions have cost the Burch's their income and millions of dollars in assets.

ARGUMENT AND AUTHORITIES

From the first colonization of Texas in 1821 with the land grant to Stephen F. Austin, the security of property was an essential part of the real estate laws in Texas. So much so that **Article XVI section 50**, Protection of homestead from forced or unauthorized sale; exceptions; requirements for mortgage loans and other obligations secured by is one of the most important parts of the Texas Constitution.

In this case **Section 50(a)(1)** identifies a purchase money contract as being part of this article. The property in question is a purchase money loan secured by the deed of trust which, combined, make up the lien. In **Section 50(c)** it is written, "No mortgage, trust deed, or other lien on the homestead shall ever be valid unless it secures a debt described by this section, whether such mortgage, trust deed, or

other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.” Burch did not sign the Promissory Note or the Deed of Trust. **Section 50(c)** applies to “all debt described by this section”. This section means all the categories of debt on the homestead listed in **Section 50(a) (1-8)**. Therefore, without a signature from Burch on either the loan or the deed of trust the lien is void.

In **Wood v. HSBC BANK USA, NA, 505 SW 3d 542 - Tex: Supreme Court 2016** Article XVI, section 50 of the Texas Constitution has long protected the homestead, strictly limiting the types of loans that may be secured by a homestead lien. Historically, constitutionally noncompliant homestead liens were absolutely void. See, e.g., **Tex. Land & Loan Co. v. Blalock, 76 Tex. 85, 13 S.W. 12, 13 (1890)** (holding that borrowers' misrepresentation of homestead status of land securing debt did not "enable parties to evade the law, and incumber [sic] homesteads with liens forbidden by the constitution"); **Inge v. Cain, 65 Tex. 75, 79 (1885)**; see also **LaSalle Bank Nat'l Ass'n v. White, 246 S.W.3d 616, 620 (Tex.2007)** (acknowledging invalidation of noncompliant lien, but recognizing right to equitable subrogation). What the Constitution forbids cannot be evaded even by agreement of the parties, **Tex. Land & Loan Co., 13 S.W. at 13**, and what is "never valid is always void," **Inge, 65 Tex. at 80**; see also **Laster v. First**

Huntsville Props. Co., 826 S.W.2d 125, 130 (Tex. 1991) ("A mortgage or lien that is void because it was illegally levied against homestead property can never have any effect, even after the property is no longer impressed with the homestead character."). The lack of a signature by Burch does not mean that he loses standing as an owner of this community property homestead. It simply means that the mortgage company has, at best, an unsecured debt but the homestead is free and clear of a lien. All unsecured debt was vanquished in the bankruptcy.

In the Texas Family Code §§ 5.81-5.84, if either spouse occupies the property as his or her homestead the joinder of the other spouse is required to encumber that homestead, whether separate or community property.

The other issue on standing is the claim that Burch is barred from standing because he filed for bankruptcy the second time. Burch's spouse, Juanita "Jane" Burch did not file in the second bankruptcy. "A plaintiff has standing when it is personally aggrieved, regardless of whether it is acting with legal authority; a party has capacity when it has the legal authority to act, regardless of whether it has a justiciable interest in the controversy". **See Hunt v. Bass, 664 S.W.2d 323, 324 (Tex.1984); Pledger v. Schoellkopf, 762 S.W.2d 145, 146 (Tex. 1988).**

In a recently decided case from the Fifth District Court of Appeals that is very similar to this case standing was granted to the plaintiff even though she had

not listed her property in the bankruptcy claims allowance page. Moser v. DILLON INVESTMENTS, LLC, Tex: Court of Appeals, 5th Dist. 2022. The trial court dismissed the case on summary judgment due to their ruling on standing exactly as it was done on this case. However, “The movant has the burden of showing that no genuine issue of material fact exists and that it is entitled to judgment as a matter of law.” TEX. R. CIV. P. 166a(c). In deciding whether a disputed material fact issue exists precluding summary judgment, the court considers evidence favorable to the nonmovant to be true. In re Estate of Berry, 280 S.W.3d 478, 480 (Tex. App.-Dallas 2009, no pet.). Every reasonable inference must be indulged in favor of the nonmovant, and any doubts resolved in its favor. City of Keller v. Wilson, 168 S.W.3d 802, 824 (Tex. 2005). Based on these rulings, summary judgement should not have been granted and the case should be heard on the merits on the issues regarding the millions of dollars taken from Burch as well as the lien release.

In looking at the judicial overreach of the federal bankruptcy judge we must consider what the judge did. The bankruptcy court made their ruling pursuant to 28 U.S.C. § 1651(a) (The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law). 11 U. S. C. § 105(a) The court may issue any order, process, or judgment that is necessary or

appropriate to carry out the provisions of this title. No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, sua sponte, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.) of the bankruptcy code, and the Court's inherent power (From **Article III, Section 1 of the United States Constitution**.) In protecting his individual properties, Burch was not abusive.

A. The Court's inherent power does not apply because a bankruptcy court is not an **Article III** Court.

B. **11 U. S. C. § 105(a)** As used by the bankruptcy court and as written this rule is a violation of the United States Constitution First Amendment in that it prevents the free exercise of free speech. It stops Burch from speaking on behalf of his cases without prior approval. It should be noted that this sanction was made at a time when there were no cases involving Burch in the bankruptcy court. This is also in violation of the Fifth Amendment in that it has deprived Burch of his property in this case. Additionally, Burch was prevented from using his Due Process rights in cases in the state courts and federal courts. As written this ruling is a violation of the Tenth Amendment in that it allows a bankruptcy judge to write laws and rule on them as he sees fit.

C. **28 U.S.C. § 1651(a)** does not apply as there were no cases involving Burch at the time of the sanction. As written this ruling is a violation of **Article IV, Section 1** of the United States Constitution.

“Full Faith and Credit shall be given in each State to the public Acts, Records, and judicial Proceedings of every other State. And the Congress may by general Laws prescribe the Manner in which such Acts, Records and Proceedings shall be proved, and the Effect thereof” It does not allow a bankruptcy judge to write new laws and rule on them.

D. **U.S. Constitution Article I, Section 9, Clause 3,**

“No Bill of Attainder or ex post facto Law shall be passed.”

The bankruptcy court created legislation from the bench by the attributes that specifically targeted a specific person without the benefit of a trial. The basis for the vexatious sanction order was not a new case filed in the court but was based on an apparent ex parte communication between two lawyers and the Judge. Hence the bankruptcy judge wrote in his vexatious order:

“I understand why Mr. Stout is upset. I understand why Mr. Weems is upset”. (CR.869) This statement could only occur through communication with Mr. Weems and Mr. Stout. The basis was because Burch filed suit in State Court against HWA (Weems law firm) for lying to convert a successful Chapter 11 plan that was going to close in July 2018 to an unsuccessful Chapter 7 plan. The

bankruptcy granted the defendants immunity for lying. (12-bk-46959-mxm, advisory case 18-04176-mxm).

Vexatious Litigant is not defined in Federal law but is a statute in **Texas Civil Practice & Remedies Code Chapter 11 (TCP R Ch11)**. Under the Texas law Burch would not qualify as a vexatious litigant. The cases filed in the state court mainly pertained to the twenty-two properties Burch owned. In this case the Bankruptcy Judge legislated his own vexatious law that did not even follow the Texas Law specifically targeting Burch without the benefit of a trial.

There is no question that the summary judgment should be reversed, standing granted, the incursions into the state judicial actions by the bankruptcy judge should be reversed, and the lien on the homestead should be removed. These are actions that are extremely important to the citizens of Texas.

PRAYER

Petitioner asks this Court to grant its Petition for Review.

Respectfully submitted September 6, 2022,

/s/William Paul Burch
William Paul Burch-Pro Se
5947 Waterford Dr
Grand Prairie, Texas 75052
817-919-4853

CERTIFICATE OF SERVICE

In accordance with the Texas Rules of Appellate Procedure I certify that a copy of this Petition for Review was served on Respondent Nationstar Mortgage Holdings, Inc through counsel of record Taylor W. Meek and Elizabeth Chandler, tmeek@mcduirewoods.com, echandler@mcguirewoods.com, 2000 McKinney Avenue, Suite 1400, Dallas, Texas 75201, 214.932.6400, e-mail on September 6, 2022.

/s/ William Paul Burch
William Paul Burch-Pro Se
5947 Waterford Dr
Grand Prairie, Texas 75052
817-919-4853

CERTIFICATE OF COMPLIANCE

Pursuant to TEX. R. APP. P. 9.4, I hereby certify that this Petition for Review contains 3617 words. This is a computer-generated document created in Microsoft Word, using 14-point typeface for all text, except for footnotes which are in 12-point typeface. In making this certificate of compliance, I am relying on the word count provided by the software used to prepare the document.

/s/ William Paul Burch
William Paul Burch-Pro Se

APPENDIX

TAB

- A Judgment of trial court dated November 30, 2021
- B Opinion of the Second District Court of Appeals, dated May 12, 2022
- C Reconsideration ruling for the Second District Court of Appeals, dated
July 21, 2022
- D Texas Constitution Article 1, Section 50

APPENDIX D



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-21-00035-CV

WILLIAM PAUL BURCH, Appellant

V.

NATIONSTAR MORTGAGE HOLDINGS, INC., Appellee

On Appeal from the 236th District Court
Tarrant County, Texas
Trial Court No. 236-307178-19

Before Sudderth, C.J.; Kerr and Walker, JJ.
Memorandum Opinion by Justice Kerr

MEMORANDUM OPINION

The trial court dismissed Appellant William Paul Burch's claims against Appellee Nationstar Mortgage Holdings, Inc. for lack of standing. Burch appealed. Because Burch's claims against Nationstar accrued before his later-filed bankruptcy case was converted to a Chapter 7 proceeding, the bankruptcy estate owned those claims, and only the Chapter 7 trustee had standing to assert them. We will thus affirm the trial court's dismissal based on Burch's lack of standing.

I. Background

In June 2007, Burch's wife Juanita signed a promissory note and deed of trust; the deed of trust secured a lien on a home located on Waterford Drive in Grand Prairie. In 2008, the Burches filed for Chapter 11 bankruptcy, and the bankruptcy court approved a reorganization plan in December 2009. Under the plan, the Burches retained the Waterford Drive property as their homestead and were required to continue making monthly payments in accordance with the existing loan document's terms. The plan further called for the Burches to pay only principal and interest to the then mortgage holder (Aurora Loan Services) and to pay insurance and taxes directly rather than into an escrow account. The bankruptcy court closed the Burches' case in March 2010.

In 2012, Nationstar acquired Aurora Loan Services. That summer, in August—and despite the Burches' reorganization plan—Nationstar demanded that Juanita pay monthly escrow amounts and shortly thereafter threatened to foreclose.

