

§591.3

(p)(1) A *window-period loan* means a real property loan, not originated by a Federal savings association, which was made or assumed during a window-period created by state law and subject to that law, which loan was recorded, at the time of origination or assumption, before October 15, 1982, or within 60 days thereafter (December 14, 1982).

(2) The window-period begins on: (i) The date a state adopted a law (by means of a constitutional provision or statute) prohibiting the unrestricted exercise of due-on-sale clauses upon outright transfers of property securing loans subject to the state law creating the window-period, or the effective date of a constitutional or statutory provision so adopted, whichever is later; or

(ii) The date on which the highest court of the state rendered a decision prohibiting such unrestricted exercise (or if the highest court has not so decided, the date on which the next highest appellate court rendered a decision resulting in a final judgment which applies statewide), and ends on the earlier of the date such state law prohibition terminated under state law or October 15, 1982.

(3) Categories of state law which create window-periods by prohibiting the unrestricted exercise of due-on-sale clauses upon outright transfers of property securing loans subject to such state law restrictions include laws or judicial decisions which permit the lender to exercise its option under a due-on-sale clause only where:

(i) The lender's security interest or the likelihood of repayment is impaired; or

(ii) The lender is required to accept an assumption of the existing loan without an interest-rate change or with an interest-rate change below the market interest rate currently being offered by the lender on similar loans secured by similar property at the time of the transfer.

[54 FR 49718, Nov. 30, 1989, as amended at 67 FR 60554, Sept. 26, 2002]

§591.3 Loans originated by Federal savings associations.

(a) With regard to any real property loan originated or to be originated by a Federal savings association, as a mat-

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ter of contract between it and the borrower, a Federal savings association continues to have the power to include a due-on-sale clause in its loan instrument.

(b) Except as otherwise provided in §591.5 of this part with respect to any such loan made on the security of a home occupied or to be occupied by the borrower, exercise by any lender of a due-on-sale clause in a loan originated by a Federal savings association shall be exclusively governed by the terms of the loan contract, and all rights and remedies of the lender and borrower shall at all times be fixed and governed by that contract.

§591.4 Loans originated by lenders other than Federal savings associations.

(a) With regard to any real property loan originated by a lender other than a Federal savings association, as a matter of contract between it and the borrower, the lender has the power to include a due on sale clause in its loan instrument.

(b) Except as otherwise provided in paragraph (c) of this section and §591.5 of this part, the exercise of due-on-sale clauses in loans originated by lenders other than Federal savings associations shall be governed exclusively by the terms of the loan contract, and all rights and remedies of the lender and the borrower shall be fixed and governed by that contract.

(c)(1) In the case of a window-period loan, the provisions of paragraph (b) of this section shall apply only in the case of a sale or transfer of the property subject to the real property loan and only if such sale or transfer occurs on or after October 15, 1985: *Provided, That:*

(i) With respect to real property loans originated in a state by lenders other than national banks, Federal savings associations, and Federal credit unions, a state may otherwise regulate such contracts by state law enacted prior to October 16, 1985, in which case paragraph (b) of this section shall apply only if such state law so provides; and

(ii) With respect to real property loans originated by national banks and Federal credit unions, the Comptroller