

DUE-ON-SALE CLAUSES

Act 351 of 1984

AN ACT to regulate the enforcement of due-on-sale clauses in certain real estate mortgages; and to provide penalties and remedies.

History: 1984, Act 351, Eff. Oct. 15, 1985

The People of the State of Michigan enact:

445.1621 Definitions.

Sec. 1.

As used in this act:

(a) "Assumed" means transfers of real property subject to a real property loan by assumptions, land contracts, wrap-around loans, or transfers subject to the mortgage or similar lien, and other like transfers.

(b) "Blended rate period" means a period of time commencing on the date that a residential window period loan contract is amended as provided in Section 4 and ending either on a date selected by the lender at least 3 years after the period commences or on the date the loan was originally scheduled to become due and payable in full, whichever date is earlier.

(c) "Due-on-sale clause" means a contract provision which authorizes the 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 in the property, securing the real property loan is sold or transferred without the lender's prior written consent.

(d) "FHLBB mortgage index rate" means the national average contract interest rate on conventional 25 plus year fixed rate mortgages charged by all major lenders on mortgage loans for previously occupied homes, as most recently published by the federal home loan bank board in its journal or news releases.

(e) "Lender" means a person or governmental agency, other than the Michigan state housing development authority, making real property loans, including, but not limited to, an individual, a federal or state chartered savings and loan association or savings bank, a state or national bank, a federal or state chartered credit union, an insurance company, or other lender approved as a mortgagee under the national housing act, 12 U.S.C. 1701 to 1750g; a manufactured housing retailer which extends credit; or any assignee or transferee, in whole or in part, of such a person or agency. Lender does not include an individual, with respect to a real property loan made by that individual, if during the calendar year in which that real property loan is made, the individual makes not more than 1 other real property loan.

(f) "Loan secured by a lien on real property" means a loan on the security of any instrument which makes the interest in real property specific security for the payment of the obligation secured by the instrument.

(g) "Loan secured by a lien on stock in a residential cooperative housing corporation" means a loan on the security of the following:

(i) A security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization.

(ii) An assignment of the borrower's interest in the proprietary lease of occupancy agreement issued by such organization.

(h) "Loan secured by a lien on a residential manufactured home, whether real or personal property" means a loan made pursuant to an agreement by which the party extending the credit acquires a security interest in the residential manufactured home.

(i) "Real property loan" means a loan, mortgage, advance, or credit sale secured by a lien on real property, on the stock allocated to a dwelling unit in a cooperative housing corporation, or on a residential manufactured home, whether real or personal property.

(j) "Residential manufactured home" means a manufactured home as defined in section 603(6) of the national manufactured housing construction and safety standards act of 1974, 42 U.S.C. 5402(6), which is used as a residence.

(k) "Residential window period loan" means a window period loan which is 1 of the following:

(i) A loan secured by a lien on real property intended for occupancy by not more than 4 families.

(ii) A loan secured by a lien on stock in a residential cooperative housing corporation.

(iii) A loan secured by a lien on a residential manufactured home, whether real or personal property.

(l) "Sale or transfer" means the conveyance of property, or of any right, title, or interest in property, whether legal or equitable, whether voluntary or involuntary, by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than 3 years, lease option contract, or any other method of conveyance of real property interest.

(m) "Window period loan" means a real property loan which was made or assumed during a period beginning on January 5, 1977, and ending on October 15, 1982, other than a real property loan originated by a federal savings and loan association, a federal savings bank, a national bank, or a federally chartered credit union. A lender's identity with respect to a window period loan shall be the lender's identity on the date the loan was originated.

History: 1984, Act 351, Eff. Oct. 15, 1985 ;-- Am. 1985, Act 136, Imd. Eff. Oct. 15, 1985

445.1622 Enforcement of due-on-sale clause generally.

Sec. 2.

Except for a residential window period loan, a lender may enforce a due-on-sale clause in a real property loan in accordance with the terms of the loan contract. A lender shall enforce a due-on-sale clause in a residential window period loan only in accordance with sections 3 to 5.

History: 1984, Act 351, Eff. Oct. 15, 1985 ;-- Am. 1985, Act 136, Imd. Eff. Oct. 15, 1985

445.1623 Procedure before sale or transfer of property securing residential window period loan containing due-on-sale clause; fees; grounds for enforcement of due-on-sale clause; failure to follow procedure.

Sec. 3.

(1) Before a sale or transfer of property securing a residential window period loan, which contains a due-on-sale clause, the following procedure shall be followed:

(a) The borrower, or the proposed buyer or transferee, shall provide written notice to the lender of the proposed sale or transfer, which notice shall include the name and address of the proposed buyer or transferee and a copy of the agreement of sale or other document under which the sale or transfer shall occur.

