

# Resource Guide to Statute of Limitations

A statute of limitations is a law that defines the maximum amount of time within which a party involved in a dispute must initiate legal proceedings following an alleged breach. The statute of limitations in foreclosure cases only applies to consumer debt and is triggered by a default on the mortgage. Most states' accelerations start when the Complaint is filed. The statute of limitations will vary depending on the jurisdiction. For example, in some states, making a payment on the time-barred debt will restart the limitations clock.

A creditor often wants to know what happens if the statute of limitations has expired. If the statute of limitations has expired, a creditor can no longer sue on the time-barred debt. If the creditor attempts or threatens litigation on a debt where the statute of limitations has expired, the creditor may be violating the FDCPA.

There are other key questions creditors must ask before proceeding after a default has occurred. Every state requires a Notice of Default and the Intent to Accelerate (NOD) in some form. A creditor is not permitted to foreclose until the NOD has been mailed and the debt has been in default for at least 120 days. Has the NOD been mailed out to the borrower at the property address? Has the borrower notified the creditor, in writing, of a new address? If so, the NOD must be sent to the new address.

Also critical, that the creditor must be in possession of the Note at the time of filing suit. The creditor should also ensure that the proper assignment of mortgage ("AOM") has been recorded. Failure to possess the Note and having the correct AOM recorded could impact a creditor's standing. Standing, which must be established at the beginning of case, cannot be later corrected.

Some courts have found a lender does not have standing when it fails to establish an interest in the Note and/or Mortgage at the time suit was filed. Another key requirement is to ensure the Note contains the proper endorsements and there is a properly recorded AOM. Most courts have determined, without a valid AOM, the Note constitutes evidence of the debt and the mortgage is a mere incident to the obligation. The negotiation of the Note operates as an equitable assignment of mortgage. The phrase typically used is the "mortgage follows the note." Equitable assignment must be specifically pled in the Complaint.

A creditor must also consider whether the particular state permits "in rem proceedings." An in rem proceeding means "against a thing". In such matters, the thing is the real property. For example, if a debtor files a Chapter 7 bankruptcy proceeding and is discharged of the obligation, the creditor is permitted to proceed against the property, but not the person. The Ohio Supreme Court has held that a judgment

on a Note (6 years) and an action to enforce mortgage (21 years) are separate and distinct remedies.

Also of note, we have seen an uptick in what is now characterized as "zombie loans." A zombie loan is mortgage debt that a borrower may have thought was forgiven or satisfied long ago. Typically, these are second mortgages, HELOCs (Home Equity Line of Credit), or lines of credit. These are loans that went into default during the financial crisis – 2008 to 2012. In most instances, the first mortgage was modified with the borrower not realizing that the second mortgage was not part of the modification. The borrower stopped making payments, and the creditor did not foreclose on the loan. Creditors can often run into trouble on zombie loans when they are attempting to collect both the principal and interest, due on the loan. In order to collect interest, and not violate the TILA, the creditor must have sent monthly statements. If no monthly statements have been sent the creditor is prohibited from attempting to collect interest.

Several states have enacted or proposed legislation to set a statute of limitations on zombie loans. Currently Maryland has legislation pending to set a ten-year statute of limitations from the date of the default if the Mortgage has been in default for more than five years.

Therefore, if you are dealing with a zombie loan, it is imperative to consult a lawyer in the jurisdiction within which you seek to foreclose to make sure the SOL has not expired and any actions you seek to take are not in violation of TILA or FDCPA.

## Tips—Things to Remember

- Make sure Notice of Default is correct.
- Correct Assignment of Mortgage has been recorded. If not, is Equitable Assignment an option in the jurisdiction.
- Once Complaint is filed and loan accelerated do not dismiss without confirming jurisdictions SOL.
- If not proper party in-interest it is better to have Court rule, then dismiss.
- If loan mod entered into make sure borrower makes 1st payment before dismissing (FAPA).
- We recommend doing a Motion to Dismiss as opposed to Notice of Dismissal.
  - Set forth reason –
    - » Loan reinstated
    - » Loan modification etc.

Below you will find a spreadsheet on the SOL for 50 states and the District of Columbia. Please use this as a guide. Feel free to reach out to any Legal League attorney practicing in a jurisdiction where you may have a question.

