

# Stop the impending foreclosure or How to Find Someone to Assume Your Mortgage...

## Part One:

A mortgage assumption involves simply finding a willing and able buyer to take on the responsibilities of your home loan and to assume all aspects of the loan. Loans can even be assumed up to the very day a home is foreclosed on. The buyer will relieve you of your debt obligation to the lender and take up all remaining payments on the balance for the duration of the loan.

### **According to HUD:**

**Assumable Mortgage:** when a home is sold, the seller may be able to transfer the mortgage to the new buyer. This means the mortgage is assumable. Lenders generally require a credit review of the new borrower and may charge a fee for the assumption. Some mortgages contain a due-on-sale clause, which means that the mortgage may not be transferable to a new buyer. Instead, the lender may make you pay the entire balance that is due when you sell the home. An assumable mortgage can help you attract buyers if you sell your home.

**Assumption Clause:** a provision in the terms of a loan that allows the buyer to take legal responsibility for the mortgage from the seller.

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/sfh/buying/glossary](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/sfh/buying/glossary)

## In four easy steps....

### Step 1

**Ask your mortgage holder whether a mortgage assumption will cause the due-on-sale clause to go into effect. The due-on-sale clause in a home loan is the stipulation that the lender could require the entire balance of the loan due upon assumption, meaning that the buyer would either have to refinance the property outright or pay the entire balance of the mortgage on closing. A loan assumption cannot proceed without the lender's agreement.**

### Step 2

**Contact a real-estate professional to market your property to interested buyers who would be willing to participate in a loan assumption. If you prefer not to use a real-estate agent,**

**several websites allow you to market your property to find a buyer willing to assume your loan.**

Step 3

**Market the property as a loan assumption with qualifying, which means that the purchaser's credit rating has to qualify with your lender in order to assume the loan. You will be surprised at how many buyers and investors are willing to take on a loan assumption in this fashion, because it is much easier to obtain financing and have a fast closing when compared to obtaining a brand-new loan.**

Step 4

**Once you have found a viable and credit-qualified buyer, he will need to sign loan-assumption paperwork and a transfer of title into his name at a local title company. This process is very simple, but it must be witnessed by a notary. Once the paperwork is completed, the loan has been assumed, and the new owner can move in.**

### **Tips and Hints:**

- i. Low interest rates attract more buyers for a loan assumption. If you have a high mortgage interest rate, consider refinancing prior to marketing the property as a loan assumption.
  
- ii. Consider short sales. In a short sale, the mortgage lender agrees to permit you to sell the house for less than the balance of the mortgage loan to avoid a foreclosure. If someone come along offering to assume the original mortgage loan, the bank gets the assurance that the full balance of the original loan will be paid while you get to avoid the negative impact a short sale would have on the credit report.
  
- iii. Not all mortgages are assumable. If the original mortgage contract possesses a "due on sale" clause, the mortgage loan cannot be always assumed.(see Part Two)

## **Part Two:**

# About getting around “due-on-sale” clause in your mortgage contract...

## Why the “due-on-sale” clause?

The main reasons for due-on-sale clauses is lenders want and need to know to whom they are loaning money and they need to be able to predict roughly when a mortgage will be paid off.

Lenders cannot tolerate making mortgage loans which will likely last seven years on average because of the due-on-sale clause, only to find that those mortgages are being passed onto subsequent buyers, thereby extending their terms which gives lenders **negative** spreads between their cost of funds and interest income during periods of high interest rates. Actually, the vast majority of lenders have no choice. The due-on-sale clause is required by the various federal agencies.

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## Understanding the Clause...

To understand the clause, you have to break it down into small parts. When you do, you immediately find that "due-on-sale" is a misnomer. A better name would be “due-on-transfer-of-any-interest clause.” The list of actions covered by the actual clause is far broader than just “sales.” The [federal regulation \(12 C.F.R. 591.2\)](#) says the due-on-sale clause is triggered by:

“...transfers of real property subject to a real property loan by assumptions, installment land sales contracts, wraparound loans, contracts for deed, transfers subject to the mortgage or similar lien, and other like transfers.”

A great many think that all you have to do to get around a due-on-"sale" clause is a transaction that is not a "sale" *per se*. As the regulation shows, that is not true.

## Lease options...

Many gurus say you can get around the due-on-sale clause by doing a **lease option** instead of a sale. **Wrong**. Subparagraph (d) of the longer clause covered that. Now you have to look at the law itself [\[§1701j-3\(d\)\(4\)\]](#) to learn that the due-on-sale clause is triggered by **any lease longer than three years**. And it's triggered by **any lease that contains an option to purchase** the property, regardless of the length of the lease.

In the mortgage (Paragraph 6), you promise to "...occupy, establish, and use the Property as Borrower's principal residence within sixty days after execution of this Security Instrument and shall continue to occupy the Property as Borrower's principal residence for at least one year after the date of occupancy..." The lender is prohibited from "unreasonably withholding" permission to not occupy during that period and "extenuating circumstances beyond Borrower's control" are an exception to the occupancy promise. In the absence of lender unreasonableness or extenuating circumstances, you may not do **any** kind of lease until you have lived in the property for a full year.

## **Land trusts...**

Another way around is for the current owner to transfer the property to a trust, then sell the beneficiary interest in the trust to the guy who wants to take over the mortgage.