(b) Within 5 business days after receipt of the notice required under subdivision (a), the lender may require by written notice mailed or delivered to the proposed buyer or transferee that the proposed buyer or transferee either provide the credit information customarily required by the lender in connection with a credit application or complete the lender's customary credit application for a similar loan secured by similar property.

(c) Within 15 days after receipt of a written notice for credit information or for completion of the lender's customary credit application, the proposed buyer or transferee shall provide the credit information or complete the application as requested by the lender.

(d) Within 20 days after receipt of the credit information or completion of the lender's customary credit application, the lender shall determine whether the proposed buyer or transferee meets the lender's customary credit standards for a similar loan secured by similar property, and shall notify the proposed buyer or transferee in writing, mailed or delivered, of the lender's decision and, in the event of disapproval, the reasons for the disapproval.

(e) If the lender is not in the business of making real property loans, then the determination to be made by the lender under subdivision (d) shall be whether the proposed buyer or transferee meets the credit standards customarily applied by major institutional residential lenders within the geographic market for similar loans secured by similar properties.

(2) A lender may charge a reasonable fee to determine whether a proposed buyer or transferee meets its customary credit standards, which fee shall be paid by the proposed buyer or transferee at the time of submission of the credit information or application required by subsection (1)(c). If the lender determines that the proposed buyer or transferee meets the lender's customary credit standards, the lender may charge the proposed buyer or transferee a loan processing fee in connection with and to be paid at the time of the amendment to the loan contract as provided in section 4. The total amount of the fees permitted by this subsection shall not exceed 1/2 of 1% of the outstanding balance of the residential window period loan plus the actual cost of an endorsement to the lender's

policy of title insurance plus the actual cost of transfer of any private mortgage insurance. Other than the fees provided by this subsection, a lender shall not charge any amount for any reason for a transaction governed by sections 3 to 5.

(3) Except as provided in section 6, a lender may enforce a due-on-sale clause in a residential window period loan if any of the following apply:

(a) The borrower and the proposed buyer or transferee fail to follow in a timely manner the procedures set forth in subsection (1).

(b) The proposed buyer or transferee fails to timely pay a fee charged by the lender under subsection (2).

(c) The lender, in good faith and in accordance with its customary procedures for evaluating creditworthiness, determines that the proposed buyer or transferee does not meet the lender's customary credit standards.

(d) Enforcement is justified by a threat to a legitimate interest of the lender, which includes preventing the impairment or loss of the lender's security.

(4) A lender shall not enforce a due-on-sale clause under either this section or section 4 in a residential window period loan if the lender fails to follow in a timely manner the procedures set forth in subsection (1).

History: 1984, Act 351, Eff. Oct. 15, 1985 ;-- Am. 1985, Act 136, Imd. Eff. Oct. 15, 1985

445.1624 Amendment of loan contract; rate of interest; monthly payments of principal and interest; execution, delivery, and effective date of amendment; lien priority; extending term of loan.

Sec. 4.

(1) If a lender is not entitled to enforce a due-on-sale clause in a residential window period loan under the procedures established in section 3, the lender shall either consent in writing to the proposed sale or transfer or shall offer in writing to consent in writing to the proposed sale or transfer if the borrower agrees to amend the terms of the residential window period loan to provide for a fixed rate of interest for the blended rate period after the date of the sale or transfer at a rate of interest not greater than the arithmetic mean of the rate specified in the loan contract prior to the amendment and the FHLBB mortgage index rate on the date of the offer, and after the blended rate period agreed to, for the remainder of the term as provided in subsection (2).

(2) If the borrower accepts an offer to amend a loan contract as provided in subsection (1), the amended contract shall provide that, after the blended rate period, the rate of interest shall be the rate selected by the lender, but not more than as follows:

(a) If the lender is making fixed rate mortgage loans on similar types of property at the end of the blended rate period, the rate of interest at which the lender is making those loans.

(b) If the lender is not making fixed rate mortgage loans on similar types of property at the end of the blended rate period, the FHLBB mortgage index rate in effect on the last day of the blend rate period.

(3) If the borrower accepts an offer to amend a loan as provided in subsection (1), during the blended rate period agreed to under subsection (1), there shall be monthly payments of principal and interest in an amount sufficient to repay the loan plus interest on the balance outstanding from time to time at the rate in effect during the blended rate period in equal monthly payments over the remaining original amortization period for the loan. At the end of the blended rate period, the monthly payments of principal and interest shall be adjusted to an amount sufficient to repay the loan plus interest on the balance outstanding from time to time at the rate effective after the blended rate period in equal monthly payments over the remaining original amortization period for the loan.