State	Foreclosure SOL	Notes
Alabama	No definite statute of limitations for foreclosure proceedings	Non judicial foreclosure state. Still a six year SOL for suing on a promissory note.
Alaska	6 years	Alaska moves foreclosures both judicially and non-judicially. The SoL is enforceable based off the note and if no demand made to enforce and no P&I has been made for continuous 10 years it is barred
Arizona	6 years	A.R.S. 12-548, A.R.S. 33-816; applies to both nonjudicial and judicial foreclosures
Arkansas	5 years	The statute of limitations for foreclosure is five years. The statute of limitations runs against each installment of a mortgage or deed of trust from the time it becomes due. [Ark. Code Ann. § 16-56-111]
California	4 years	Foreclosures in California are generally conducted nonjudicially. Nonjudicial foreclosures are not subject to statutes of limitation. A nonjudicial foreclosure may occur as long as a deed of trust is valid. Pursuant to Civil Code § 882.020, a deed of trust expires either 10 years after the final maturity date, or the last date set for payment, as shown in the recorded deed of trust, or if no date is found in that recorded document, within 60 years after the recording of the deed of trust. A standard Fannie/Freddie deed of trust reflects the obligation's maturity date, thereby allowing a servicer to gauge that foreclosure must be completed within 10 years from that date. In the event that the 10-year deadline is set to expire, a servicer may extend the deadline for another 10 years by recording a Notice of Intent to Foreclose. Civil Code § 882.020(a)(3). The filing of a Lis pendens may also extend the deadline. Civil Code §§ 8880.260, 882.020.
Colorado	6 years	
Connecticut	6 years	
Delaware	3 to 20 years	Contracting parties can specify a contractual limitations period of up to 20 years in written contracts involving at least \$100,000. In the absence of such specification, a three-year statute of limitations applies to most contract claims.
District of Columbia	6 years	D.C. Code § 28:3-118(a), contract SOL
Florida	5 years	Notice of acceleration should be unequivocal to start the period—Courts tend to look at the default date, but there is an argument that it does not begin until acceleration of the loan, which is generally the filing of the complaint ... or ... if a NOI states the loan "will" be accelerated.
Georgia	6 years	
Hawaii	6 years	6 years SOL on the Note—must enforce note within 6 years of the default. Mortgage is 20 years from date when right to foreclose first accrued. HI Rev Stat sec 657-31

<b>Idaho</b>	note maturity plus five years	Pursuant to Idaho Code § 45-1515, a foreclosure on a deed of trust is governed by the same statute of limitations as foreclosure on a mortgage for real property. Therefore, a foreclosure action on a deed of trust in the state of Idaho must be brought within 5 years of the date of maturity (default) [I.C. § 5-214A, and <i>Isaak v. Idaho First National Bank</i> , 119 Idaho 907, 811 P.2d 832 (1991)]. This 5-year period begins to run from the maturity date of the defaulted obligation. There is no requirement that a foreclosure action be brought immediately upon default [ <i>Isaak v. Idaho First National Bank</i> , 119 Idaho 907, 811 P.2d 832 (1991)].
<b>Illinois</b>	10 years	Typical for contractual claims—IL is 10 years from default or 10 years from maturity. Under Illinois law a lender can potentially advance the default date to cure an SOL issue.
<b>Indiana</b>	6 years SOL on the Note from missed payment, acceleration or maturity	Typical for contractual claims. Making a payment on the Note after default can restart the clock on SOL. For mortgages entered into prior to 7.01.12, 20 years after the lien executed unless foreclosure brought and for mortgages executed after 6.30.12, 10 years from maturity date of mortgage
<b>Iowa</b>	10 years	2 year statute of limitations on enforcing deficiency judgments
<b>Kansas</b>	5 years	For an action upon any agreement, contract or promise in writing, Kansas Statute § 60-511 sets the statute of limitations at 5 years. Kansas courts have recognized that the acceleration clause in a note or mortgage dictates when a foreclosure action accrues for purposes of the statute of limitations. If the clause provides that the entire debt becomes due on the failure to make payments, the statute of limitations begins to run with the default. However, if the clause provides the holder of the note with the option to mature the entire debt upon default, the statute of limitations does not begin to run until the holder exercises the option to accelerate the entire amount. If the holder elects not to exercise the option upon default, the statute would not run earlier than the time originally fixed for the maturity of the note [ <i>FGB Realty Advisors, Inc. v. Keller</i> , 22 Kan. App.2d 853, 923 P.2d 520 (1996)].
<b>Kentucky</b>	6 years (governed by UCC negotiable instrument SOL, not KY written contract SOL). 15 years on the Mortgage after right to institute first accrued	UCC Article 3 creates a trap in Kentucky. The time to bring an action on a negotiable instrument is not 10 years (or 15 if signed prior to July 1, 2014) as specified under the general limitations statutes for written instruments in KY, but rather only 6 years after maturity, or if the due date is accelerated due to default, 6 years after the accelerated due date.
<b>Louisiana</b>	Mortgages with a maturity prescribe 6 years after maturity and cannot be enforced.	If payments are not demanded, after 5 years, any payment 5 years plus, may not be collected.
<b>Maine</b>	20 years	In Maine, actions to enforce or foreclose a mortgage in Maine must generally commence within 20 years after the cause of action accrues, unless otherwise specified by statute. However, for actions on mortgage notes or obligations secured by a mortgage, a specific limitation applies: If seeking a deficiency judgment after foreclosure by sale under a power contained in the mortgage, the action must be started within 2 years after the delivery of the deed to the purchaser or agent. For undischarged mortgages, if the mortgagor and successors have been in uninterrupted possession for 20 years after the expiration of the mortgage terms, no action can be brought to enforce the mortgage. The statute of limitations for enforcing a promissory note (the underlying debt instrument for most mortgages) is generally 6 years from the due date stated in the note or, if accelerated, from the accelerated due date. However, if the promissory note was signed in the presence of an attesting witness or is under seal, the statute of limitations may extend to 20 years.
<b>Maryland</b>	None	There is no statute of limitations applicable to foreclosure actions in Maryland. The Court of Appeals held in <i>Cunningham v. Davidoff</i> , 188 Md. 437 (1947), that there was no statute of limitations on foreclosure sales, and that this remains the law today.

