

# The Finance Commission of Texas

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RQ-0483-JC

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OPINION COMMITTEE

December 21, 2001

The Honorable John Cornyn  
Texas Attorney General  
P.O. Box 12548  
Capitol Station  
Austin, TX 78711-2548

Via Certified Mail  
Return Receipt Requested  
7099 3220 0003 1923 6806

Re: Request for Attorney General Opinion regarding Tex. Fin. Code §341.502

Dear General Cornyn:

The purpose of this letter is to request an Attorney General Opinion regarding the construction and applicability of Tex. Fin. Code §341.502. The request is being made by the Consumer Credit Commissioner, the Banking Commissioner, and the Savings and Loan Commissioner at the request of the Texas Finance Commission.

With the passage of SB 317 (77<sup>th</sup> Leg.), effective September 1, 2001, the Texas Legislature amended the Finance Code by adding, among others, §341.502. This section requires certain consumer contracts to be written in plain language and states in pertinent part:

Sec. 341.502. FORM OF LOAN CONTRACT. (a) *A contract for a loan under Chapter 342, a retail installment transaction under Chapter 348, or a home equity loan regulated by the Office of Consumer Credit Commissioner, whether in English or Spanish, must be written in plain language designed to be easily understood by the average consumer. The contract must be printed in an easily readable font and type size.*

(Emphasis added.)

The issue that has arisen pertains to which transactions must be written in plain language. Does the phrase in question, "regulated by the Office of Consumer Credit Commissioner," modify only "home equity loans" or all three types of transactions: (i) a loan under Chapter 342, (ii) a retail installment transaction under Chapter 348, and (iii) a home equity loan? The impact

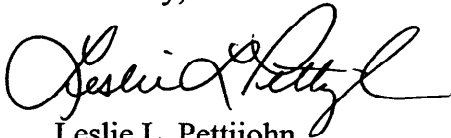
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of this interpretation determines which contracts under Chapter 342 will be subject to plain language requirements. Chapter 342 is entitled "Consumer Loans." The chapter is the governing authority for authorized lenders who desire to make loans to consumers for personal, family, or household use and charge a rate of interest in excess of 10%. Authorized lenders are banks, thrifts, or persons who hold licenses issued by the Office of Consumer Credit Commissioner ("OCCC") under Chapter 342. [Tex. Fin. Code §341.001(1)]. Chapter 348 governs the retail installment sale of motor vehicles, all of which falls under the jurisdiction of the OCCC. Article XVI, Sec. 50 (a)(6) of the Texas Constitution governs the making of home equity loans. This legislation resulted from the Sunset recommendations of the Finance Commission agencies and was passed in SB 317, the OCCC's Sunset bill.

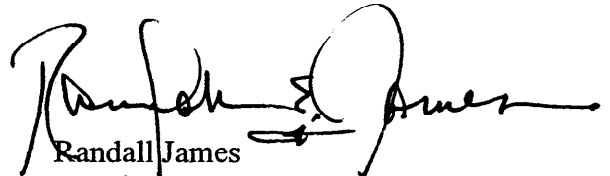
The OCCC recently presented a proposed rule to the Finance Commission to clarify the applicability of the plain language requirement. The OCCC's administrative construction of §341.502 is that the phrase "regulated by the Office of Consumer Credit Commissioner" modifies only the phrase immediately prior to it, i.e., "a home equity loan" (consistent with the doctrine of last antecedent). Banking and thrift trade associations registered their interpretation of this provision with the Finance Commission and Finance Commission agencies. These trade associations have taken the position that the phrase "regulated by the Office of Consumer Credit Commissioner" in §341.502 is a modifier that should be applied to "a contract for a loan under Chapter 342," "a retail installment transaction under chapter 348," and "a home equity loan regulated by the Office of Consumer Credit Commissioner." This provision has only been effective for a short time thus, application of the agency's administrative construction is in the implementation rule-making stage.

We would appreciate your construction of this provision. Should you have questions or require additional information, please contact one of us. Thank you for your attention to this matter.

Sincerely,



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Savings & Loan Commissioner  
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cc: Texas Finance Commission Members