(4) If the borrower accepts an offer by a lender to amend a loan as provided in subsection (1), the amendment shall be executed and delivered at or before the sale or transfer, and shall be effective beginning on the date of the sale or transfer. If for reasons other than acts of the lender the amendment is not executed and delivered before the sale or transfer, then upon consummation of a sale or transfer the lender may enforce a due-on-sale clause. If the borrower amends the loan as provided in subsection (1), then upon consummation of the sale or transfer the lender shall not enforce a due-on-sale clause.

(5) If a loan contract is amended as contemplated by this section, the mortgage securing the loan shall retain the same lien priority which it had immediately prior to such amendment or extension.

(6) Nothing in this act shall be construed to require a lender to extend the term of a residential real property loan.

History: 1984, Act 351, Eff. Oct. 15, 1985 ;-- Am. 1985, Act 136, Imd. Eff. Oct. 15, 1985

445.1625 Limitations on enforcement of due-on-sale clause during term of land contracts or second mortgages.

Sec. 5.

(1) With respect to any residential real property loan, other than a residential real property loan originated by a federal savings and loan association, a federal savings bank, a national bank, or a federally chartered credit union, if the property securing the loan was sold or transferred prior to October 15, 1982 either on any land contract which does not have a due-on-sale clause or subject to a second mortgage in favor of the seller which does not have a due-on-sale clause, then upon 1 or more subsequent sales or transfers of the property without a payoff of that land contract or second mortgage, a lender shall not enforce a due-on-sale clause in its loan contract.

(2) The limitations on enforcement of a due-on-sale clause in subsection (1) shall remain in force only for the term of any land contracts or second mortgages in effect on October 15, 1982 not containing a due-on-sale clause or until those land contracts or second mortgages are paid off, whichever occurs first.

History: 1984, Act 351, Eff. Oct. 15, 1985

445.1626 Circumstances under which enforcement prohibited.

Sec. 6.

A lender shall not enforce a due-on-sale clause in a residential real property loan in any circumstances under which enforcement is prohibited under section 341(d) of the Garn-St. Germain depository institutions act of 1982, 12 U.S.C. 1701j-3, as currently in force.

History: 1984, Act 351, Eff. Oct. 15, 1985

445.1626a Consent to sale or transfer of real property subject to residential window period loan containing due-on-sale clause.

Sec. 6a.

Nothing in this act shall be construed to prohibit a lender, either before or after making a determination of the creditworthiness of a proposed buyer or transferee, from consenting in writing to a sale or transfer of real property that is subject to a residential window period loan containing a due-on-sale clause.

History: Add. 1985, Act 136, Imd. Eff. Oct. 15, 1985

445.1627 Contract for sale or transfer of residential property subject to mortgage; provisions in boldface type.

Sec. 7.

Each contract for the sale or transfer of residential property which is subject to a mortgage shall provide in boldface type substantially as follows:

"Seller understands that consummation of the sale or transfer of the property described in this agreement shall not relieve the seller of any liability that seller may have under the mortgage(s) to which the property is subject, unless otherwise agreed to by the lender or required by law or regulation."

History: 1984, Act 351, Eff. Oct. 15, 1985

445.1628 Violation by lender; liability; action to recover civil fine; prohibited conduct by licensee; liability for civil fine; revocation of license; action for declaratory judgment or injunction; action for actual damages and attorneys' fees.

Sec. 8.

(1) A lender who knowingly enforces or attempts to enforce a due-on-sale clause in violation of this act shall be liable for a civil fine not to exceed \$5,000.00 for each offense. The attorney general or a prosecuting attorney may bring an action to recover a civil fine under this section.

(2) Any person licensed to do business in this state who, while carrying on that business, knowingly advises a person selling or transferring property securing a residential window period loan not to notify a lender as required by section 3 or who knowingly otherwise aids or assists a person in evading the enforcement of a due-on-sale clause enforceable under this act shall be liable for a civil fine not to exceed \$5,000.00 for each offense and shall be subject to revocation of his or her license.

(3) The attorney general, a prosecuting attorney, or any other person may bring an action for 1 or both of the following:

(a) A declaratory judgment that a method, act, or practice violates this act.

(b) An injunction to enjoin a lender, real estate broker, or real estate salesperson which is engaging or is about to engage in a method, act, or practice which violates or would violate this act.

(4) In addition to any other remedy provided by this act, a person who suffers loss as a result of a violation of this act may bring an action to recover actual damages or \$250.00, whichever is greater, together with reasonable attorneys' fees.

History: 1984, Act 351, Eff. Oct. 15, 1985

445.1629 Effective date.

Sec. 9.

This act shall take effect October 15, 1985.

History: 1984, Act 351, Eff. Oct. 15, 1985