The [statute](#) [12 USC 1701j-3(d)(8)] and the federal [regulation](#) [12 C.F.R. 591.5 (b)(vi)] say transfer of a home into an *inter vivos* trust does **not** trigger the due-on-sale clause.

## **Mortgage Forbearance Agreement...**

An agreement made between a mortgage lender and delinquent borrower in which the lender agrees not to exercise its legal right to foreclose on a mortgage and the borrower agrees to a mortgage plan that will, over a certain time period, bring the borrower current on his or her payments. A forbearance agreement is not a long-term solution for delinquent borrowers; it is designed for borrowers who have temporary financial problems caused by unforeseen problems such as temporary unemployment or health problems.

## **VA Assumable Mortgages...**

VA loans are the most commonly assumed mortgages, and you do not have to be a veteran to assume these loans. Any VA mortgages made before March 1, 1988, are assumable without a credit check to the new buyer. In this case, both the buyer and the seller are liable if there is a default. Most sellers will not agree to this, and if the seller is a veteran, the remaining balance is taken from his eligibility amount to buy another home using a VA mortgage. For any mortgages made after that date, the buyer must qualify to assume the loan. The buyer must pay an assumption fee to both the lender and the VA. In this case, the seller is released from the liability of the loan.

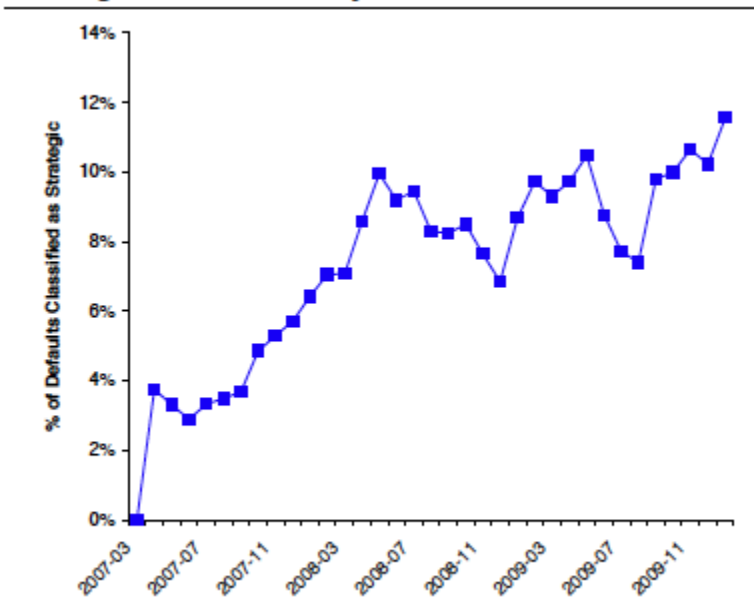
## Part Three:

# Voluntarily Abandoned Mortgages Continue To Grow and Other Options...

More and more defaults are considered “strategic” — where borrowers choose to walk away from underwater mortgage obligations regardless of their ability to pay — although to what extent is still up for debate.

*While recent reports differ on the extent of the problem, the incidence of intentionally abandoned mortgages is mounting as buyers are unconvinced and undeterred by the threat of lender recourse. Although total defaults are most prevalent for those with the poorest credit scores, higher credit scores actually translate into a higher rate of strategic default..*

**Strategic Defaults (%) by Month**



Source: TransUnion, Morgan Stanley Research

## Mortgage Assumption after a divorce

- If you and your spouse discuss the mortgage assumption option as a way for you to keep the family home after your divorce is finalized, contact your lender to find out if it will allow you to assume the mortgage. The lender will need proof that you can afford to pay the mortgage loan based on your income alone. The application process involves completing an assumption agreement and a release of liability. You may also need to provide the lender with copies of your divorce decree and the quitclaim deed. Assuming the existing mortgage can be a practical option if the interest rate on the existing mortgage is low compared to current market rates. There are fees associated with assuming a mortgage, but they are usually less than the cost of refinancing the loan.
- If current market rates are higher than the interest rate on the present mortgage, lenders lose money when they can't refinance the loan. To protect their interests, many lenders include a due-on-sale clause in the mortgage agreement. The clause stipulates that if the property is sold, the borrower must repay the loan. According to the 1982 Garn-St. Germain Law, if your mortgage contract does not include a due-on-sale clause, the lender cannot demand payment when your spouse transfers title of the property to you. The law also maintains that even if your mortgage contract contains a due-on-sale clause, the lender cannot make a divorcing couple pay off the original low-interest-rate mortgage. The lender must allow you to assume the mortgage if you qualify.  
([http://www.newyorkfed.org/research/quarterly\\_review/1982v7/v7n4article6.pdf](http://www.newyorkfed.org/research/quarterly_review/1982v7/v7n4article6.pdf))

## References and helpful links:

Understand the law:

<http://digitalcommons.law.wustl.edu/cgi/viewcontent.cgi?article=1426&context=urbanlaw>

Lease Options:

<http://www.nuwireinvestor.com/articles/10-tips-for-structuring-a-lease-option-51133.aspx>

In the Works:

<http://www.americanprogress.org/issues/housing/news/2012/05/30/11575/tossing-a-lifeline-to-underwater-homeowners/>

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