Burch (but not Juanita) then went through bankruptcy a second time: in December 2012, he filed a Chapter 13 proceeding, which was converted to a Chapter 11 proceeding a year later. *See* 11 U.S.C. §§ 1301–1330; 11 U.S.C. §§ 1101–1195. In February 2016, the bankruptcy court signed an “Order Confirming Debtor[']s Plan of Reorganization,” which provided that (1) Nationstar “shall retain its lien on the property”; (2) Burch would retain the property as his homestead; and (3) Burch would cure the arrears on the property and resume making tax escrow payments to Nationstar. In January 2018, the bankruptcy court converted the case to a Chapter 7. *See* 11 U.S.C. §§ 701–784. Burch did not list in his required Chapter 7 asset schedule, which he filed in June 2018, any of the claims he has asserted against Nationstar in this litigation. He received a bankruptcy discharge in June 2018.

Some ten months later, in April 2019, Burch¹ sued Nationstar seeking to quiet title to the property and asserting claims alleging an invalid (and fraudulent) lien on the Waterford Drive property, statutory fraud, breach of contract, and negligence. *See* Tex. Civ. Prac. & Rem. Code Ann. § 12.003; Tex. Bus. & Com. Code Ann. § 27.01; Tex. Prop. Code Ann. § 53.160. Burch sought “actual damages caused by the violation [of the fraudulent-lien statute] of \$2,081,216,” \$750,000 in “compensatory damages,” and \$1,500,000 in punitive damages.²

¹Juanita is not a party to this case.

²In July 2020, after Burch had filed this lawsuit, the bankruptcy court designated him a vexatious litigant. Its order “notes that it warned the Debtor over a

Nationstar moved to dismiss Burch's claims for lack of subject-matter jurisdiction, arguing that because any such claims had accrued before Burch's bankruptcy case converted to a Chapter 7 case in January 2018, the Chapter 7 bankruptcy estate owned all his claims and thus the trustee—not Burch—had exclusive standing to assert them. Alternatively, Nationstar argued that Burch did not have standing to assert claims based on the note and deed of trust because only his wife had signed them. Nationstar also moved for traditional summary judgment,

year ago that he needed to stop his abusive practice of filing more lawsuits premised in whole or in part on baseless allegations, including that various lenders' liens were somehow invalidated in the Debtor's 2008 Bankruptcy Case or 2012 Bankruptcy Case." The bankruptcy court's order included excerpts from that earlier hearing, among them its comment that "[a]ll of these issues have been litigated, time and time again, and you've lost in your underlying bankruptcy case, in now three different adversary proceedings, and when you lose, you continue to go back and file new lawsuits in state court, which frankly, is a bit offensive." The vexatious-litigant order sanctioned Burch "by restricting his ability to file future lawsuits, motions, pleadings, or other requests for affirmative relief in any federal trial court, or Texas state or local trial court, against any party involving personal or real property that was included in the Debtor's 2008 Bankruptcy Case or 2012 Bankruptcy Case (the '***Restricted Subject Matter***') without first securing this Court's prior written authorization to do so." After the bankruptcy court entered that order in July 2020, Burch and Juanita "began filing lawsuits in her name only," prompting an expanded vexatious-litigant order that encompassed both of them. *Burch v. Freedom Mortg. Corp.*, No. 3:20-CV-3086-M-BN, 2021 WL 2446962, at *2 (N.D. Tex. May 27, 2021), *report and recommendation adopted*, No. 3:20-CV-3086-M-BN, 2021 WL 2435125 (N.D. Tex. June 15, 2021), *appeal dismissed*, No. 21-10654, 2021 WL 5822941 (5th Cir. Nov. 16, 2021); *see also In re Burch*, No. 20-11171, 2022 WL 212836, at *1 (5th Cir. Jan. 24, 2022) (unpublished) (admonishing and sanctioning Burch for another in a line of frivolous proceedings and stating, "Burch is again warned that additional frivolous or abusive filings in this court, the district court, or the bankruptcy court will result in the imposition of further sanctions. Burch is once again admonished to review any pending appeals . . . and to withdraw any appeals that are frivolous").

arguing *res judicata* and Burch's lack of capacity because he was not a party to the loan.

In November 2020, the trial court granted Nationstar's motion to dismiss and ordered that "Plaintiff's claims are dismissed for lack of subject[-]matter jurisdiction based on Plaintiff's lack of standing." The trial court simultaneously granted Nationstar's summary-judgment motion "in the alternative," holding that "Plaintiff's claims are barred by *res judicata* and further alternatively, Plaintiff's claims are barred by Plaintiff's lack of legal capacity to assert them." Thus, the final order had three separate foundations.

Burch timely appealed.³

II. Applicable Law

A. Standing

"Standing is a constitutional prerequisite to suit," and "[a] court has no jurisdiction over a claim made by a plaintiff who lacks standing to assert it." *Heckman v. Williamson Cnty.*, 369 S.W.3d 137, 150 (Tex. 2012). Because standing is a component of subject-matter jurisdiction, its existence is a legal question that we review de novo. *See Farmers Tex. Cnty. Mut. Ins. Co. v. Beasley*, 598 S.W.3d 237, 240 (Tex. 2020). In

³Burch, appearing pro se in the trial court and in this appeal, has raised three issues that we construe as challenging the trial court's three alternative bases for disposing of Burch's claims against Nationstar.

evaluating standing, we construe the pleadings in the plaintiff's favor, and we consider evidence relevant to the jurisdictional inquiry. *See id.*

A standing inquiry “focuses on the question of who may bring an action.” *Vernco Constr., Inc. v. Nelson*, 460 S.W.3d 145, 149 (Tex. 2015) (quoting *Patterson v. Planned Parenthood of Hous. & Se. Tex., Inc.*, 971 S.W.2d 439, 442 (Tex. 1998)). Generally, unless standing is conferred by statute, a plaintiff must show that it “possesses an interest in a conflict distinct from that of the general public, such that the defendant’s actions have caused the plaintiff some particular injury.” *Williams v. Lara*, 52 S.W.3d 171, 178 (Tex. 2001). To have standing, a plaintiff must be personally aggrieved. *Nootsie, Ltd. v. Williamson Cnty. Appraisal Dist.*, 925 S.W.2d 659, 661 (Tex. 1996). Standing requires “a real controversy between the parties” that “will be actually determined by the judicial declaration sought,” *Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 849 (Tex. 2005) (quoting *Nootsie*, 925 S.W.2d at 662), and “focuses on whether a party has a sufficient relationship with the lawsuit so as to have a ‘justiciable interest’ in its outcome,” *id.* at 848.

B. Property of bankruptcy estate

Filing a petition for bankruptcy creates a bankruptcy estate. *See* 11 U.S.C. § 541(a); *La. World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 245 (5th Cir. 1988). “[A]ll legal or equitable interests of the debtor in property as of the commencement of the case” become part of that estate, including any legal claims that belonged to the debtor before the petition was filed. 11 U.S.C. § 541(a)(1); *see Kahn v. Helvetia Asset*

Recovery, Inc., 475 S.W.3d 389, 393 (Tex. App.—San Antonio 2015, pet. denied); *Antonov v. Walters*, 168 S.W.3d 901, 904 (Tex. App.—Fort Worth 2005, pet. denied); *see also State Farm Life Ins. Co. v. Swift (In re Swift)*, 129 F.3d 792, 795 (5th Cir. 1997). The bankruptcy trustee is “the representative of the estate” with the “capacity to sue and be sued,” 11 U.S.C. § 323, and once a claim belongs to the estate, the trustee has exclusive standing to assert the claim, *Douglas v. Delp*, 987 S.W.2d 879, 882 (Tex. 1999) (citing *Schertz–Cibolo–Universal City ISD v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994)); *Antonov*, 168 S.W.3d at 904–05.

A debtor may gain control over a pre-petition claim in two circumstances: (1) by listing the legal claim as an item of personal property and by designating, without objection, an available exemption for the claim, *see generally McLain v. Newhouse (In re McLain)*, 516 F.3d 301, 315 (5th Cir. 2008) (collecting cases discussing debtor’s obligation to comply with statutory disclosures in order to validly exempt certain property from bankruptcy estate); or (2) by listing a legal claim that the trustee does not administer before the bankruptcy case is closed, in which case the claim can be “abandoned” and revert to the debtor, *see generally id.* (discussing debtor’s “affirmative duty” under bankruptcy code to schedule all assets; if debtor fails to do so, “those assets continue to belong to the bankruptcy estate and do not revert to the debtor upon discharge”). *See also Shankles v. Gordon*, No. 05-16-00863-CV, 2018 WL 4100030, at *12 (Tex. App.—Dallas Aug. 27, 2018, no pet.) (mem. op.) (“Once an asset becomes a part of the estate, the debtor’s rights in the asset are extinguished unless

the trustee abandons the asset pursuant to section 554 of the United States Bankruptcy Code.” (citing 11 U.S.C. § 554)).

If a legal claim accrues or is acquired after the debtor files for bankruptcy but before a conversion to Chapter 7, that claim is likewise part of the bankruptcy estate. *Id.* at *8. “To determine whether a debtor had a property interest in the causes of action at the time the debtor filed for bankruptcy, courts must determine when the debtor’s causes of action accrued under state law.” *Id.* at *9. A claim accrues the “moment the injury occurred,” *id.*, even if a plaintiff does not learn of the injury until later and even if resulting damages have yet to occur, *S.V. v. R.V.*, 933 S.W.2d 1, 4 (Tex. 1996).

III. Analysis

The face of Burch’s petition shows that his claims against Nationstar accrued in August 2012, when Burch contacted Nationstar over its demand for escrow payments and told a Nationstar representative that it was in breach of contract.⁴ Burch has not

⁴Burch pleaded the following facts:

13. In August 2012 Plaintiff was informed that Nationstar would no longer except [sic] the payments of \$1,153.27 that Plaintiff had been making to Aurora because it was not in compliance with the loan regarding the Note Terms. Plaintiff informed NHMI that under the court order that Plaintiff was required to make princip[al] and interest payments only and that they carried their own insurance. Plaintiff referred the Customer Service Representative to the bankruptcy plan. . . .

responded to Nationstar’s argument about when his claims accrued. Burch’s later-filed bankruptcy case was converted to Chapter 7—with the attendant obligation for Burch to list all his assets, including legal claims—in January 2018. Our review of the record does not suggest any later point in time at which any of Burch’s pleaded claims might have accrued.

