



Statute of Limitations in a Post-COVID World

*Friday, December 4, 2020
12:00 – 1:15 p.m. Central Time*

Presented By



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Governor Tolling/Stay Orders for Covid-19

****Reminder**** Based on current case law, there is no Statute of Limitations for payment default as long as alleged subsequent payment default language is in the complaint. SOL issues at complaint filing arise due to loan maturity. Lender has 5 years from loan maturity to file a case.

COVID-19 Tolling Orders:

- April 2, 2020 – Governor suspends and tolls foreclosure cause of action for 45 days.
- Multiple month-by-month extensions until Aug 1, 2020.

FLORIDA - Governor Tolling/Stay Orders for Covid-19

- July 29, 2020 Order tolls any statute for final action at conclusion of mortgage foreclosure proceeding when non-payment solely arises by a single-family mortgagor adversely affected by Covid-19.
 - Adversely affected means loss of employment, income, other monetary loss due to Covid-19.
- Governor's order specifically stated **Nothing in the order shall be construed of relieving an individual from his or her obligation to make mortgage payments or rent payments.**
- All payments, including tolled payments, are due when an individual is no longer adversely affected by the Covid-19 Emergency.
- This Order was extended monthly until Oct. 1, 2020
- As of Oct. 1, 2020, there are no further extensions or tolling of statutes related to mortgage foreclosure.

After Oct. 1, 2020 ---- Now What Florida?

- The Orders tolled the statute but were silent on any calculations or extension of the calculation of time. Ideally, any SOL that expired for loan maturity during this tolling time would have had to be filed on October 1, 2020. This does not take into account Federal Stay that is still imposed on Fannie, Freddie, FHA, VA. Also, any servicers or lenders that are voluntarily allowing more time in forbearance to borrowers.
- This is where the Litigation will come into play.
- Tolling of statute due to COVID – An argument to be made?
- Covid delay and SOL run on Maturity- Are you SOL? Maybe/Maybe Not? Equitable tolling?

Equitable Tolling in Florida

The Florida Supreme Court created an exception on the grounds of equitable tolling in *Machules v. Dep't of Admin.* , 523 So. 2d 1132 (Fla. 1988)

“The doctrine of equitable tolling was developed to permit under certain circumstances the filing of a lawsuit that otherwise would be barred by a limitations period. The tolling doctrine is used in the interests of justice to accommodate both a defendant’s right not to be called upon to defend a stale claim and a plaintiff’s right to assert a meritorious claim when equitable circumstances have prevented a timely filing”



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Promissory Note Statute of Limitations

Two applicable Indiana Code Provisions govern the calculation of the statute of limitations on a Promissory Note in Indiana.

- Indiana Code section 34-11-2-9 is the general statute of limitations for “action[s] upon promissory notes.” This statute states that such an action, when pertaining to a note executed after August 31, 1982, “must be commenced within six (6) years after the cause of action accrues.”
- Indiana Code section 26-1-3.1-118. It gives two alternative deadlines for asserting a cause of action upon such a note: either “within six (6) years after the due date or dates stated in the note or, if a due date is accelerated, within six (6) years after the accelerated due date.”

Indiana Caselaw Interpretation of SOL on a Promissory Note

1. Blair v. EMC Mortgage, LLC, 139 N.E.3d 705 (Ind. Sup. Ct. 2020)
2. Collins Asset v. Alialy, 139 N.E.3d 712 (Ind. Sup. Ct. 2020)

These two relevant cases in effect remove the prior reasonableness weight to the Promissory Note Statute of Limitations issue in Indiana.

Both statutes are relevant to an action to collect on a Promissory Note as part of a mortgage foreclosure action in Indiana.

Options for accrual of a Cause of Action on a Promissory Note.

1. If there is an optional acceleration clause:
 - A. May pursue foreclosure if lender exercises its option to accelerate before a note matures, and sues within 6 years of the date of acceleration;
 - B. Lender can sue for a missed payment within six years of a borrower's default;
 - C. Or lender can choose not to accelerate and sue for the entire amount owed within six years of maturity of the Promissory Note.
2. If no optional acceleration clause:
 - A. Lender can sue for a missed payment within six years of a borrower's default.