<b>Massachusetts</b>	6 years	In Massachusetts, the statute of limitations for foreclosure is different than that applied to actions seeking to collect on the Note. The Obsolete Mortgage statute found at G.L. c. 260, § 33 bars a mortgagee from exercising the statutory power of sale incorporated into a Mortgage more than 5 years after the maturity date stated in the Mortgage or, if the Mortgage does not provide a maturity date, 35 years from the date that the Mortgage was recorded. In contrast, G.L. c. 106, § 3-118 provides that an action to collect on a promissory note must be commenced within 6 years of the maturity date or accelerated maturity date or within 6 years of any demand for payment sent to the borrower or within 10 years of the last payment.
<b>Michigan</b>	6 years on the note	Foreclosure action is time-barred 15 years from when the mortgage becomes due or 15 years after the last payment, whichever comes first. However, a breach of contract claim related to the accelerated debt has a 6-year statute of limitations. The 6 years begins with the last payment made or the date of acceleration.
<b>Minnesota</b>	6 years on the note from stated maturity date or date of acceleration.	15 years to foreclose on the mortgage from stated maturity date or, if none, the date of the mortgage.
<b>Mississippi</b>	6 years	Non judicial foreclosure statute.
<b>Missouri</b>	10 years	Missouri has a 10-year statute of limitations for any action based upon any writing (such as a promissory note) for the payment of money. Suit or foreclosure must be commenced within 10 years of the maturity date of the note. Any other cause of action based upon a contract is governed by a 5-year statute of limitations.
<b>Montana</b>	8 years	A mortgage is valid from the time of recording until 8 years after the debt matures, unless an affidavit is filed to extend for an additional 8 years [MCA 71-1-210]. Pursuant to MCA 71-1-305, a trust indenture (deed of trust) is treated as a mortgage.
<b>Nebraska</b>	5 years on the note	10 years to foreclose on the mortgage
<b>Nevada</b>	6 years on the note	10 years to foreclose on the mortgage
<b>New Hampshire</b>	20 years on the Mortgage	Mortgage proceedings are governed by a twenty-year statute of limitations in New Hampshire. In re St. Onge, 317 B.R. 39, 44 (Bankr.D.N.H. 2004).
<b>New Jersey</b>	6 years	
<b>New Mexico</b>	6 years	
<b>New York</b>	6 years	6 years from the date of acceleration of the mortgage debt. In NY, acceleration occurs at the date of filing of the Summons and Complaint to commence the foreclosure action. If the loan has matured, the 6 year statute of limitations runs from the date of maturity.
<b>North Carolina</b>	3 years, but 10 if note signed under seal	10 years to foreclose on the mortgage
<b>North Dakota</b>	10 years	Judgment liens are valid for a period of 10 years after docketing and may be extended by filing an affidavit of renewal of judgment. The lien created by a mortgage expires 10 years after the final maturity date noted in the document. If no maturity date is ascertainable from the document, the mortgage lien expires 10 years after the date the mortgage is recorded [N.D.C.C. § 35-03-14]. See procedures to extend mortgage at N.D.C.C. § 35-03-15. Deficiency judgments on agricultural land expire 3 years from entry of judgment [N.D.C.C. § 32-19-06.2].
<b>Ohio</b>	6 years for claims that accrue on or after June 14, 2021	Standard period for written contracts. Formerly 8 years in Ohio. Some conflicting case law saying 21 years for mortgage foreclosure, even when action on note barred after 6.