Burch’s Chapter 7 asset schedule did not include any possible legal claims against Nationstar, and Burch points us to nothing in the record showing that he had made the trustee aware of his claims. As a result, the Chapter 7 trustee could not have abandoned (and did not abandon) those claims when Burch’s bankruptcy case was later closed and Burch was discharged; exclusive standing to pursue the claims against Nationstar remained with the trustee. *See Shankles*, 2018 WL 4100030, at *7 (noting that debtor–plaintiff agreed that her professional-negligence claims against her attorneys were property of the bankruptcy estate if they arose or accrued before her Chapter 11 was converted to Chapter 7); *see also Douglas*, 987 S.W.2d at 882 (“When Billy filed his bankruptcy petition, his legal[-]malpractice claims became part of the bankruptcy estate. Once the claims became part of the estate, only the bankruptcy

14. The Rep also informed us that we needed to send an extra payment of \$4,273.04 to bring the Escrow up to date. The Rep said that NHMI was not a party to the bankruptcy and therefore did not have to comply [with] the Court Order. Plaintiff told the Rep that that was ridicul[ous]. . . . He also told the Rep that NHMI was in breach of contract.

trustee had standing to pursue them. By filing his bankruptcy petition, Billy relinquished to the trustee any standing to prosecute or dispose of the claims.”).

Moreover, because standing is determined when an original petition is filed, Burch cannot somehow cure his lack of standing and thereby revive this litigation. *See McMillan v. Aycock*, No. 03-18-00278-CV, 2019 WL 1461427, at *2 (Tex. App.—Austin Apr. 3, 2019, no pet.) (mem. op.) (“[I]f the plaintiff lacks standing at the time suit is filed, the case must be dismissed, even if the plaintiff later acquires an interest sufficient to support standing.”); *Bell v. Moores*, 832 S.W.2d 749, 754 (Tex. App.—Houston [14th Dist.] 1992, writ denied) (“A trial court determines its jurisdiction at the time a suit is filed. At that time, the court either has jurisdiction or it does not. Jurisdiction cannot subsequently be acquired while the suit is pending.”).

Because only the Chapter 7 trustee could pursue the claims against Nationstar, the trial court properly granted Nationstar’s motion to dismiss on Burch’s lack of standing, and we overrule what we construe as Burch’s appellate issue attacking that result. Our disposition obviates the need for us to analyze the trial court’s alternative holding dismissing Burch’s claims because his name was not on the Waterford Drive note or deed of trust and granting Nationstar’s summary-judgment motion based on *res judicata* and lack of capacity.

IV. Conclusion

Having held that only Burch's Chapter 7 trustee had standing to pursue any claims against Nationstar, we overrule Burch's issues and affirm the trial court's order of dismissal.

/s/ Elizabeth Kerr
Elizabeth Kerr
Justice

Delivered: May 12, 2022

APPENDIX E

CASE: 02-21-00035-CV

Case:

02-21-00035-CV Date Filed:

02/22/2021

Case Type:

Miscellaneous/other civil

Style:

William Paul Burch

v.:

Nationstar Mortgage Holdings, Inc.

Orig Proc:

No

Transfer From:

Transfer In:

Transfer Case:

Transfer To:

Transfer Out:

Pub Service:

West Publishing

APPELLATE BRIEFS

Date	Event Type	Description	Document
08/06/2021	Electronic reply brief filed	Appellant	[PDF/591 KB] Brief [PDF/88 KB] Notice
07/26/2021	Electronic brief filed - oral argument not requested	Appellee	[PDF/633 KB] Brief [PDF/89 KB] Notice
05/26/2021	Electronic brief filed - oral argument requested	Appellant	[PDF/50.79 MB] Brief [PDF/100 KB] Notice

CASE EVENTS

Date	Event Type	Disposition	Document		
01/12/2023	Mandate issued		[PDF/129 KB]	21035cv BILL OF COST	
			[PDF/135 KB]	21035cv MANDATE	
			[PDF/102 KB]	Notice	
01/04/2023	Order entered				
12/30/2022	Motion for rehearing disposed	Motion or Writ Denied			
11/19/2022	Motion for rehearing filed				
11/18/2022	Petition for review disposed by Supreme Court	Motion or Writ Denied			
09/06/2022	Petition for review filed in Supreme Court				
07/21/2022	Motion for en banc reconsideration disposed	Motion or Writ Denied	[PDF/95 KB]	Notice	
07/12/2022	Motion for en banc reconsideration filed		[PDF/6.22 MB]	Motion	
06/30/2022	Motion for en banc reconsideration disposed	Motion or Writ Denied	[PDF/94 KB]	Notice	
06/13/2022	Motion for en banc reconsideration filed		[PDF/5.30 MB]	Motion	
06/09/2022	Motion for rehearing disposed	Motion or Writ Denied	[PDF/93 KB]	Notice	
05/27/2022	Motion for rehearing filed		[PDF/879 KB]	Motion	
05/12/2022	Memorandum opinion issued	Affirmed	[PDF/117 KB]	Judgment	
			[PDF/184 KB]	Memorandum Opinion	
			[PDF/91 KB]	Notice	
10/19/2021	Submitted				
10/01/2021	Objection disposed	Motion or Writ Denied	[PDF/115 KB]	Notice	
09/29/2021	Objection filed		[PDF/372 KB]	Other	
09/16/2021	Set for submission on briefs - oral argument denied		[PDF/115 KB]	Notice	
08/06/2021	Electronic reply brief filed		[PDF/591 KB]	Brief	
			[PDF/88 KB]	Notice	
07/27/2021	Case ready to be set				
07/26/2021	Electronic brief filed - oral argument not requested		[PDF/633 KB]	Brief	
			[PDF/89 KB]	Notice	
07/22/2021	Motion to withdraw attorney disposed	Motion or Writ Granted	[PDF/93 KB]	Notice	
07/19/2021	Motion to withdraw attorney filed		[PDF/189 KB]	Motion	

Date	Event Type	Disposition	Document
06/21/2021	Motion for extension of time to file brief	Motion or Writ Granted	[PDF/96 KB] Notice
06/21/2021	Motion for extension of time to file brief		[PDF/218 KB] Motion
05/26/2021	Electronic brief filed - oral argument requested		[PDF/50.79 MB] Brief [PDF/100 KB] Notice
04/20/2021	Motion for extension of time to file brief	Motion or Writ Granted	[PDF/96 KB] Notice
04/20/2021	Motion for extension of time to file brief		[PDF/543 KB] Motion
04/19/2021	Record Sent		
03/25/2021	Electronic Clerks Record Filed		[PDF/128 KB] Notice
02/26/2021	Statement of inability to afford costs filed in the court of appeals		[PDF/1014 KB] Other
02/26/2021	Docketing statement filed		
02/22/2021	Notice of appeal filed in court of appeals		[PDF/122 KB] Notice

CALENDARS

Set Date	Calendar Type	Reason Set
01/12/2023	Case Stored	Case stored

PARTIES

Party	PartyType	Representative
Burch, William Paul	Appellant	William Paul Burch
Nationstar Holdings, Inc.	Mortgage Appellee	Taylor W. Meek

TRIAL COURT INFORMATION

Court

236th District Court
County
Tarrant
Court Judge
Honorable Ray Wheless
Court Case
236-307178-19
Reporter
Court Reporter, 236th District Court
Punishment

To view or print PDF files you must have the Adobe Acrobat® reader. This software may be obtained without charge from Adobe. Download the reader from the Adobe Web site

APPENDIX F

236-307178-19

FILED
TARRANT COUNTY
9/29/2020 12:06 PM
THOMAS A. WILDER
DISTRICT CLERK

CAUSE NO. 236-307178-19

WILLIAM PAUL BURCH,

Plaintiff,

v.

NATIONSTAR MORTGAGE
HOLDINGS, INC.

Defendant.

IN THE DISTRICT COURT

236TH JUDICIAL DISTRICT

TARRANT COUNTY, TEXAS

FILED
TARRANT COUNTY
2020 NOV 30 PM 2:31
THOMAS A. WILDER
DISTRICT CLERK

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS
FOR LACK OF SUBJECT MATTER JURISDICTION AND,
ALTERNATIVELY, TRADITIONAL MOTION FOR SUMMARY JUDGMENT**

BEFORE THE COURT IS Defendant's Motion to Dismiss for Lack of Subject Matter Jurisdiction and, Alternatively, Traditional Motion for Summary Judgment. Having considered the Motion and any responses or replies thereto, the pleadings, and applicable legal authorities, the Court concludes the Motion has merit and it is hereby:

ORDERED that Defendant's Motion to Dismiss is GRANTED and Plaintiff's claims are dismissed for lack of subject matter jurisdiction based on Plaintiff's lack of standing.

IT IS FURTHER ORDERED that, in the alternative, Defendant's Motion for Summary Judgment is GRANTED on the grounds that Plaintiff's claims are barred by *res judicata* and further alternatively, Plaintiff's claims are barred by Plaintiff's lack of legal capacity to assert them.

Date

NOV. 30, 2020

Presiding Judge

Ray Wilder

SENIOR JUDGE
366TH DISTRICT COURT
SITTING BY ASSIGNMENT

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS FOR
LACK OF SUBJECT MATTER JURISDICTION AND, ALTERNATIVELY,
TRADITIONAL MOTION FOR SUMMARY JUDGMENT
Cause No. 236-307178-19; William Paul Burch v. Nationstar Mortgage Holdings, Inc.

Page 1 of 1

APPENDIX G

Article I of US Constitution

Article I, Section 1

All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

Article I, Section 2

The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

No Person shall be a Representative who shall not have attained to the Age of twenty five Years, and been seven Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State in which he shall be chosen.

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.

When vacancies happen in the Representation from any State, the Executive Authority thereof shall issue Writs of Election to fill such Vacancies.

The House of Representatives shall chuse their Speaker and other Officers; and shall have the sole Power of Impeachment.

Article I, Section 3

The Senate of the United States shall be composed of two Senators from each State, chosen by the Legislature thereof, for six Years; and each Senator shall have one Vote.

Immediately after they shall be assembled in Consequence of the first Election, they shall be divided as equally as may be into three Classes. The Seats of the Senators of the first Class shall be vacated at the Expiration of the second Year, of the second Class at the Expiration of the fourth Year, and of the third Class at the Expiration of the sixth Year, so that one third may be chosen every second Year; and if Vacancies happen by Resignation, or otherwise, during the Recess of the Legislature of any State, the Executive thereof may make temporary Appointments until the next Meeting of the Legislature, which shall then fill such Vacancies.

No Person shall be a Senator who shall not have attained to the Age of thirty Years, and been nine Years a Citizen of the United States, and who shall not, when elected, be an Inhabitant of that State for which he shall be chosen.

The Vice President of the United States shall be President of the Senate, but shall have no Vote, unless they be equally divided.

The Senate shall chuse their other Officers, and also a President pro tempore, in the Absence of the Vice President, or when he shall exercise the Office of President of the United States.

The Senate shall have the sole Power to try all Impeachments. When sitting for that Purpose, they shall be on Oath or Affirmation. When the President of the United States is tried, the Chief Justice shall preside: And no Person shall be convicted without the Concurrence of two thirds of the Members present.

Judgment in Cases of impeachment shall not extend further than to removal from Office, and disqualification to hold and enjoy any Office of honor, Trust or Profit under the United States: but the Party convicted shall nevertheless be liable and subject to Indictment, Trial, Judgment and Punishment, according to Law.

