(2) The lender may exercise a due-on-sale clause in a window-period loan if:
   (i) The successor or transferee of the borrower fails to meet the lender’s credit standards as set forth in paragraphs (b)(1)(i) and (b)(1)(ii) of this section; or
   (ii) Upon transfer of the security property and not later than fifteen days after written request by the lender, the successor or transferee of the borrower fails to provide information requested by the lender pursuant to paragraph (d)(1)(i) or (d)(1)(ii) of this section, to determine whether such successor or transferee of the borrower meets the lender’s customary credit standards.

(3) The lender shall, within thirty days of receipt of a completed credit application and any other related information provided by the successor or transferee of the borrower, determine whether such successor or transferee meets the customary credit standards of the lender and provide written notice to the successor or transferee of its decision, and the reasons in the event of a disapproval. Failure of the lender to provide such notice shall preclude the lender from exercise of its due-on-sale clause upon the sale or transfer of the property securing the loan.

(4) The lender’s right to exercise a due-on-sale clause pursuant to this paragraph (d)(4) is in addition to any other rights afforded the lender by state law regulating window-period loans with regard to the exercise of due-on-sale clauses and loan assumptions.

§ 191.5 Limitation on exercise of due-on-sale clauses.

(a) General. Except as provided in §191.4(c) and (d)(4) of this part, due-on-sale practices of Federal savings associations and other lenders shall be governed exclusively by the OCC’s regulations, in preemption of and without regard to any limitations imposed by state law on either their inclusion or exercise including, without limitation, state law prohibitions against restraints on alienation, prohibitions against penalties and forfeitures, equitable restrictions and state law dealing with equitable transfers.

(b) Specific limitations. With respect to any loan on the security of a home occupied or to be occupied by the borrower,
   (1) A lender shall not (except with regard to a reverse mortgage) exercise its option pursuant to a due-on-sale clause upon:
      (i) 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: Provided, That such lien or encumbrance is not created pursuant to a contract for deed;
      (ii) The creation of a purchase-money security interest for household appliances;
      (iii) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;
      (iv) The granting of a leasehold interest which has a term of three years or less and which does not contain an option to purchase (that is, either a lease of more than three years or a lease with an option to purchase will allow the exercise of a due-on-sale clause);
      (v) A transfer, in which the transferee is a person who occupies or will occupy the property, which is:
         (A) A transfer to a relative resulting from the death of the borrower;
         (B) A transfer where the spouse or child(ren) becomes an owner of the property; or
         (C) A transfer resulting from a decree of dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse becomes an owner of the property; or
      (vi) A transfer into an inter vivos trust in which the borrower is and remains the beneficiary and occupant of the property, unless, as a condition precedent to such transfer, the borrower refuses to provide the lender with reasonable means acceptable to the lender by which the lender will be assured of timely notice of any subsequent transfer of the beneficial interest or change in occupancy.
   (2) A lender shall not impose a prepayment penalty or equivalent fee
§ 191.6 Interpretations.

The OCC periodically will publish Interpretations under section 341 of the Garn-St Germain Depository Institutions Act of 1982, Public Law 97–320, 96 Stat. 1469, 1505–1507, in the Federal Register in response to written requests sent to the OCC.

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