

July 22, 1998

James P. Shea, Esq.
Flaherty & Shea
329 Elmwood Avenue
Buffalo, New York 14222

Re: Permissible Enforcement of a Due-On-Sale Clause.

Dear Mr. Shea:

We apologize for the delay in our reply. You ask whether a federal credit union (FCU) can enforce a due-on-sale clause contained in a member's mortgage if the member transfers the property securing the mortgage to his son. No, the National Credit Union Administration's (NCUA) regulations prohibit the enforcement of a due-on-sale clause if the property is transferred to a spouse or child of the member.

You state that the Buffalo Fire Department Federal Credit Union (Buffalo FCU) includes due-on-sale clauses in all of its home equity and collateral mortgages. One Buffalo FCU member, who has both a collateral and home equity mortgage secured by his residence, sold the residence to his son. The credit union wants to enforce the due-on-sale clauses contained in the two mortgages. The member contends that the FCU is prohibited from enforcing the due-on-sale clauses under §1701j-3(d)(6) of the National Housing Act. The member is correct.

Section §701.21(g)(6) of NCUA's regulations states that due-on-sale clauses contained in FCU mortgages are governed by §1701j-3(d)(6) of the National Housing Act. The National Housing Act, as well as NCUA's regulations, provides that an FCU may not enforce a due-on-sale clause if the borrower transfers ownership of the property to a spouse or child. 12 U.S.C.A. §1701j-3(d)(6) (West 1989); 12 C.F.R. §701.21(g)(6)(ii)(F). Accordingly, Buffalo FCU is prohibited from exercising the due-on-sale clauses contained in either of its member's mortgages.

Sincerely,

Sheila A. Albin
Associate General Counsel

GC/NSW:bhs
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97-1247