

PREEMPTION OF DUE-ON-SALE PROHIBITIONS

As of March 30, 2013 Current through Pub. L. [112-238](#). (See [Public Laws for the current Congress](#).)

TITLE 12 - BANKS AND BANKING CHAPTER 13 - NATIONAL HOUSING

§ 1701j-3. Preemption of due-on-sale prohibitions

(a) Definitions

For the purpose of this section—

- (1)**the term “due-on-sale clause” means a contract provision which authorizes a lender, at its option, to declare due and payable sums secured by the lender’s security instrument if all or any part of the property, or an interest therein, securing the real property loan is sold or transferred without the lender’s prior written consent;
- (2)**the term “lender” means a person or government agency making a real property loan or any assignee or transferee, in whole or in part, of such a person or agency;
- (3)**the term “real property loan” means a loan, mortgage, advance, or credit sale secured by a lien on real property, the stock allocated to a dwelling unit in a cooperative housing corporation, or a residential manufactured home, whether real or personal property; and
- (4)**the term “residential manufactured home” means a manufactured home as defined in section [5402\(6\)](#) of title [42](#) which is used as a residence; and
- (5)**the term “State” means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Northern Mariana Islands, American Samoa, and the Trust Territory of the Pacific Islands.

(b) Loan contract and terms governing execution or enforcement of due-on-sale options and rights and remedies of lenders and borrowers; assumptions of loan rates

- (1)**Notwithstanding any provision of the constitution or laws (including the judicial decisions) of any State to the contrary, a lender may, subject to subsection (c) of this section, enter into or enforce a contract containing a due-on-sale clause with respect to a real property loan.
- (2)**Except as otherwise provided in subsection (d) of this section, the exercise by the lender of its option pursuant to such a clause shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the lender and the borrower shall be fixed and governed by the contract.
- (3)**In the exercise of its option under a due-on-sale clause, a lender is encouraged to permit an assumption of a real property loan at the existing contract rate or at a rate which is at or below the average between the contract and market rates, and nothing in this section shall be interpreted to prohibit any such assumption.

(c) State prohibitions applicable for prescribed period; subsection (b) provisions applicable upon expiration of such period; loans subject to State and Federal regulation or subsection (b) provisions when authorized by State laws or Federal regulations

(1)In the case of a contract involving a real property loan which was made or assumed, including a transfer of the lien property subject to the real property loan, during the period beginning on the date a State adopted a constitutional provision or statute prohibiting the exercise of due-on-sale clauses, or the date on which the highest court of such State has rendered a decision (or if the highest court has not so decided, the date on which the next highest appellate court has rendered a decision resulting in a final judgment if such decision applies State-wide) prohibiting such exercise, and ending on October 15, 1982, the provisions of subsection (b) of this section shall apply only in the case of a transfer which occurs on or after the expiration of 3 years after October 15, 1982, except that—

(A)a State, by a State law enacted by the State legislature prior to the close of such 3-year period, with respect to real property loans originated in the State by lenders other than national banks, Federal savings and loan associations, Federal savings banks, and Federal credit unions, may otherwise regulate such contracts, in which case subsection (b) of this section shall apply only if such State law so provides; and

(B)the Comptroller of the Currency with respect to real property loans originated by national banks or the National Credit Union Administration Board with respect to real property loans originated by Federal credit unions may, by regulation prescribed prior to the close of such period, otherwise regulate such contracts, in which case subsection (b) of this section shall apply only if such regulation so provides.

(2)

(A)For any contract to which subsection (b) of this section does not apply pursuant to this subsection, a lender may require any successor or transferee of the borrower to meet customary credit standards applied to loans secured by similar property, and the lender may declare the loan due and payable pursuant to the terms of the contract upon transfer to any successor or transferee of the borrower who fails to meet such customary credit standards.

(B)A lender may not exercise its option pursuant to a due-on-sale clause in the case of a transfer of a real property loan which is subject to this subsection where the transfer occurred prior to October 15, 1982.

(C)This subsection does not apply to a loan which was originated by a Federal savings and loan association or Federal savings bank.

(d) Exemption of specified transfers or dispositions

With respect to a real property loan secured by a lien on residential real property containing less than five dwelling units, including a lien on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home, a lender may not exercise its option pursuant to a due-on-sale clause upon—

(1)the creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(2)the creation of a purchase money security interest for household appliances;

(3)a transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(4)the granting of a leasehold interest of three years or less not containing an option to purchase;

(5)a transfer to a relative resulting from the death of a borrower;

(6)a transfer where the spouse or children of the borrower become an owner of the property;

(7)a transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement, by which the spouse of the borrower becomes an owner of the property;

(8)a transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property; or

(9)any other transfer or disposition described in regulations prescribed by the Federal Home Loan Bank Board.

(e) Rules, regulations, and interpretations; future income bearing loans subject to due-on-sale options

(1)The Federal Home Loan Bank Board, in consultation with the Comptroller of the Currency and the National Credit Union Administration Board, is authorized to issue rules and regulations and to publish interpretations governing the implementation of this section.

(2)Notwithstanding the provisions of subsection (d) of this section, the rules and regulations prescribed under this section may permit a lender to exercise its option pursuant to a due-on-sale clause with respect to a real property loan and any related agreement pursuant to which a borrower obtains the right to receive future income.

(f) Effective date for enforcement of Corporation-owned loans with due-on-sale options

The Federal Home Loan Mortgage Corporation (hereinafter referred to as the "Corporation") shall not, prior to July 1, 1983, implement the change in its policy announced on July 2, 1982, with respect to enforcement of due-on-sale clauses in real property loans which are owned in whole or in part by the Corporation.

(g) Balloon payments

Federal Home Loan Bank Board regulations restricting the use of a balloon payment shall not apply to a loan, mortgage, advance, or credit sale to which this section applies.

(Pub. L. 97-320, title III, § 341, Oct. 15, 1982, 96 Stat. 1505; Pub. L. 98-181, title IV, § 473, Nov. 30, 1983, 97 Stat. 1237.)

Codification

Section was enacted as part of the Thrift Institutions Restructuring Act and also as part of the Garn-St Germain Depository Institutions Act of 1982, and not as part of the National Housing Act which comprises this chapter.

Amendments

1983—Subsec. (d). Pub. L. 98-181 substituted "With respect to a real property loan secured by a lien on residential real property containing less than five dwelling units, including a lien on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home, a lender" for "A lender".

Termination of Trust Territory of the Pacific Islands

For termination of Trust Territory of the Pacific Islands, see note set out preceding section 1681 of Title 48, Territories and Insular Possessions.

Transfer of Functions

Federal Home Loan Bank Board abolished and functions transferred, see sections 401 to 406 of Pub. L. 101-73, set out as a note under section 1437 of this title.