REAL ESTATE FINANCE
Fall Semester 2019
Due-on-Transfer/Due-on-Sale Clauses
The Garn-St. Germain Act

Reading Assignment: Casebook pages 500-516.

Discussion Questions:

1. Mitchell is thinking about buying Litton’s home. Mitchell currently has a mortgage loan (with 15 years remaining on the term) on which there is an existing balance of $150,000, and an interest rate of 4%. Litton wants to take over the payments on Mitchell’s existing mortgage from Bank, because mortgage interest rates have recently increased and Litton’s rate on a new mortgage loan would be 5%.

   (a) How would this affect the price negotiation between Mitchell and Litton over the price of the home?

   (b) Assuming Litton is a responsible, creditworthy borrower (one to which Bank would make a mortgage loan directly), why wouldn’t Bank just allow Litton to assume the existing loan?

2. Bank has a mortgage on Uphoff’s home. § 9 of that mortgage provides as follows:

   If the mortgagor shall sell the mortgaged premises without the prior written consent of the mortgagee, mortgagee may at its option accelerate the maturity of the mortgage debt and demand immediate payment of the accelerated debt.

   In which of the following situations would Bank legally be able to accelerate the maturity of the indebtedness under that clause?

   (a) Uphoff obtains a home equity line of credit from Commerce Bank, secured by a mortgage on the home.

   (b) Following Uphoff’s default on the home equity line of credit described in (a), Commerce Bank forecloses on the home equity line of credit and conducts a foreclosure sale.

   (c) Uphoff gives the home to his son as a birthday gift.

   (d) Uphoff grants Litton an option to purchase the home, exercisable for a period of 2 years.

   (e) Uphoff leases the home to Mitchell for 4 years at $800/month in rent.

3. Would your answer to the problems in Question 2 change if the applicable clause was the one found in ¶ 19 of the Fannie/Freddie Uniform Instrument? [¶ 18, p. 1451]? Why or why not?
4. How would the hypotheticals in Notes 1 and 2 (page 511) and Notes 3 through 6 (pages 512-513) be resolved under a due-on clause that reads as follows:

   If all or any part of the Mortgaged Premises or an interest therein is sold or transferred by Mortgagor without Mortgagee’s prior written consent, Mortgagee may, at Mortgagee’s option, declare all sums secured by this mortgage to be due and payable.

   How about under the due-on clause used in the Fannie Uniform Instrument [¶ 18, p. 1451]?