



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

January 4, 2008

Ms. Diane O'Neal
Clerk, Court of Appeals
Price Daniel Jr. Building
209 West 14th Street, Room 101
Austin, Texas 78701

Via Hand Delivery

RE: Court of Appeals Number: No. 03-06-00273-CV
Trial Court Case Number: D-1-GN-04-000269

Style: *Texas Bankers Association, Finance Commission of Texas and The Credit Union Commission of Texas v. ACORN, et al.*; In the Third Court of Appeals, Austin, Texas

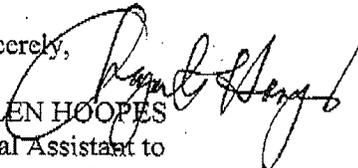
Dear Ms. O'Neal:

Enclosed for filing are the original and four (4) copies of the **Commissions' Motion for Abatement** in the above-referenced case.

Please file-stamp the extra copy to be returned to me by the waiting messenger. All counsel of record have been provided with a copy of same.

Thank you for your attention to this matter.

Sincerely,


ELLEN HOOPES
Legal Assistant to
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cc: *(All via facsimile transmission)*
Bruce E. Priddy
Robert W. Doggett
Alex S. Valdes
Karen M. Neeley
Client Representatives

NO. 03-06-00273-CV

THE FINANCE COMMISSION OF TEXAS, THE	W	IN THE COURT OF APPEALS
CREDIT UNION COMMISSION OF TEXAS,	W	
AND	W	
TEXAS BANKERS ASSOCIATION	W	
<i>Appellants, Cross-Appellees</i>	W	
	W	
VS.	W	THIRD DISTRICT OF TEXAS
	W	
ASSOCIATION OF COMMUNITY	W	
ORGANIZATIONS FOR REFORM NOW	W	
(ACORN), VALERIE NORWOOD, ELISE	W	
SHOWS, MARYANN ROBLES-VALDEZ,	W	
BOBBY MARTIN, PAMELA COOPER, AND	W	
CARLOS RIVAS	W	
<i>Appellees, Cross-Appellants</i>	W	AUSTIN, TEXAS

COMMISSIONS' MOTION FOR ABATEMENT

Appellants, The Finance Commission of Texas and The Credit Union Commission of Texas (herein collectively referred to as the "State"), ask the Court to abate a portion of this appeal for a period of six months. As shown in greater detail in its Brief, the State's appeal concerns the following interpretive rules, which are still in effect: 7 TAC § 153.12 (oral applications); 7 TAC § 153.84 (convenience checks); 7 TAC § 153.22 (requiring that copies of all closing documents be provided to homeowner). The State is requesting abatement with respect to each of these interpretative rules. As grounds for its request, the State shows the following:

Prior to the most recent legislative session, the Texas Finance Commission and the Credit Union Commission drafted a resolution asking the Texas Legislature to clarify certain home equity loan provisions in the Texas Constitution. HJR 72, amending the Texas Constitution, passed in the House and the Senate at the end of May. HJR 72 was then approved by Texas voters in the November 6, 2007 election. The effective date of these constitutional changes was December 4, 2007, the date the Secretary of State canvassed the election on HJR 72.

1. Oral applications and the 12-day notice period

HJR 72 amends Section 50(a)(6)(M)(i) - (ii) to clarify that the 12-day waiting period starts when "a loan application" is submitted or the date that the lender provides the owner a copy of the required consumer disclosure.

(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;

The notice provisions in 50(g) are also amended to reflect this clarification.

"(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

7 TAC § 153.12 interpreted the previous version of Section 50(a)(6)(M)(i). In view of the amendments, Commission staff reasonably anticipates rulemaking interpreting the new constitutional language and superseding its current interpretative rule. Such rulemaking would, of course, moot that portion of the appeal concerning the current version of 7 TAC § 153.12.

2. Preprinted solicitation checks

The Commissions have interpreted Section 50(t)(3) to not otherwise limit the allowable methods for obtaining HELOC advances. Rule 153.84 concludes that a homeowner may use such devices as prearranged drafts, convenience checks or written transfer instructions to obtain advances.

HJR 72 amends Section 50(t) with respect to the issue of preprinted solicitation checks. The new language allows borrowers to use preprinted checks to obtain an advance, if these checks are requested by the borrower:

(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:

(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;

The notice provisions of 50(g) are also amended regarding prohibited access devices:

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

...
"(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;

The Commissions' current rule at 7 TAC § 153.84 interprets the previous version of Section 50(t)(3). In view of amendments to this constitutional provision, Commission staff reasonably anticipates rulemaking interpreting the new language and superseding its current interpretative rule. Such rulemaking would, of course, moot that portion of the appeal which concerns the validity of the current rule at 7 TAC § 153.84.

3. Copies of documents at closing

HJR 72 clarifies that the legislature intends that the lenders provide copies of the documents executed at closing by the borrower. The amendment also requires that the lender provide a copy of the final application to the borrower.

50(a)(6)(Q) is made on the condition that:

(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;

These intentions are also reflected in the amended notice provisions:

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

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

The Commissions' current rule at 7 TAC § 153.22 interprets the previous version of section 50(a)(6)(Q)(v). In view of the amendments approved by voters, Commission

staff reasonably anticipates rulemaking interpreting the new constitutional language and superseding its current interpretative rule. Such rulemaking would, of course, moot the portion of this appeal concerning the validity of 7 TAC § 153.22.

Finally, the State is *not* requesting abatement of that portion of the appeal which concerns the validity of 7 TAC §§ 153.1(11) and 153.5(3)(4)(6)(8)(9) and (12) (interpreting “any interest”), as it is unaware of any constitutional amendments impacting this issue.

Commission staff reasonably anticipates that at the conclusion of rulemaking proceedings, the parties will be in a position to file a joint motion for dismissal of this action, except for that portion of the appeal which concerns the validity of 7 TAC §§ 153.1(11) and 153.5(3)(4)(6)(8)(9) and (12) (interpreting “any interest”).

WHEREFORE, PREMISES CONSIDERED, the State requests abatement for a period of six months with respect to that portion of the appeal which concerns the validity of the following interpretative rules: 7 TAC § 153.12 (oral applications); 7 TAC § 153.84 (convenience checks); 7 TAC § 153.22 (requiring that copies of all closing documents be provided to homeowner).

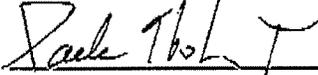
Respectfully submitted,

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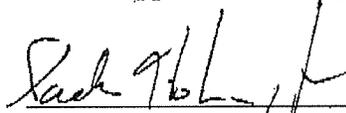
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CERTIFICATE OF CONFERENCE

I certify that I have conferred with Alex S. Valdes, Counsel for Appellants/Cross-Appellees Texas Bankers Association by telephone, and he is unopposed to this motion. With respect to Appellees/Cross-Appellants ACORN and others, the substance of the motion has been discussed with them, and they have requested an opportunity to review the motion itself before they represent whether they are opposed or unopposed.



JACK HOHENGARTEN
Deputy Division Chief

CERTIFICATE OF SERVICE:

I certify that a true copy of the foregoing Commissions' Motion for Abatement has been sent by facsimile this 4th day of January, 2008, to counsel of record as follows:

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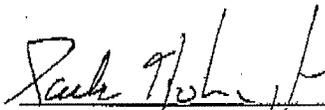
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