A landowner mortgaged her land to a nationally chartered bank as security for a loan. The mortgage provided that the bank could, at its option, declare the entire loan due and payable if all or any part of the land, or an interest therein, was sold or transferred without the bank's prior written consent.

Subsequently, the landowner wanted to sell the land to a neighbor by an installment land contract, but the bank refused to consent. The neighbor's credit was good, and all mortgage payments to the bank were fully current.

The landowner and the neighbor consulted an attorney about their proposed transaction, their desire to complete it, and the bank's refusal to consent.

What would the attorney's best advice be?

A. By making the transfer in land contract form, the landowner will prevent enforcement of the due-on-sale clause if the mortgage payments are kept current.

B. Even if the landowner transfers to the neighbor by land contract, the bank may accelerate the debt and foreclose if the full amount is not paid.

C. The due-on-sale clause is void as an illegal restraint on alienation of the fee simple, so they may proceed.

D. The only effect of the due-on-sale clause is that the proposed transfer will automatically make the neighbor personally liable on the debt, whether or not the neighbor specifically agrees to assume it.

Explanation:

Common mortgage provisions

Acceleration clause	Allows creditor to demand entire loan due & payable if debtor defaults
Due-on-sale clause	Allows creditor to demand entire loan due & payable if debtor sells mortgaged property without permission
Due-on-encumbrance clause	Allows creditor to accelerate mortgage obligation if debtor obtains second mortgage or otherwise encumbers property
Defeasance clause	Requires creditor to give debtor legal title to property & release mortgage lien once all payments are made

Mortgage documents are used to convey a lender an interest in real property to secure debt. These documents may contain a **due-on-sale clause**, which allows the lender to demand **full payment** of the remaining mortgage debt if the **debtor transfers** the mortgaged property **without the lender's consent**. If the debtor is **unable to pay**, the lender can bring a **foreclosure action** to force the sale of the property to satisfy any remaining debt.

Here, the landowner seeks to transfer the mortgaged property to the neighbor through an installment land contract *without* the bank's consent. However, the method used to transfer the mortgaged property has no effect on the enforceability of a due-on-sale clause—even if mortgage payments are kept current **(Choice A)**. The attorney should therefore advise the parties that the bank may accelerate the debt and foreclose if the full amount is not paid.

(Choice C) Due-on-sale clauses are restraints on alienation because they restrict a debtor's ability to transfer the mortgaged property. However, these restraints are considered *reasonable* and can be challenged only if the lender engaged in unconscionable conduct when exercising the clause.

(Choice D) Under the due-on-sale clause, the unauthorized transfer will make the landowner personally liable on the debt, but it would make the neighbor liable *only if* he specifically agreed to assume it.

Educational objective:

A due-on-sale clause allows a lender to demand full payment of the remaining mortgage debt if the debtor transfers the mortgaged property without permission. If the debtor is unable to pay, the lender may bring a foreclosure action to force the sale of the property to satisfy any remaining debt.

References

55 Am. Jur. 2d Mortgages § 415 (2019) (due-on-sale clauses).

Rustic Hills Shopping Plaza, Inc. v. Columbia Sav. & Loan Ass'n, 661 P.2d 254, 256–57 (Colo. 1983) (holding that the unauthorized transfer of mortgaged property by an installment land contract triggered the due-on-sale clause).