<b>Oklahoma</b>	7 years after maturity, 6 years after acceleration	7 years from the date the last maturing obligation secured by such mortgage, contract for deed or deed of trust becomes due as set out therein
<b>Oregon</b>	6 Years	No mortgage upon real property shall be a lien upon such property after the expiration of 10 years from the later of the date of maturity of the mortgage debt, the expiration of the term of the mortgage debt, or the date to which the payment thereof has been extended by agreement of record; and after such 10 years, the mortgage shall be conclusively presumed paid and discharged, and no suit shall be maintainable for its foreclosure. If neither the date of maturity nor the term of the debt is disclosed by the recorded mortgage or recorded memorandum thereof, then the date of the execution of the recorded mortgage or recorded memorandum thereof shall be deemed the date of maturity and expiration of the term of the mortgage debt for purposes of this section. If the mortgage and a memorandum or memoranda thereof are of record, and no date of maturity or statement of the term of the mortgage is contained in the mortgage or memoranda, then the date of execution of the earliest document of record shall be used to determine the date of maturity and the expiration of the term of the debt [ORS 88.110, Nonjudicial provision 86.815].
<b>Pennsylvania</b>	First mortgages signed "under seal" the SOL is 20 years; for mortgages NOT signed "under seal" the SOL is 4 years.	Although there is an argument that the 20-year Statute of Limitations on documents under seal should apply to mortgage loans, that issue is not settled. 4 years for second and later mortgages
<b>Rhode Island</b>	10 years	Generally for mortgage-related actions
<b>South Carolina</b>	20 years from date of maturity with huge exception	There is a 20 year statute, Courts severely reduce this under "equitable principals"
<b>South Dakota</b>	15 years from "after the cause of action shall have accrued"	Any civil action must be brought within 15 years from the date of the maturity of the mortgage [SDCL 15-02-07].
<b>Tennessee</b>	10 years from debt maturity, 6 years after acceleration	Applies to foreclosure actions on written contracts
<b>Texas</b>	4 years	Applies to written contract claims; non-judicial foreclosures follow different procedures
<b>Utah</b>	6 years	The statute of limitations for enforcement of a written obligation, such as a mortgage or deed of trust securing payment of a promissory note, is six years. For non-judicial foreclosure proceedings, the foreclosure sale must be completed within the six-year period. For judicial proceedings, the complaint for foreclosure must be filed within the six-year period.
<b>Vermont</b>	6 years on the note if not witnessed	12 V.S.A. § 511
	14 years for witnessed notes	12 V.S.A. § 508
	15 years to foreclose on the mortgage	12 V.S.A. § 502. (enforcement of a mortgage is an "action in land")
<b>Virginia</b>	10 years	Va. Code Ann. § 8.01-241 says 10 years from the time when the original obligation last maturing thereby secured shall have become due and payable according to its terms and without regard to any provision for the acceleration of such date

<b>Washington</b>	6 years	At least 30 days prior to setting a trustee's sale, the beneficiary or trustee must mail a notice of default to the grantor or his successor in interest, both by first-class and certified or registered mail, and either post the notice of default on the premises or personally serve notice on the grantor or his successors in interest [RCW 61.24.030(7)]. The trustee can conduct the foreclosure sale not less than 190 days from the first date of default on the obligation secured by the deed of trust [RCW 61.24.040(8)]. The statute of limitations on written contracts is 6 years in Washington. Collection on payments that are delinquent more than 6 years is time-barred. Pursuit of remedies under a deed of trust securing an obligation more than 6 years after its maturity date is likewise time-barred.
<b>West Virginia</b>	35 years from origination, 5 years from maturity, if maturity date is on the DOT.	Typical for contractual claims
<b>Wisconsin</b>	6 years	Lender's right to enforce the mortgage remains for up to 30 years - subject to laches defense.
<b>Wyoming</b>	10 years	Every mortgage of real estate, containing therein a power of sale upon default being made in any condition thereof, may be foreclosed by advertisement within 10 years after the maturing of such mortgage or the debt secured thereby, or after the recording thereof [Wyo. Stat. Ann. §§ 34-4-102 & 1-3-103].