

Lending: Waiving Waiting Periods

Q: We have had a tremendous amount of storm and tornado damage in our area. Anticipating the need to get funds for repairs available, can a consumer waive the right to rescind in these situations?

A: A 'natural disaster' would qualify as a 'financial emergency' under §1026.15(e) and allow a consumer to waive the right to rescind. To waive or modify the right to rescind, the consumer must give a written statement that includes a description of the emergency, a clear statement that the consumer is waiving the right to rescind, and is signed and dated. Each consumer entitled to rescind must sign the waiver statement.

Under state law, if the property securing the loan is a homestead and an equity loan (50(a)(6)) is being contemplated, there are no waiver provisions for the 12-day period under 7 TAC §153.12 or the right of rescission under 7 TAC §153.25.

Additionally, the one-year prohibition on the refinance of an equity loan under 7 TAC §153.14 can be waived if requested under oath and if there is a state of emergency that has been declared by the President of the United States or the Governor. The declaration must apply to the area where the homestead is located.

For a home improvement loan secured by homestead (50(a)(5)) the Texas Constitution only permits waiver of the five- and three-day waiting periods if there is a condition that materially affects the health and safety of the owner (see 7 TAC §152.13). Such a condition might also create a personal financial emergency if it forced the owner to move off the property and find rental premises.

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