Article I, Section 4

The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.

The Congress shall assemble at least once in every Year, and such Meeting shall be on the first Monday in December, unless they shall by Law appoint a different Day.

Article I, Section 5

Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide.

Each House may determine the Rules of its Proceedings, punish its Members for disorderly Behaviour, and, with the Concurrence of two thirds, expel a Member.

Each House shall keep a Journal of its Proceedings, and from time to time publish the same, excepting such Parts as may in their Judgment require Secrecy; and the Yeas and Nays of the Members of either House on any question shall, at the Desire of one fifth of those Present, be entered on the Journal.

Neither House, during the Session of Congress, shall, without the Consent of the other, adjourn for more than three days, nor to any other Place than that in which the two Houses shall be sitting.

Article I, Section 6

The Senators and Representatives shall receive a Compensation for their Services, to be ascertained by Law, and paid out of the Treasury of the United States. They shall in all Cases, except Treason, Felony and Breach of the Peace, be privileged from Arrest during their Attendance at the Session of their respective Houses, and in going to and returning from the same; and for any Speech or Debate in either House, they shall not be questioned in any other Place.

No Senator or Representative shall, during the Time for which he was elected, be appointed to any civil Office under the Authority of the United States, which shall have been created, or the Emoluments whereof shall have been encreased during such time; and no Person holding any Office under the United States, shall be a Member of either House during his Continuance in Office.

Article I, Section 7

All Bills for raising Revenue shall originate in the House of Representatives; but the Senate may propose or concur with Amendments as on other Bills.

Every Bill which shall have passed the House of Representatives and the Senate, shall, before it become a Law, be presented to the President of the United States; If

he approve he shall sign it, but if not he shall return it, with his Objections to that House in which it shall have originated, who shall enter the Objections at large on their Journal, and proceed to reconsider it. If after such Reconsideration two thirds of that House shall agree to pass the Bill, it shall be sent, together with the Objections, to the other House, by which it shall likewise be reconsidered, and if approved by two thirds of that House, it shall become a Law. But in all such Cases the Votes of both Houses shall be determined by yeas and Nays, and the Names of the Persons voting for and against the Bill shall be entered on the Journal of each House respectively. If any Bill shall not be returned by the President within ten Days (Sundays excepted) after it shall have been presented to him, the Same shall be a Law, in like Manner as if he had signed it, unless the Congress by their Adjournment prevent its Return, in which Case it shall not be a Law.

Every Order, Resolution, or Vote to which the Concurrence of the Senate and House of Representatives may be necessary (except on a question of Adjournment) shall be presented to the President of the United States; and before the Same shall take Effect, shall be approved by him, or being disapproved by him, shall be repassed by two thirds of the Senate and House of Representatives, according to the Rules and Limitations prescribed in the Case of a Bill.

Article I, Section 8

The Congress shall have Power To lay and collect Taxes, Duties, Imposts and Excises, to pay the Debts and provide for the common Defence and general Welfare of the United States; but all Duties, Imposts and Excises shall be uniform throughout the United States;

To borrow Money on the credit of the United States;

To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes;

To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States;

To coin Money, regulate the Value thereof, and of foreign Coin, and fix the Standard of Weights and Measures;

To provide for the Punishment of counterfeiting the Securities and current Coin of the United States;

To establish Post Offices and post Roads;

To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries;

To constitute Tribunals inferior to the supreme Court;

To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;

To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;

To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

To provide and maintain a Navy;

To make Rules for the Government and Regulation of the land and naval Forces;

To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be employed in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress;

To exercise exclusive Legislation in all Cases whatsoever, over such District (not exceeding ten Miles square) as may, by Cession of particular States, and the Acceptance of Congress, become the Seat of the Government of the United States, and to exercise like Authority over all Places purchased by the Consent of the Legislature of the State in which the Same shall be, for the Erection of Forts, Magazines, Arsenals, dock-Yards, and other needful Buildings;—And

To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

Article I, Section 9

The Migration or Importation of such Persons as any of the States now existing shall think proper to admit, shall not be prohibited by the Congress prior to the Year one thousand eight hundred and eight, but a Tax or duty may be imposed on such Importation, not exceeding ten dollars for each Person.

The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.

No Bill of Attainder or ex post facto Law shall be passed.

No Capitation, or other direct, Tax shall be laid, unless in Proportion to the Census or Enumeration herein before directed to be taken.

No Tax or Duty shall be laid on Articles exported from any State.

No Preference shall be given by any Regulation of Commerce or Revenue to the Ports of one State over those of another: nor shall Vessels bound to, or from, one State, be obliged to enter, clear, or pay Duties in another.

No Money shall be drawn from the Treasury, but in Consequence of Appropriations made by Law; and a regular Statement and Account of the Receipts and Expenditures of all public Money shall be published from time to time.

No Title of Nobility shall be granted by the United States: And no Person holding any Office of Profit or Trust under them, shall, without the Consent of the Congress, accept of any present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or foreign State.

Article I, Section 10

No State shall enter into any Treaty, Alliance, or Confederation; grant Letters of Marque and Reprisal; coin Money; emit Bills of Credit; make any Thing but gold and silver Coin a Tender in Payment of Debts; pass any Bill of Attainder, ex post facto Law, or Law impairing the Obligation of Contracts, or grant any Title of Nobility.

No State shall, without the Consent of the Congress, lay any Imposts or Duties on Imports or Exports, except what may be absolutely necessary for executing it's inspection Laws: and the net Produce of all Duties and Imposts, laid by any State on Imports or Exports, shall be for the Use of the Treasury of the United States; and all such Laws shall be subject to the Revision and Control of the Congress.

No State shall, without the Consent of Congress, lay any Duty of Tonnage, keep Troops, or Ships of War in time of Peace, enter into any Agreement or Compact with another State, or with a foreign Power, or engage in War, unless actually invaded, or in such imminent Danger as will not admit of delay.

APPENDIX H

CIVIL PRACTICE AND REMEDIES CODE

TITLE 2. TRIAL, JUDGMENT, AND APPEAL

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 11. VEXATIOUS LITIGANTS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 11.001. DEFINITIONS. In this chapter:

(1) "Defendant" means a person or governmental entity against whom a plaintiff commences or maintains or seeks to commence or maintain a litigation.

(2) "Litigation" means a civil action commenced, maintained, or pending in any state or federal court.

(3) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(4) "Moving defendant" means a defendant who moves for an order under Section 11.051 determining that a plaintiff is a vexatious litigant and requesting security.

(5) "Plaintiff" means an individual who commences or maintains a litigation pro se.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.01, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.002. APPLICABILITY. (a) This chapter does not apply to an attorney licensed to practice law in this state unless the attorney proceeds pro se.

(b) This chapter does not apply to a municipal court.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 2, eff. September 1, 2013.

SUBCHAPTER B. VEXATIOUS LITIGANTS

Sec. 11.051. MOTION FOR ORDER DETERMINING PLAINTIFF A VEXATIOUS LITIGANT AND REQUESTING SECURITY. In a litigation in this state, the defendant may, on or before the 90th day after the date the defendant files the original answer or makes a special appearance, move the court for an order:

- (1) determining that the plaintiff is a vexatious litigant; and
- (2) requiring the plaintiff to furnish security.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.052. STAY OF PROCEEDINGS ON FILING OF MOTION. (a) On the filing of a motion under Section 11.051, the litigation is stayed and the moving defendant is not required to plead:

- (1) if the motion is denied, before the 10th day after the date it is denied; or
- (2) if the motion is granted, before the 10th day after the date the moving defendant receives written notice that the plaintiff has furnished the required security.

(b) On the filing of a motion under Section 11.051 on or after the date the trial starts, the litigation is stayed for a period the court determines.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.053. HEARING. (a) On receipt of a motion under Section 11.051, the court shall, after notice to all parties, conduct a hearing to determine whether to grant the motion.

(b) The court may consider any evidence material to the ground of the motion, including:

- (1) written or oral evidence; and
- (2) evidence presented by witnesses or by affidavit.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.054. CRITERIA FOR FINDING PLAINTIFF A VEXATIOUS LITIGANT. A court may find a plaintiff a vexatious litigant if the defendant shows that there is not a reasonable probability that the plaintiff will prevail in the litigation against the defendant and that:

(1) the plaintiff, in the seven-year period immediately preceding the date the defendant makes the motion under Section 11.051, has commenced, prosecuted, or maintained at least five litigations as a pro se litigant other than in a small claims court that have been:

- (A) finally determined adversely to the plaintiff;
- (B) permitted to remain pending at least two years without having been brought to trial or hearing; or
- (C) determined by a trial or appellate court to be frivolous or groundless under state or federal laws or rules of procedure;

(2) after a litigation has been finally determined against the plaintiff, the plaintiff repeatedly relitigates or attempts to relitigate, pro se, either:

- (A) the validity of the determination against the same defendant as to whom the litigation was finally determined; or
- (B) the cause of action, claim, controversy, or any of the issues of fact or law determined or concluded by the

final determination against the same defendant as to whom the litigation was finally determined; or

(3) the plaintiff has previously been declared to be a vexatious litigant by a state or federal court in an action or proceeding based on the same or substantially similar facts, transition, or occurrence.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 3, eff. September 1, 2013.

Sec. 11.055. SECURITY. (a) A court shall order the plaintiff to furnish security for the benefit of the moving defendant if the court, after hearing the evidence on the motion, determines that the plaintiff is a vexatious litigant.

(b) The court in its discretion shall determine the date by which the security must be furnished.

(c) The court shall provide that the security is an undertaking by the plaintiff to assure payment to the moving defendant of the moving defendant's reasonable expenses incurred in or in connection with a litigation commenced, caused to be commenced, maintained, or caused to be maintained by the plaintiff, including costs and attorney's fees.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.056. DISMISSAL FOR FAILURE TO FURNISH SECURITY. The court shall dismiss a litigation as to a moving defendant if a plaintiff ordered to furnish security does not furnish the security within the time set by the order.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Sec. 11.057. DISMISSAL ON THE MERITS. If the litigation is dismissed on its merits, the moving defendant has recourse to the security furnished by the plaintiff in an amount determined by the court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. PROHIBITING FILING OF NEW LITIGATION

Sec. 11.101. PREFILING ORDER; CONTEMPT. (a) A court may, on its own motion or the motion of any party, enter an order prohibiting a person from filing, pro se, a new litigation in a court to which the order applies under this section without permission of the appropriate local administrative judge described by Section 11.102(a) to file the litigation if the court finds, after notice and hearing as provided by Subchapter B, that the person is a vexatious litigant.

(b) A person who disobeys an order under Subsection (a) is subject to contempt of court.

(c) A litigant may appeal from a prefiling order entered under Subsection (a) designating the person a vexatious litigant.

(d) A prefiling order entered under Subsection (a) by a justice or constitutional county court applies only to the court that entered the order.

