

ESTATES CODE

TITLE 3. GUARDIANSHIP AND RELATED PROCEDURES

SUBTITLE I. OTHER SPECIAL PROCEEDINGS AND SUBSTITUTES FOR
GUARDIANSHIP

CHAPTER 1352. MORTGAGE OF MINOR'S INTEREST IN RESIDENCE HOMESTEAD

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1352.001. DEFINITIONS. In this chapter:

(1) "Home equity loan" means a loan made under Section 50(a)(6), Article XVI, Texas Constitution.

(2) "Residence homestead" has the meaning assigned by Section 11.13, Tax Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

SUBCHAPTER B. MORTGAGE OF MINOR'S INTEREST WITHOUT GUARDIANSHIP

Sec. 1352.051. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a minor who:

(1) is not a ward; and

(2) has an interest in a residence homestead.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.052. AUTHORITY TO MORTGAGE MINOR'S INTEREST WITHOUT GUARDIANSHIP. (a) If the net value of a minor's interest in a residence homestead does not exceed \$100,000, a parent, subject to Subsection (b), or managing conservator of the minor may apply to the court under this subchapter for an order authorizing the parent or managing conservator to receive on the minor's behalf, without being appointed guardian, an extension of credit that is secured wholly or partly by a lien on the homestead.

(b) A parent of a minor may file an application under this subchapter only if the parent has a homestead interest in the property that is the subject of the application.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02,

eff. January 1, 2014.

Sec. 1352.053. APPLICATION; VENUE. (a) A parent or managing conservator shall apply to the court under oath for the authority to encumber the residence homestead as provided by this subchapter.

(b) The application must contain:

- (1) the minor's name and address;
- (2) a legal description of the property constituting the homestead;
- (3) a description of the minor's ownership interest in the property constituting the homestead;
- (4) the fair market value of the property constituting the homestead;
- (5) the amount of the home equity loan;
- (6) the purpose or purposes for which the home equity loan is being sought;
- (7) a detailed description of the proposed expenditure of the loan proceeds to be received by the parent or managing conservator on the minor's behalf; and
- (8) a statement that all loan proceeds received by the parent or managing conservator on the minor's behalf through a home equity loan authorized under this subchapter shall be used in a manner that is for the minor's benefit.

(c) Venue for the application is the same as venue for an application for the appointment of a guardian for a minor.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.054. HEARING; REQUIREMENTS TO MORTGAGE MINOR'S INTEREST. (a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than the fifth day after the date the application is filed.

(b) The court may cause citation to be issued if the court considers citation necessary.

(c) At the time of the hearing, the court, on approval of the surety bond required by Section [1352.055](#), shall authorize the

parent or managing conservator to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is:

(1) for a purpose described by Section [1352.056](#)(1) or (2); and

(2) in the minor's best interests.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.055. SURETY BOND; DISCHARGE OF SURETIES.

(a) Before a hearing under Section [1352.054](#) is held, the parent or managing conservator shall file with the county clerk a surety bond. The bond must be:

(1) in an amount at least equal to two times the amount of the proposed home equity loan;

(2) payable to and approved by the court; and

(3) conditioned on the parent or managing conservator:

(A) using the proceeds of the home equity loan attributable to the minor's interest solely for the purposes authorized by Section [1352.056](#); and

(B) making payments on the minor's behalf toward the outstanding balance of the home equity loan.

(b) After the first anniversary of the date a parent or managing conservator executes a home equity loan authorized under this subchapter, the court may, on motion of the borrower, reduce the amount of the surety bond required under this section to an amount that is not less than the loan's outstanding balance.

