



# UNDERSTANDING THE DUE ON SALE PROVISIONS IN THE GARN ST. GERMAIN ACT

Despite the prevalence of due-on-sale clauses, there are certain legal exceptions that negate lenders' right to demand the full payment of the mortgage. These exemptions include

## **DIVORCE OR LEGAL SEPARATION**

If the borrower files for divorce or legal separation, the property may be transferred to the spouse or child of the marriage without invoking the due-on-sale clause. However, the new owner must occupy the property for this to be the case.

## **INHERITANCE**

If the buyer dies and a relative inherits then occupies the home, the relative cannot be forced to pay off the remaining mortgage balance on demand. However, if the heir chooses not to occupy the home, the transferred title can trigger the due-on-sale clause. This exception is applicable to any circumstances in which the borrower transfers the property to a child or spouse.

## **LIVING TRUSTS**

If the property is transferred into a living trust, as long as the borrower continues to occupy the property and remains the beneficiary of the trust, the lender cannot force the borrower to pay off the mortgage on demand.



## **JOINT TENANCY**

If the borrower entered a joint tenancy agreement when purchasing the house, a lender can't enforce the due-on-sale clause in the event that the borrower dies. Instead, the surviving joint tenant automatically assumes the entire mortgage and can pay it off as initially planned.