(e) A prefiling order entered under Subsection (a) by a district or statutory county court applies to each court in this state.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.02, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 4, eff. September 1, 2013.

Sec. 11.102. PERMISSION BY LOCAL ADMINISTRATIVE JUDGE.

(a) A vexatious litigant subject to a prefiling order under Section 11.101 is prohibited from filing, pro se, new litigation in a court to which the order applies without seeking the permission of:

(1) the local administrative judge of the type of court in which the vexatious litigant intends to file, except as provided by Subdivision (2); or

(2) the local administrative district judge of the county in which the vexatious litigant intends to file if the litigant intends to file in a justice or constitutional county court.

(b) A vexatious litigant subject to a prefiling order under Section 11.101 who files a request seeking permission to file a litigation shall provide a copy of the request to all defendants named in the proposed litigation.

(c) The appropriate local administrative judge described by Subsection (a) may make a determination on the request with or without a hearing. If the judge determines that a hearing is necessary, the judge may require that the vexatious litigant filing a request under Subsection (b) provide notice of the hearing to all defendants named in the proposed litigation.

(d) The appropriate local administrative judge described by Subsection (a) may grant permission to a vexatious litigant subject to a prefiling order under Section 11.101 to file a litigation only if it appears to the judge that the litigation:

(1) has merit; and

(2) has not been filed for the purposes of harassment or delay.

(e) The appropriate local administrative judge described by Subsection (a) may condition permission on the furnishing of

security for the benefit of the defendant as provided in Subchapter B.

(f) A decision of the appropriate local administrative judge described by Subsection (a) denying a litigant permission to file a litigation under Subsection (d), or conditioning permission to file a litigation on the furnishing of security under Subsection (e), is not grounds for appeal, except that the litigant may apply for a writ of mandamus with the court of appeals not later than the 30th day after the date of the decision. The denial of a writ of mandamus by the court of appeals is not grounds for appeal to the supreme court or court of criminal appeals.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.03, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 5, eff. September 1, 2013.

Sec. 11.103. DUTIES OF CLERK. (a) Except as provided by Subsection (d), a clerk of a court may not file a litigation, original proceeding, appeal, or other claim presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 unless the litigant obtains an order from the appropriate local administrative judge described by Section 11.102(a) permitting the filing.

(b) Repealed by Acts 2013, 83rd Leg., R.S., Ch. 1224, Sec. 10, eff. September 1, 2013.

(c) If the appropriate local administrative judge described by Section 11.102(a) issues an order permitting the filing of the litigation, the litigation remains stayed and the defendant need not plead until the 10th day after the date the defendant is served with a copy of the order.

(d) A clerk of a court of appeals may file an appeal from a prefiling order entered under Section 11.101 designating a person a vexatious litigant or a timely filed writ of mandamus under Section 11.102.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.04, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 7, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 10, eff. September 1, 2013.

Sec. 11.1035. MISTAKEN FILING. (a) If the clerk mistakenly files litigation presented, pro se, by a vexatious litigant subject to a prefiling order under Section 11.101 without an order from the appropriate local administrative judge described by Section 11.102(a), any party may file with the clerk and serve on the plaintiff and the other parties to the litigation a notice stating that the plaintiff is a vexatious litigant required to obtain permission under Section 11.102 to file litigation.

(b) Not later than the next business day after the date the clerk receives notice that a vexatious litigant subject to a prefiling order under Section 11.101 has filed, pro se, litigation without obtaining an order from the appropriate local administrative judge described by Section 11.102(a), the clerk shall notify the court that the litigation was mistakenly filed. On receiving notice from the clerk, the court shall immediately stay the litigation and shall dismiss the litigation unless the plaintiff, not later than the 10th day after the date the notice is filed, obtains an order from the appropriate local

administrative judge described by Section 11.102(a) permitting the filing of the litigation.

(c) An order dismissing litigation that was mistakenly filed by a clerk may not be appealed.

Added by Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 8, eff. September 1, 2013.

Sec. 11.104. NOTICE TO OFFICE OF COURT ADMINISTRATION; DISSEMINATION OF LIST. (a) A clerk of a court shall provide the Office of Court Administration of the Texas Judicial System a copy of any prefiling order issued under Section 11.101 not later than the 30th day after the date the prefiling order is signed.

(b) The Office of Court Administration of the Texas Judicial System shall post on the agency's Internet website a list of vexatious litigants subject to prefiling orders under Section 11.101. On request of a person designated a vexatious litigant, the list shall indicate whether the person designated a vexatious litigant has filed an appeal of that designation.

(c) The Office of Court Administration of the Texas Judicial System may not remove the name of a vexatious litigant subject to a prefiling order under Section 11.101 from the agency's Internet website unless the office receives a written order from the court that entered the prefiling order or from an appellate court. An order of removal affects only a prefiling order entered under Section 11.101 by the same court. A court of appeals decision reversing a prefiling order entered under Section 11.101 affects only the validity of an order entered by the reversed court.

Added by Acts 1997, 75th Leg., ch. 806, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 3 (H.B. 79), Sec. 9.05, eff. January 1, 2012.

Acts 2013, 83rd Leg., R.S., Ch. 1224 (S.B. 1630), Sec. 9,
eff. September 1, 2013.

APPENDIX I

U.S. CONST FOURTEENTH AMENDMENT

Section 1.

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Section 2.

Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a state, or the members of the legislature thereof, is denied to any of the male inhabitants of such state, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such state.

Section 3.

No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any state, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any state legislature, or as an executive or judicial officer of any state, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may by a vote of two-thirds of each House, remove such disability.

Section 4.

The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any state shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations and claims shall be held illegal and void.

Section 5.

The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

APPENDIX J

THE TEXAS CONSTITUTION

ARTICLE 16.

Sec. 50.

PROTECTION OF HOMESTEAD FROM FORCED OR UNAUTHORIZED SALE;
EXCEPTIONS; REQUIREMENTS FOR MORTGAGE LOANS AND OTHER
OBLIGATIONS SECURED BY HOMESTEAD. (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:

(1) the purchase money thereof, or a part of such
purchase money;

(2) the taxes due thereon;

(3) an owelty of partition imposed against the
entirety of the property by a court order or by a written
agreement of the parties to the partition, including a debt of
one spouse in favor of the other spouse resulting from a
division or an award of a family homestead in a divorce
proceeding;

(4) the refinance of a lien against a homestead,
including a federal tax lien resulting from the tax debt of both
spouses, if the homestead is a family homestead, or from the tax
debt of the owner;

(5) work and material used in constructing new
improvements thereon, if contracted for in writing, or work and
material used to repair or renovate existing improvements
thereon if:

(A) the work and material are contracted for in
writing, with the consent of both spouses, in the case of a
family homestead, given in the same manner as is required in
making a sale and conveyance of the homestead;

(B) the contract for the work and material is
not executed by the owner or the owner's spouse before the fifth
day after the owner makes written application for any extension
of credit for the work and material, unless the work and

material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing;

(C) the contract for the work and material expressly provides that the owner may rescind the contract without penalty or charge within three days after the execution of the contract by all parties, unless the work and material are necessary to complete immediate repairs to conditions on the homestead property that materially affect the health or safety of the owner or person residing in the homestead and the owner of the homestead acknowledges such in writing; and

(D) the contract for the work and material is executed by the owner and the owner's spouse only at the office of a third-party lender making an extension of credit for the work and material, an attorney at law, or a title company;

(6) an extension of credit that:

(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;

(B) is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the extension of credit is made;

(C) is without recourse for personal liability against each owner and the spouse of each owner, unless the owner or spouse obtained the extension of credit by actual fraud;

(D) is secured by a lien that may be foreclosed upon only by a court order;

(E) does not require the owner or the owner's spouse to pay, in addition to any interest or any bona fide discount points used to buy down the interest rate, any fees to

any person that are necessary to originate, evaluate, maintain, record, insure, or service the extension of credit that exceed, in the aggregate, two percent of the original principal amount of the extension of credit, excluding fees for:

(i) an appraisal performed by a third party appraiser;

(ii) a property survey performed by a state registered or licensed surveyor;

(iii) a state base premium for a mortgagee policy of title insurance with endorsements established in accordance with state law; or

(iv) a title examination report if its cost is less than the state base premium for a mortgagee policy of title insurance without endorsements established in accordance with state law;

(F) is not a form of open-end account that may be debited from time to time or under which credit may be extended from time to time unless the open-end account is a home equity line of credit;

(G) is payable in advance without penalty or other charge;

(H) is not secured by any additional real or personal property other than the homestead;

(I) (repealed);

(J) may not be accelerated because of a decrease in the market value of the homestead or because of the owner's default under other indebtedness not secured by a prior valid encumbrance against the homestead;

(K) is the only debt secured by the homestead at the time the extension of credit is made unless the other debt was made for a purpose described by Subsections (a)(1)-(a)(5) or Subsection (a)(8) of this section;

(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; or

(ii) if the extension of credit is a home equity line of credit, in periodic payments described under Subsection (t)(8) of this section;

(M) is closed not before:

(i) the 12th day after the later of the date that the owner of the homestead submits a loan 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;

(ii) 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 documentation to the owner or the lender may modify previously provided documentation on the date of closing; and

(iii) the first anniversary of the closing date of any other extension of credit described by Subsection (a)(6) of this section secured by the same homestead property, except a refinance described by Paragraph (Q)(x)(f) of this subdivision, unless the owner on oath requests an earlier closing due to a state of emergency that:

(a) has been declared by the president of the United States or the governor as provided by law; and

(b) applies to the area where the homestead is located;

(N) is closed only at the office of the lender, an attorney at law, or a title company;

(O) permits a lender to contract for and receive any fixed or variable rate of interest authorized under statute;

(P) is made by one of the following that has not been found by a federal regulatory agency to have engaged in the practice of refusing to make loans because the applicants for the loans reside or the property proposed to secure the loans is located in a certain area:

(i) a bank, savings and loan association, savings bank, or credit union doing business under the laws of this state or the United States, including a subsidiary of a bank, savings and loan association, savings bank, or credit union described by this subparagraph;

(ii) a federally chartered lending instrumentality or a person approved as a mortgagee by the United States government to make federally insured loans;

(iii) a person licensed to make regulated loans, as provided by statute of this state;

(iv) a person who sold the homestead property to the current owner and who provided all or part of the financing for the purchase;

(v) a person who is related to the homestead property owner within the second degree of affinity or consanguinity; or

(vi) a person regulated by this state as a mortgage banker or mortgage company; and

(Q) is made on the condition that:

(i) the owner of the homestead is not required to apply the proceeds of the extension of credit to repay another debt except debt secured by the homestead or debt to another lender;

(ii) the owner of the homestead not assign wages as security for the extension of credit;

(iii) the owner of the homestead not sign any instrument in which blanks relating to substantive terms of agreement are left to be filled in;

(iv) the owner of the homestead not sign a confession of judgment or power of attorney to the lender or to

a third person to confess judgment or to appear for the owner in a judicial proceeding;

