

What Does a “Due-on-Sale” Clause Look Like?

By Matthew S. Chan

(Excerpt from “The TurnKey Investor’s “Subject To” Mortgage Handbook”)

Contrary to popular belief, there is no such monster in any mortgage document that points to itself with a specific name or label, “due-on-sale clause”.

The infamous “due-on-sale clause” is often the paragraph that discusses “acceleration of the loan.”

This is one “due-on-sale” clause from an Alabama mortgage.

Transfer of the Property or a Beneficial Interest in Borrower.

If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender’s prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

This is one “due-on-sale” clause from a Georgia Security Deed (mortgage).

Sale Without Credit Approval.

Lender shall, if permitted by applicable law (including Section 341(d) of the Garn-St. Germain Depository Institutions Act of 1982, 12 U.S.C. 1701j-3(d)) and with the prior approval of the Secretary, require immediate payment in full of all sums secured by this Security Instrument if:

(i) All or part of the Property, or a beneficial interest in a trust owning all or part of the Property, is sold or otherwise transferred (other than by devise or descent), and

(ii) The Property is not occupied by the purchaser or grantee as his or her principal residence, or the purchaser or grantee does so occupy the Property but his or her credit has not been approved in accordance with the requirements of the Secretary.

The next time anyone refers to the “due-on-sale” clause, you need not wonder about it. You now know the clause does not refer to itself as such. You find the Acceleration clause and go read it for yourself. Don’t blindly accept the ideas of others without checking it out for yourself. You will be glad you did.



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