

DUE-ON-SALE CLAUSES (EXCERPT)
Act 351 of 1984

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