(v) at the time the extension of credit is made, the owner of the homestead shall receive a copy of the final loan application and all executed documents signed by the owner at closing related to the extension of credit;

(vi) the security instruments securing the extension of credit contain a disclosure that the extension of credit is the type of credit defined by Subsection (a)(6) of this section;

(vii) within a reasonable time after termination and full payment of the extension of credit, the lender cancel and return the promissory note to the owner of the homestead and give the owner, in recordable form, a release of the lien securing the extension of credit or a copy of an endorsement and assignment of the lien to a lender that is refinancing the extension of credit;

(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;

(ix) the owner of the homestead and the lender sign a written acknowledgment as to the fair market value of the homestead property on the date the extension of credit is made;

(x) except as provided by Subparagraph (xi) of this paragraph, the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the lender or holder fails to comply with the lender's or holder's obligations under the extension of credit and fails to correct the failure to comply not later than the 60th day after the date the lender or holder is notified by the borrower of the lender's failure to comply by:

(a) paying to the owner an amount equal to any overcharge paid by the owner under or related to the extension of credit if the owner has paid an amount that

exceeds an amount stated in the applicable Paragraph (E), (G), or (O) of this subdivision;

(b) sending the owner a written acknowledgement that the lien is valid only in the amount that the extension of credit does not exceed the percentage described by Paragraph (B) of this subdivision, if applicable, or is not secured by property described under Paragraph (H) of this subdivision, if applicable;

(c) sending the owner a written notice modifying any other amount, percentage, term, or other provision prohibited by this section to a permitted amount, percentage, term, or other provision and adjusting the account of the borrower to ensure that the borrower is not required to pay more than an amount permitted by this section and is not subject to any other term or provision prohibited by this section;

(d) delivering the required documents to the borrower if the lender fails to comply with Subparagraph (v) of this paragraph or obtaining the appropriate signatures if the lender fails to comply with Subparagraph (ix) of this paragraph;

(e) sending the owner a written acknowledgement, if the failure to comply is prohibited by Paragraph (K) of this subdivision, that the accrual of interest and all of the owner's obligations under the extension of credit are abated while any prior lien prohibited under Paragraph (K) remains secured by the homestead; or

(f) if the failure to comply cannot be cured under Subparagraphs (x)(a)-(e) of this paragraph, curing the failure to comply by a refund or credit to the owner of \$1,000 and offering the owner the right to refinance the extension of credit with the lender or holder for the remaining term of the loan at no cost to the owner on the same terms, including interest, as the original extension of credit with any modifications necessary to comply with this section or on terms on which the owner and the lender or holder otherwise agree that comply with this section; and

(xi) the lender or any holder of the note for the extension of credit shall forfeit all principal and interest of the extension of credit if the extension of credit is made by a person other than a person described under Paragraph (P) of this subdivision or if the lien was not created under a written agreement with the consent of each owner and each owner's spouse, unless each owner and each owner's spouse who did not initially consent subsequently consents;

(7) a reverse mortgage; or

(8) the conversion and refinance of a personal property lien secured by a manufactured home to a lien on real property, including the refinance of the purchase price of the manufactured home, the cost of installing the manufactured home on the real property, and the refinance of the purchase price of the real property.

(b) An owner or claimant of the property claimed as homestead may not sell or abandon the homestead without the consent of each owner and the spouse of each owner, given in such manner as may be prescribed by law.

[(c) No mortgage, trust deed, or other lien on the homestead shall ever be valid unless it secures a debt described by this section, whether such mortgage, trust deed, or other lien, shall have been created by the owner alone, or together with his or her spouse, in case the owner is married. All pretended sales of the homestead involving any condition of defeasance shall be void.]

(d) A purchaser or lender for value without actual knowledge may conclusively rely on an affidavit that designates other property as the homestead of the affiant and that states that the property to be conveyed or encumbered is not the homestead of the affiant.

(e) A refinance of debt secured by a homestead and described by any subsection under Subsections (a)(1)-(a)(5) that includes the advance of additional funds may not be secured by a valid lien against the homestead unless:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) of this section; or

(2) the advance of all the additional funds is for reasonable costs necessary to refinance such debt or for a purpose described by Subsection (a)(2), (a)(3), or (a)(5) of this section.

(f) A refinance of debt secured by the homestead, any portion of which is an extension of credit described by Subsection (a)(6) of this section, may not be secured by a valid lien against the homestead unless either:

(1) the refinance of the debt is an extension of credit described by Subsection (a)(6) or (a)(7) of this section; or

(2) all of the following conditions are met:

(A) the refinance is not closed before the first anniversary of the date the extension of credit was closed;

(B) the refinanced extension of credit does not include the advance of any additional funds other than:

(i) funds advanced to refinance a debt described by Subsections (a)(1) through (a)(7) of this section; or

(ii) actual costs and reserves required by the lender to refinance the debt;

(C) the refinance of the extension of credit is of a principal amount that when added to the aggregate total of the outstanding principal balances of all other indebtedness secured by valid encumbrances of record against the homestead does not exceed 80 percent of the fair market value of the homestead on the date the refinance of the extension of credit is made; and

(D) the lender provides the owner the following written notice on a separate document not later than the third business day after the date the owner submits the loan application to the lender and at least 12 days before the date the refinance of the extension of credit is closed:

"YOUR EXISTING LOAN THAT YOU DESIRE TO REFINANCE IS A HOME EQUITY LOAN. YOU MAY HAVE THE OPTION TO REFINANCE YOUR HOME EQUITY LOAN AS EITHER A HOME EQUITY LOAN OR AS A NON-HOME EQUITY LOAN, IF OFFERED BY YOUR LENDER.

"HOME EQUITY LOANS HAVE IMPORTANT CONSUMER PROTECTIONS. A LENDER MAY ONLY FORECLOSE A HOME EQUITY LOAN BASED ON A COURT ORDER. A HOME EQUITY LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE.

"IF YOU HAVE APPLIED TO REFINANCE YOUR EXISTING HOME EQUITY LOAN AS A NON-HOME EQUITY LOAN, YOU WILL LOSE CERTAIN CONSUMER PROTECTIONS. A NON-HOME EQUITY REFINANCED LOAN:

"(1) WILL PERMIT THE LENDER TO FORECLOSE WITHOUT A COURT ORDER;

"(2) WILL BE WITH RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE; AND

"(3) MAY ALSO CONTAIN OTHER TERMS OR CONDITIONS THAT MAY NOT BE PERMITTED IN A TRADITIONAL HOME EQUITY LOAN.

"BEFORE YOU REFINANCE YOUR EXISTING HOME EQUITY LOAN TO MAKE IT A NON-HOME EQUITY LOAN, YOU SHOULD MAKE SURE YOU UNDERSTAND THAT YOU ARE WAIVING IMPORTANT PROTECTIONS THAT HOME EQUITY LOANS PROVIDE UNDER THE LAW AND SHOULD CONSIDER CONSULTING WITH AN ATTORNEY OF YOUR CHOOSING REGARDING THESE PROTECTIONS.

"YOU MAY WISH TO ASK YOUR LENDER TO REFINANCE YOUR LOAN AS A HOME EQUITY LOAN. HOWEVER, A HOME EQUITY LOAN MAY HAVE A HIGHER INTEREST RATE AND CLOSING COSTS THAN A NON-HOME EQUITY LOAN."

(f-1) A lien securing a refinance of debt under Subsection (f)(2) of this section is deemed to be a lien described by Subsection (a)(4) of this section. An affidavit executed by the owner or the owner's spouse acknowledging that the requirements of Subsection (f)(2) of this section have been met conclusively establishes that the requirements of Subsection (a)(4) of this section have been met.

(g) An extension of credit described by Subsection (a)(6) of this section may be secured by a valid lien against homestead

property if the extension of credit is not closed before the 12th day after the lender provides the owner with the following written notice on a separate instrument:

"NOTICE CONCERNING EXTENSIONS OF CREDIT DEFINED BY SECTION 50(a)(6), ARTICLE XVI, TEXAS CONSTITUTION:

"SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION ALLOWS CERTAIN LOANS TO BE SECURED AGAINST THE EQUITY IN YOUR HOME. SUCH LOANS ARE COMMONLY KNOWN AS EQUITY LOANS. IF YOU DO NOT REPAY THE LOAN OR IF YOU FAIL TO MEET THE TERMS OF THE LOAN, THE LENDER MAY FORECLOSE AND SELL YOUR HOME. THE CONSTITUTION PROVIDES THAT:

"(A) THE LOAN MUST BE VOLUNTARILY CREATED WITH THE CONSENT OF EACH OWNER OF YOUR HOME AND EACH OWNER'S SPOUSE;

"(B) THE PRINCIPAL LOAN AMOUNT AT THE TIME THE LOAN IS MADE MUST NOT EXCEED AN AMOUNT THAT, WHEN ADDED TO THE PRINCIPAL BALANCES OF ALL OTHER LIENS AGAINST YOUR HOME, IS MORE THAN 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME;

"(C) THE LOAN MUST BE WITHOUT RECOURSE FOR PERSONAL LIABILITY AGAINST YOU AND YOUR SPOUSE UNLESS YOU OR YOUR SPOUSE OBTAINED THIS EXTENSION OF CREDIT BY ACTUAL FRAUD;

"(D) THE LIEN SECURING THE LOAN MAY BE FORECLOSED UPON ONLY WITH A COURT ORDER;

"(E) FEES AND CHARGES TO MAKE THE LOAN MAY NOT EXCEED 2 PERCENT OF THE LOAN AMOUNT, EXCEPT FOR A FEE OR CHARGE FOR AN APPRAISAL PERFORMED BY A THIRD PARTY APPRAISER, A PROPERTY SURVEY PERFORMED BY A STATE REGISTERED OR LICENSED SURVEYOR, A STATE BASE PREMIUM FOR A MORTGAGEE POLICY OF TITLE INSURANCE WITH ENDORSEMENTS, OR A TITLE EXAMINATION REPORT;

"(F) THE LOAN MAY NOT BE AN OPEN-END ACCOUNT THAT MAY BE DEBITED FROM TIME TO TIME OR UNDER WHICH CREDIT MAY BE EXTENDED FROM TIME TO TIME UNLESS IT IS A HOME EQUITY LINE OF CREDIT;

"(G) YOU MAY PREPAY THE LOAN WITHOUT PENALTY OR CHARGE;

"(H) NO ADDITIONAL COLLATERAL MAY BE SECURITY FOR THE LOAN;

"(I) (repealed);

"(J) YOU ARE NOT REQUIRED TO REPAY THE LOAN EARLIER THAN AGREED SOLELY BECAUSE THE FAIR MARKET VALUE OF YOUR HOME

DECREASES OR BECAUSE YOU DEFAULT ON ANOTHER LOAN THAT IS NOT SECURED BY YOUR HOME;