Public Health Emergency – Indiana – March 6, 2020

Effect on Statutes of Limitations

1. Indiana Supreme Court Order – March 16, 2020

A. Emergency measures under Indiana Administrative Rule 17

- i. ...”Trial courts should consider whether local needs warrant petitioning for any of the following emergency measures under Indiana Administrative Rule 17:”
 - a. 1. Tolling for a limited time all laws, rules and procedures setting time limits for speedy trials in criminal and juvenile proceedings, public health, mental health, and appellate matters; all judgments, support, and other orders; and in all other civil and criminal matters before all State of Indiana trial courts.

Public Health – Governor Executive Order – 20-08 – March 23, 2020

Effect on Statutes of Limitations

1. Indiana Supreme Court Order – March 23, 2020

A. Emergency measures under Indiana Administrative Rule 17

- i. “... through April 6, 2020 or further order of the Court.”
 - a. 3. To the extent not already provided by an order granting emergency relief under Admin. Rule 17 to a particular court, the Court hereby tolls all laws, rules, and procedures setting time limits for... all judgments... and other orders; statutes of limitations; ... Further, no interest shall be due or charged during this tolled period.

Public Health – Governor Executive Order – 20-08 – March 23, 2020

Effect on Statutes of Limitations

1. Indiana Supreme Court Order – April 3, 2020

A. Emergency measures under Indiana Administrative Rule 17

i. The Court accordingly ORDERS as follows:

- a. 1. The effective date of all orders granting emergency relief to trial courts under Admin. Rule 17, is extended **through May 4, 2020** ... or the expiration of the public emergency as declared by the Governor, whichever is later.

2. Indiana Supreme Court Order – May 29, 2020

- A. The Court authorizes the tolling, **through August 14, 2020**, of all laws, rules and procedures setting time limits for ... all judgments, support, and other orders; and in all other civil and criminal matters before Indiana trial courts. Further, no interest shall be due or charged during this tolled period.



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****Reminder**** In general, Ohio is six years on the note from due date or acceleration and 21 years on the mortgage.

Tolling of Statutes of Limitation due to Covid-19

Am. Sub. H. B. No. 197, Section 22

Section 22.

(A) The following that are set to expire between March 9, 2020, and July 30, 2020, shall be tolled:

(1) A statute of limitation, as follows: ...

(b) When a civil cause of action accrues against a person, notwithstanding any other provision of law to the contrary, the period of limitation for commencement of the action as provided under any section in Chapter 2305. of the Revised Code, or under any other provision of the Revised that applies to causes of action; ...

After July 31, 2020 Now What OHIO?

- Regarding this law:
 - The length of the tolling is not clear.
 - Applies retroactively from March 9, 2020, to date period of emergency ends or July 30, 2020, whichever is sooner.
 - Retroactive portion of the law may or may not be constitutional and this will likely be decided in litigation.
 - If statute of limitation expires outside of the toll period, then it is not impacted by the law.
 - Time requirements imposed by the rules and set to expire during term of Order are tolled, and upon expiration, all time requirements tolled by Order shall resume.
- Litigation
 - Under the tolling of the statute regarding the statutes of limitation, if the SOL ran on March 30, 2020, arguably the case would need to have been filed on July 31st 2020.

“Equitable tolling is only available in compelling cases which justify a departure from established procedure.” Sharp v. Ohio Civ. Rights Comm., 7th Dist. No. 04 MA 116, 2005-Ohio-1119, 2005 WL 589889, ¶ 11.

Thus, equitable tolling is to be applied sparingly and only in exceptional circumstances. Byers v. Robinson, 10th Dist. No. 08AP-204, 2008-Ohio-4833, 2008 WL 4328189, ¶ 56. A litigant seeking equitable tolling must demonstrate that he or she diligently pursued his or her rights, but some extraordinary circumstance stood in his or her way and prevented timely action. In re Regency Village Certificate of Need Application, 10th Dist. No. 11AP-41, 2011-Ohio-5059, 2011 WL 4541358, ¶ 37

Polling Question

Has the Statute of Limitations in your state been tolled as the result of any Judicial, Administrative, Executive, or other order as a result of the COVID-19 pandemic?