(c) The court may not discharge the person's sureties from all further liability under a surety bond until the court:

(1) approves the filing of the parent's or managing conservator's reports required under Sections [1352.057](#) and [1352.058](#);

(2) finds that the parent or managing conservator used loan proceeds resulting from the minor's interest solely for the purposes authorized by Section [1352.056](#); and

(3) is presented with satisfactory evidence that the home equity loan has been repaid and is no longer considered an

outstanding obligation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.056. USE OF PROCEEDS. Proceeds of a home equity loan that is the subject of an application under Section 1352.053 that are attributable to the minor's interest may be spent only to:

- (1) make improvements to the homestead;
- (2) pay for the minor's education or medical expenses;

or

- (3) pay the loan's outstanding balance.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.057. ANNUAL REPORT. A parent or managing conservator executing a home equity loan on a minor's behalf under this subchapter shall file an annual report with the court regarding the transaction.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.058. SWORN REPORT OF EXPENDITURES. When the parent or managing conservator has spent the proceeds of a home equity loan authorized under this subchapter, the parent or managing conservator shall file with the county clerk a sworn report accounting for the proceeds.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.059. DISAFFIRMATION OF HOME EQUITY LOAN PROHIBITED. A minor may not disaffirm a home equity loan authorized by the court under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

SUBCHAPTER C. MORTGAGE OF MINOR WARD'S INTEREST WITHOUT
GUARDIANSHIP OF THE ESTATE

Sec. 1352.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a minor ward who:

(1) has a guardian of the person but does not have a guardian of the estate; and

(2) has an interest in a residence homestead.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.102. AUTHORITY TO MORTGAGE MINOR WARD'S INTEREST WITHOUT GUARDIANSHIP OF THE ESTATE. If the net value of a minor ward's interest in a residence homestead does not exceed \$100,000, the guardian of the person of the ward may apply to the court under this subchapter for an order authorizing the guardian to receive on the ward's behalf an extension of credit that is secured wholly or partly by a lien on the homestead.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.103. APPLICATION; VENUE. (a) An application under this subchapter must contain the information required by Section 1352.053(b).

(b) For purposes of Subsection (a), references in Section 1352.053(b) to "parent or managing conservator" are replaced with references to "guardian of the person."

(c) Venue for the application is the same as venue for an application for the appointment of a guardian for a ward.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.104. HEARING; REQUIREMENTS TO MORTGAGE MINOR WARD'S INTEREST. (a) On receipt of an application under this subchapter, the court shall set the application for hearing on a date not earlier than the fifth day after the date the application is filed.

(b) The court may cause citation to be issued if the court considers citation necessary.

(c) The procedures and evidentiary requirements for a hearing of an application filed under this subchapter are the same as the procedures and evidentiary requirements for a hearing of an application filed under Subchapter B.

(d) At the time of the hearing, the court, on approval of the surety bond required by Section 1352.105, shall authorize the guardian to receive the extension of credit sought in the application if the court is satisfied from a preponderance of the evidence that the encumbrance is:

(1) for a purpose described by Section 1352.106(1) or (2); and

(2) in the minor ward's best interests.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.105. SURETY BOND; DISCHARGE OF SURETIES.

(a) Before a hearing under Section 1352.104 is held, the guardian of the person shall file a surety bond with the county clerk to the same extent and in the same manner as a parent or managing conservator of a minor is required to file a surety bond under Section 1352.055.

(b) The court may not discharge the guardian's sureties from all further liability under a bond required by this section or another provision of this title until the court:

(1) finds that the guardian used loan proceeds resulting from the minor ward's interest solely for the purposes authorized by Section 1352.106; and

(2) is presented with satisfactory evidence that the home equity loan has been repaid and is no longer considered an outstanding obligation.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. 2759), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.106. USE OF PROCEEDS. Proceeds of a home equity loan that is the subject of an application under Section 1352.102

that are attributable to the minor ward's interest may be spent only to:

- (1) make improvements to the homestead;
- (2) pay for the ward's education or maintenance expenses; or
- (3) pay the loan's outstanding balance.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.107. ANNUAL ACCOUNTING. A guardian of the person executing a home equity loan on a minor ward's behalf must account for the transaction, including the expenditure of the loan proceeds, in the annual account required by Subchapter A, Chapter [1163](#).

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.

Sec. 1352.108. DISAFFIRMATION OF HOME EQUITY LOAN PROHIBITED. A minor ward may not disaffirm a home equity loan authorized by the court under this subchapter.

Added by Acts 2011, 82nd Leg., R.S., Ch. 823 (H.B. [2759](#)), Sec. 1.02, eff. January 1, 2014.