"(K) ONLY ONE LOAN DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MAY BE SECURED WITH YOUR HOME AT ANY GIVEN TIME;

"(L) THE LOAN MUST BE SCHEDULED TO BE REPAID IN PAYMENTS THAT EQUAL OR EXCEED THE AMOUNT OF ACCRUED INTEREST FOR EACH PAYMENT PERIOD;

"(M) THE LOAN MAY NOT CLOSE BEFORE 12 DAYS AFTER YOU SUBMIT A LOAN APPLICATION TO THE LENDER OR BEFORE 12 DAYS AFTER YOU RECEIVE THIS NOTICE, WHICHEVER DATE IS LATER; AND MAY NOT WITHOUT YOUR CONSENT CLOSE BEFORE ONE BUSINESS DAY AFTER THE DATE ON WHICH YOU RECEIVE A COPY OF YOUR 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; AND IF YOUR HOME WAS SECURITY FOR THE SAME TYPE OF LOAN WITHIN THE PAST YEAR, A NEW LOAN SECURED BY THE SAME PROPERTY MAY NOT CLOSE BEFORE ONE YEAR HAS PASSED FROM THE CLOSING DATE OF THE OTHER LOAN, UNLESS ON OATH YOU REQUEST AN EARLIER CLOSING DUE TO A DECLARED STATE OF EMERGENCY;

"(N) THE LOAN MAY CLOSE ONLY AT THE OFFICE OF THE LENDER, TITLE COMPANY, OR AN ATTORNEY AT LAW;

"(O) THE LENDER MAY CHARGE ANY FIXED OR VARIABLE RATE OF INTEREST AUTHORIZED BY STATUTE;

"(P) ONLY A LAWFULLY AUTHORIZED LENDER MAY MAKE LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(Q) LOANS DESCRIBED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION MUST:

"(1) NOT REQUIRE YOU TO APPLY THE PROCEEDS TO ANOTHER DEBT EXCEPT A DEBT THAT IS SECURED BY YOUR HOME OR OWED TO ANOTHER LENDER;

"(2) NOT REQUIRE THAT YOU ASSIGN WAGES AS SECURITY;

"(3) NOT REQUIRE THAT YOU EXECUTE INSTRUMENTS WHICH HAVE BLANKS FOR SUBSTANTIVE TERMS OF AGREEMENT LEFT TO BE FILLED IN;

"(4) NOT REQUIRE THAT YOU SIGN A CONFESSION OF JUDGMENT OR POWER OF ATTORNEY TO ANOTHER PERSON TO CONFESS JUDGMENT OR APPEAR IN A LEGAL PROCEEDING ON YOUR BEHALF;

"(5) PROVIDE THAT YOU RECEIVE A COPY OF YOUR FINAL LOAN APPLICATION AND ALL EXECUTED DOCUMENTS YOU SIGN AT CLOSING;

"(6) PROVIDE THAT THE SECURITY INSTRUMENTS CONTAIN A DISCLOSURE THAT THIS LOAN IS A LOAN DEFINED BY SECTION 50(a)(6), ARTICLE XVI, OF THE TEXAS CONSTITUTION;

"(7) PROVIDE THAT WHEN THE LOAN IS PAID IN FULL, THE LENDER WILL SIGN AND GIVE YOU A RELEASE OF LIEN OR AN ASSIGNMENT OF THE LIEN, WHICHEVER IS APPROPRIATE;

"(8) PROVIDE THAT YOU MAY, WITHIN 3 DAYS AFTER CLOSING, RESCIND THE LOAN WITHOUT PENALTY OR CHARGE;

"(9) PROVIDE THAT YOU AND THE LENDER ACKNOWLEDGE THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LOAN CLOSES; AND

"(10) PROVIDE THAT THE LENDER WILL FORFEIT ALL PRINCIPAL AND INTEREST IF THE LENDER FAILS TO COMPLY WITH THE LENDER'S OBLIGATIONS UNLESS THE LENDER CURES THE FAILURE TO COMPLY AS PROVIDED BY SECTION 50(a)(6)(Q)(x), ARTICLE XVI, OF THE TEXAS CONSTITUTION; AND

"(R) IF THE LOAN IS A HOME EQUITY LINE OF CREDIT:

"(1) YOU MAY REQUEST ADVANCES, REPAY MONEY, AND REBORROW MONEY UNDER THE LINE OF CREDIT;

"(2) EACH ADVANCE UNDER THE LINE OF CREDIT MUST BE IN AN AMOUNT OF AT LEAST \$4,000;

"(3) YOU MAY NOT USE A CREDIT CARD, DEBIT CARD, OR SIMILAR DEVICE, OR PREPRINTED CHECK THAT YOU DID NOT SOLICIT, TO OBTAIN ADVANCES UNDER THE LINE OF CREDIT;

"(4) ANY FEES THE LENDER CHARGES MAY BE CHARGED AND COLLECTED ONLY AT THE TIME THE LINE OF CREDIT IS ESTABLISHED AND THE LENDER MAY NOT CHARGE A FEE IN CONNECTION WITH ANY ADVANCE;

"(5) THE MAXIMUM PRINCIPAL AMOUNT THAT MAY BE EXTENDED, WHEN ADDED TO ALL OTHER DEBTS SECURED BY YOUR HOME, MAY NOT EXCEED 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME ON THE DATE THE LINE OF CREDIT IS ESTABLISHED;

"(6) IF THE PRINCIPAL BALANCE UNDER THE LINE OF CREDIT AT ANY TIME EXCEEDS 80 PERCENT OF THE FAIR MARKET VALUE OF YOUR HOME, AS DETERMINED ON THE DATE THE LINE OF CREDIT IS ESTABLISHED, YOU MAY NOT CONTINUE TO REQUEST ADVANCES UNDER THE LINE OF CREDIT UNTIL THE BALANCE IS LESS THAN 80 PERCENT OF THE FAIR MARKET VALUE; AND

"(7) THE LENDER MAY NOT UNILATERALLY AMEND THE TERMS OF THE LINE OF CREDIT.

"THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE."

If the discussions with the borrower are conducted primarily in a language other than English, the lender shall, before closing, provide an additional copy of the notice translated into the written language in which the discussions were conducted.

(h) A lender or assignee for value may conclusively rely on the written acknowledgment as to the fair market value of the homestead property made in accordance with Subsection (a)(6)(Q)(ix) of this section if:

(1) the value acknowledged to is the value estimate in an appraisal or evaluation prepared in accordance with a state or federal requirement applicable to an extension of credit under Subsection (a)(6); and

(2) the lender or assignee does not have actual knowledge at the time of the payment of value or advance of funds by the lender or assignee that the fair market value stated in the written acknowledgment was incorrect.

(i) This subsection shall not affect or impair any right of the borrower to recover damages from the lender or assignee under applicable law for wrongful foreclosure. A purchaser for value without actual knowledge may conclusively presume that a lien securing an extension of credit described by Subsection (a)(6) of this section was a valid lien securing the extension of credit with homestead property if:

(1) the security instruments securing the extension of credit contain a disclosure that the extension of credit secured by the lien was the type of credit defined by Section 50(a)(6), Article XVI, Texas Constitution;

(2) the purchaser acquires the title to the property pursuant to or after the foreclosure of the voluntary lien; and

(3) the purchaser is not the lender or assignee under the extension of credit.

(j) Subsection (a)(6) and Subsections (e)-(i) of this section are not severable, and none of those provisions would have been enacted without the others. If any of those provisions are held to be preempted by the laws of the United States, all of those provisions are invalid. This subsection shall not apply to any lien or extension of credit made after January 1, 1998, and before the date any provision under Subsection (a)(6) or Subsections (e)-(i) is held to be preempted.

(k) "Reverse mortgage" means an extension of credit:

(1) that is secured by a voluntary lien on homestead property created by a written agreement with the consent of each owner and each owner's spouse;

(2) that is made to a person who is or whose spouse is 62 years or older;

(3) that is made without recourse for personal liability against each owner and the spouse of each owner;

(4) under which advances are provided to a borrower:

(A) based on the equity in a borrower's homestead; or

(B) for the purchase of homestead property that the borrower will occupy as a principal residence;

(5) that does not permit the lender to reduce the amount or number of advances because of an adjustment in the interest rate if periodic advances are to be made;

(6) that requires no payment of principal or interest until:

(A) all borrowers have died;

(B) the homestead property securing the loan is sold or otherwise transferred;

(C) all borrowers cease occupying the homestead property for a period of longer than 12 consecutive months without prior written approval from the lender;

(C-1) if the extension of credit is used for the purchase of homestead property, the borrower fails to timely occupy the homestead property as the borrower's principal residence within a specified period after the date the extension of credit is made that is stipulated in the written agreement creating the lien on the property; or

(D) the borrower:

(i) defaults on an obligation specified in the loan documents to repair and maintain, pay taxes and assessments on, or insure the homestead property;

(ii) commits actual fraud in connection with the loan; or

(iii) fails to maintain the priority of the lender's lien on the homestead property, after the lender gives notice to the borrower, by promptly discharging any lien that has priority or may obtain priority over the lender's lien within 10 days after the date the borrower receives the notice, unless the borrower:

(a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to the lender;

(b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings so as to prevent the enforcement of the lien or forfeiture of any part of the homestead property; or

(c) secures from the holder of the lien an agreement satisfactory to the lender subordinating the lien to all amounts secured by the lender's lien on the homestead property;

(7) that provides that if the lender fails to make loan advances as required in the loan documents and if the

lender fails to cure the default as required in the loan documents after notice from the borrower, the lender forfeits all principal and interest of the reverse mortgage, provided, however, that this subdivision does not apply when a governmental agency or instrumentality takes an assignment of the loan in order to cure the default;

(8) that is not made unless the prospective borrower and the spouse of the prospective borrower attest in writing that the prospective borrower and the prospective borrower's spouse received counseling regarding the advisability and availability of reverse mortgages and other financial alternatives that was completed not earlier than the 180th day nor later than the 5th day before the date the extension of credit is closed;

(9) that is not closed before the 12th day after the date the lender provides to the prospective borrower the following written notice on a separate instrument, which the lender or originator and the borrower must sign for the notice to take effect:

"IMPORTANT NOTICE TO BORROWERS

RELATED TO YOUR REVERSE MORTGAGE

"UNDER THE TEXAS TAX CODE, CERTAIN ELDERLY PERSONS MAY DEFER THE COLLECTION OF PROPERTY TAXES ON THEIR RESIDENCE HOMESTEAD. BY RECEIVING THIS REVERSE MORTGAGE YOU MAY BE REQUIRED TO FORGO ANY PREVIOUSLY APPROVED DEFERRAL OF PROPERTY TAX COLLECTION AND YOU MAY BE REQUIRED TO PAY PROPERTY TAXES ON AN ANNUAL BASIS ON THIS PROPERTY.

