

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

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.