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HOUSE OF REPRESENTATIVES

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Kenny Marchant
DISTRICT 99

COMMITTEE CHAIRMAN: FINANCIAL INSTITUTIONS

December 12, 1997

The Honorable Dan Morales
Attorney General, State of Texas
P.O. Box 12458
Austin, TX 78711-2548

FILE # ML-39979-97
I.D.# 39979

Opinion Committee

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Re: Request for Attorney General's Opinion

Dear Attorney General Morales.

As Chairman of the House Financial Institutions Committee, I am asking for your opinion on certain aspects of House Joint Resolution 31. This proposition, which was approved by Texas voters on November 4, 1997, amends Section 50, Article XVI, Texas Constitution, in several respects. It amends Section 50 to add a new subsection (5) relating to improvement loans on homestead. The new requirements [subparagraphs (A) through (D)] appear to require the following:

1. If work and material are used in constructing "new" improvements, they must be "contracted for in writing."
2. If work and material are used to "repair or renovate existing improvements" on the homestead, the requirements of subparagraph (A) [consent of both spouses], subparagraph (B) [12 day cooling off], subparagraph (C) [right to rescind], and subparagraph (D) [location of execution of contract] apply.

I would appreciate an opinion from you regarding the following:

1. Do the requirements of subparagraphs (A) through (D) apply only to contracts for work and material used to repair or renovate existing improvements?
2. Is the only requirement for a lien on homestead for work and material used in constructing new improvements that the contract be made in writing?

3. Will the following be considered repair or renovation of existing improvements: new house siding, roof replacement, and new windows?
4. Will additional improvements to a homestead, such as a new swimming pool or a new garage be considered "new improvements" for purposes of this constitutional provision, if the improvements do not replace similar existing improvements?
5. Will a contract to build a new house be subject only to the requirement that it be "contracted for in writing?"

Your attention to this matter is urgently requested. The title industry and the banking industry need to know the answers to these questions prior to January 1, 1998, when this amendment to the constitution goes into effect. Thank you in advance for being of assistance.

Sincerely,



Representative Kenny Marchant