"THE LENDER MAY FORECLOSE THE REVERSE MORTGAGE AND YOU MAY LOSE YOUR HOME IF:

"(A) YOU DO NOT PAY THE TAXES OR OTHER ASSESSMENTS ON THE HOME EVEN IF YOU ARE ELIGIBLE TO DEFER PAYMENT OF PROPERTY TAXES;

"(B) YOU DO NOT MAINTAIN AND PAY FOR PROPERTY INSURANCE ON THE HOME AS REQUIRED BY THE LOAN DOCUMENTS;

"(C) YOU FAIL TO MAINTAIN THE HOME IN A STATE OF GOOD CONDITION AND REPAIR;

"(D) YOU CEASE OCCUPYING THE HOME FOR A PERIOD LONGER THAN 12 CONSECUTIVE MONTHS WITHOUT THE PRIOR WRITTEN APPROVAL FROM THE LENDER OR, IF THE EXTENSION OF CREDIT IS USED FOR THE PURCHASE OF THE HOME, YOU FAIL TO TIMELY OCCUPY THE HOME AS YOUR PRINCIPAL RESIDENCE WITHIN A PERIOD OF TIME AFTER THE EXTENSION OF CREDIT IS MADE THAT IS STIPULATED IN THE WRITTEN AGREEMENT CREATING THE LIEN ON THE HOME;

"(E) YOU SELL THE HOME OR OTHERWISE TRANSFER THE HOME WITHOUT PAYING OFF THE LOAN;

"(F) ALL BORROWERS HAVE DIED AND THE LOAN IS NOT REPAID;

"(G) YOU COMMIT ACTUAL FRAUD IN CONNECTION WITH THE LOAN;
OR

"(H) YOU FAIL TO MAINTAIN THE PRIORITY OF THE LENDER'S LIEN ON THE HOME, AFTER THE LENDER GIVES NOTICE TO YOU, BY PROMPTLY DISCHARGING ANY LIEN THAT HAS PRIORITY OR MAY OBTAIN PRIORITY OVER THE LENDER'S LIEN WITHIN 10 DAYS AFTER THE DATE YOU RECEIVE THE NOTICE, UNLESS YOU:

"(1) AGREE IN WRITING TO THE PAYMENT OF THE OBLIGATION SECURED BY THE LIEN IN A MANNER ACCEPTABLE TO THE LENDER;

"(2) CONTEST IN GOOD FAITH THE LIEN BY, OR DEFEND AGAINST ENFORCEMENT OF THE LIEN IN, LEGAL PROCEEDINGS SO AS TO PREVENT THE ENFORCEMENT OF THE LIEN OR FORFEITURE OF ANY PART OF THE HOME; OR

"(3) SECURE FROM THE HOLDER OF THE LIEN AN AGREEMENT SATISFACTORY TO THE LENDER SUBORDINATING THE LIEN TO ALL AMOUNTS SECURED BY THE LENDER'S LIEN ON THE HOME.

"IF A GROUND FOR FORECLOSURE EXISTS, THE LENDER MAY NOT COMMENCE FORECLOSURE UNTIL THE LENDER GIVES YOU WRITTEN NOTICE BY MAIL THAT A GROUND FOR FORECLOSURE EXISTS AND GIVES YOU AN OPPORTUNITY TO REMEDY THE CONDITION CREATING THE GROUND FOR FORECLOSURE OR TO PAY THE REVERSE MORTGAGE DEBT WITHIN THE TIME PERMITTED BY SECTION 50(k)(10), ARTICLE XVI, OF THE TEXAS CONSTITUTION. THE LENDER MUST OBTAIN A COURT ORDER FOR

FORECLOSURE EXCEPT THAT A COURT ORDER IS NOT REQUIRED IF THE FORECLOSURE OCCURS BECAUSE:

"(1) ALL BORROWERS HAVE DIED; OR

"(2) THE HOMESTEAD PROPERTY SECURING THE LOAN IS SOLD OR OTHERWISE TRANSFERRED."

"YOU SHOULD CONSULT WITH YOUR HOME COUNSELOR OR AN ATTORNEY IF YOU HAVE ANY CONCERNS ABOUT THESE OBLIGATIONS BEFORE YOU CLOSE YOUR REVERSE MORTGAGE LOAN. TO LOCATE AN ATTORNEY IN YOUR AREA, YOU MAY WISH TO CONTACT THE STATE BAR OF TEXAS."

"THIS NOTICE IS ONLY A SUMMARY OF YOUR RIGHTS UNDER THE TEXAS CONSTITUTION. YOUR RIGHTS ARE GOVERNED IN PART BY SECTION 50, ARTICLE XVI, OF THE TEXAS CONSTITUTION, AND NOT BY THIS NOTICE.";

(10) that does not permit the lender to commence foreclosure until the lender gives notice to the borrower, in the manner provided for a notice by mail related to the foreclosure of liens under Subsection (a)(6) of this section, that a ground for foreclosure exists and gives the borrower at least 30 days, or at least 20 days in the event of a default under Subdivision (6)(D)(iii) of this subsection, to:

(A) remedy the condition creating the ground for foreclosure;

(B) pay the debt secured by the homestead property from proceeds of the sale of the homestead property by the borrower or from any other sources; or

(C) convey the homestead property to the lender by a deed in lieu of foreclosure; and

(11) that is secured by a lien that may be foreclosed upon only by a court order, if the foreclosure is for a ground other than a ground stated by Subdivision (6)(A) or (B) of this subsection.

(1) Advances made under a reverse mortgage and interest on those advances have priority over a lien filed for record in the real property records in the county where the homestead property is located after the reverse mortgage is filed for record in the real property records of that county.

(m) A reverse mortgage may provide for an interest rate that is fixed or adjustable and may also provide for interest that is contingent on appreciation in the fair market value of the homestead property. Although payment of principal or interest shall not be required under a reverse mortgage until the entire loan becomes due and payable, interest may accrue and be compounded during the term of the loan as provided by the reverse mortgage loan agreement.

(n) A reverse mortgage that is secured by a valid lien against homestead property may be made or acquired without regard to the following provisions of any other law of this state:

- (1) a limitation on the purpose and use of future advances or other mortgage proceeds;
- (2) a limitation on future advances to a term of years or a limitation on the term of open-end account advances;
- (3) a limitation on the term during which future advances take priority over intervening advances;
- (4) a requirement that a maximum loan amount be stated in the reverse mortgage loan documents;
- (5) a prohibition on balloon payments;
- (6) a prohibition on compound interest and interest on interest;
- (7) a prohibition on contracting for, charging, or receiving any rate of interest authorized by any law of this state authorizing a lender to contract for a rate of interest; and
- (8) a requirement that a percentage of the reverse mortgage proceeds be advanced before the assignment of the reverse mortgage.

(o) For the purposes of determining eligibility under any statute relating to payments, allowances, benefits, or services provided on a means-tested basis by this state, including supplemental security income, low-income energy assistance, property tax relief, medical assistance, and general assistance:

(1) reverse mortgage loan advances made to a borrower are considered proceeds from a loan and not income; and

(2) undisbursed funds under a reverse mortgage loan are considered equity in a borrower's home and not proceeds from a loan.

(p) The advances made on a reverse mortgage loan under which more than one advance is made must be made according to the terms established by the loan documents by one or more of the following methods:

(1) an initial advance at any time and future advances at regular intervals;

(2) an initial advance at any time and future advances at regular intervals in which the amounts advanced may be reduced, for one or more advances, at the request of the borrower;

(3) an initial advance at any time and future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached;

(4) an initial advance at any time, future advances at times and in amounts requested by the borrower until the credit limit established by the loan documents is reached, and subsequent advances at times and in amounts requested by the borrower according to the terms established by the loan documents to the extent that the outstanding balance is repaid; or

(5) at any time by the lender, on behalf of the borrower, if the borrower fails to timely pay any of the following that the borrower is obligated to pay under the loan documents to the extent necessary to protect the lender's interest in or the value of the homestead property:

(A) taxes;

(B) insurance;

(C) costs of repairs or maintenance performed by a person or company that is not an employee of the lender or a person or company that directly or indirectly controls, is controlled by, or is under common control with the lender;

(D) assessments levied against the homestead property; and

(E) any lien that has, or may obtain, priority over the lender's lien as it is established in the loan documents.

(q) To the extent that any statutes of this state, including without limitation, Section 41.001 of the Texas Property Code, purport to limit encumbrances that may properly be fixed on homestead property in a manner that does not permit encumbrances for extensions of credit described in Subsection (a)(6) or (a)(7) of this section, the same shall be superseded to the extent that such encumbrances shall be permitted to be fixed upon homestead property in the manner provided for by this amendment.

(r) The supreme court shall promulgate rules of civil procedure for expedited foreclosure proceedings related to the foreclosure of liens under Subsection (a)(6) of this section and to foreclosure of a reverse mortgage lien that requires a court order.

(s) The Finance Commission of Texas shall appoint a director to conduct research on the availability, quality, and prices of financial services and research the practices of business entities in the state that provide financial services under this section. The director shall collect information and produce reports on lending activity of those making loans under this section. The director shall report his or her findings to the legislature not later than December 1 of each year.

(t) A home equity line of credit is a form of an open-end account that may be debited from time to time, under which credit may be extended from time to time and under which:

(1) the owner requests advances, repays money, and reborrows money;

(2) any single debit or advance is not less than \$4,000;

(3) the owner does not use a credit card, debit card, or similar device, or preprinted check unsolicited by the borrower, to obtain an advance;

(4) any fees described by Subsection (a)(6)(E) of this section are charged and collected only at the time the extension of credit is established and no fee is charged or collected in connection with any debit or advance;

(5) the maximum principal amount that may be extended under the account, when added to the aggregate total of the outstanding principal balances of all indebtedness secured by the homestead on the date the extension of credit is established, does not exceed an amount described under Subsection (a)(6)(B) of this section;

(6) (repealed);

(7) the lender or holder may not unilaterally amend the extension of credit; and

(8) repayment is to be made in regular periodic installments, not more often than every 14 days and not less often than monthly, beginning not later than two months from the date the extension of credit is established, and:

(A) during the period during which the owner may request advances, each installment equals or exceeds the amount of accrued interest; and

(B) after the period during which the owner may request advances, installments are substantially equal.

(u) The legislature may by statute delegate one or more state agencies the power to interpret Subsections (a)(5)-(a)(7), (e)-(p), and (t), of this section. An act or omission does not violate a provision included in those subsections if the act or omission conforms to an interpretation of the provision that is:

(1) in effect at the time of the act or omission; and

(2) made by a state agency to which the power of interpretation is delegated as provided by this subsection or by an appellate court of this state or the United States.

(v) A reverse mortgage must provide that:

(1) the owner does not use a credit card, debit card, preprinted solicitation check, or similar device to obtain an advance;

(2) after the time the extension of credit is established, no transaction fee is charged or collected solely in connection with any debit or advance; and

(3) the lender or holder may not unilaterally amend the extension of credit.