- Yes
- No



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- i. **Valley National Bank v. Marchiano 221.A.3d 1220 (2019)**
- ii. **Issue: 42 Pa.C.S.A. § 5525(a)(7) vs. 42 Pa.C.S.A. § 5529(b)(1)**
 - 1. four- year statute of limitations for “[a]n action upon a negotiable or nonnegotiable bond, note, or other similar instrument in writing.”
 - 2. [n]otwithstanding section 5525[a] (7), ... an action upon an instrument in writing under seal must be commenced within 20 years.”).
 - 3. The proper limitation period hinges on whether the relevant documents were “under seal.”

iii. Decision

1. The days of actual sealing of legal documents, in its original sense of the impression of an individual mark or device upon wax or wafer, or even on the parchment or paper itself, have long gone by. It is immaterial what device the impression bears[,] and the same stamp may serve for several parties in the same deed. Not only so, but the use of wax has almost entirely and even of wafers, very largely ceased. In short[,] sealing has become constructive, rather than actual, and is in a great degree a matter of intention.
2. With respect to acknowledgments, our Supreme Court has held “[a]n acknowledgment is a judicial act and is conclusive of the facts certified in the absence of fraud.”...The acknowledgments certified that the mortgages were “signed, sealed and delivered.”

i. **Common Law** - agreements under seal continue to be subject to the twenty-year statute of limitations under common law

ii. **Amendment to the Code passed in 2014:**

Notwithstanding anything to the contrary in this chapter (other than subsection (b) of this section) or in § 2-725 of Title 6, an action based on a written contract, agreement or undertaking involving at least \$100,000 may be brought within a period specified in such written contract, agreement or undertaking provided it is brought prior to the expiration of 20 years from the accruing of the cause of such action.

1. The legislative history makes clear the intent to preserve the freedom to contract around the statute of limitations and does not abrogate the twenty-year statute of limitations.
2. Amendment addresses the ability to extend the statute of limitations for a cause of action under an unsealed agreement mirroring the common law statute of limitations for sealed agreements. The purpose of the bill is to give “clear statutory authorization to the parties’ freedom to contract beyond the three- or four-year statutory period without resorting to the use of a sealed instrument, as long as the contract involves at least \$100,000 and is in writing.”

- iii. Whittington v. Dragon Grp., L.L.C., 991 A.2d 1, 10 (Del. 2009): Under Delaware law, a contract under seal is subject to a twenty-year statute of limitations.
- iv. Milford Fertilizer Co. v. Hopkins, 807 A.2d 580, 583-84 (Del. Super. Ct. 2002): It concluded that actions on promissory notes under seal were governed, instead, by the common law presumption of payment after twenty years.
- v. Prior to the addition of **subsection (c) in 2014 - 10 Del. Code § 8106(a)** carved out sealed agreements from the three-year statute of limitations. Delaware courts have continued to interpret **10 Del. Code § 8106(a)** the same way after the statute was amended in 2014.
 - 1. Sea Villa Homeowners Ass'n., v. Lavine: 8106(a) of Title 10 expressly excepts from the three-year limitations period actions to 'recover a debt . . . evidenced by a record or by an instrument under seal'")
 - 2. Wilmer v. Ocwen Fin. Corp.: causes of action based upon contracts must be brought within 3 years of a breach. Contracts under seal however, are subject to a twenty-year statute of limitations

vi. Chancery Court v. Superior Court

1. **Title 25, Section 2101 (b) of the Delaware Code was amended to be effective on June 28, 2016**, which eliminated the requirement that a mortgage be made under seal to be enforceable through a **Scire Facias Sur Mortgage Action in Superior Court (an action against the property itself that provides a lender with the legal remedy to obtain title to the mortgaged premises following the borrower's breach of the mortgage by nonpayment or nonperformance)**
2. Prior to the amendment, it was well established that only sealed mortgages could be foreclosed at law, and lenders holding mortgages without seals had to pursue equitable foreclosure actions in Chancery Court.
 - a. *Monroe Park v Metropolitan Life Ins. Co.*, 457 A.2d 734,736 (Del. 1983) - it is
 - b. well settled that unless the seal requirement is abolished by statute, a mortgage must be under seal to be enforceable at law

vi. Chancery Court v. Superior Court

3. Although failing to require a seal on a mortgage no longer has legal significance impacting the type of foreclosure proceeding, **lenders should be mindful that still requiring the execution of loan documents as an instrument under seal has legal significance in Delaware as it pertains to the statute of limitations within which the lender must file to enforce a breach.**



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COVID-19 Stay at Home/Foreclosure Moratoriums:

- No actual moratorium on foreclosure actions. However, new hurdles a mortgage servicer needs to complete prior to initiating a foreclosure action. No significant delay expected.
- Some local jurisdictions have imposed stay-at-home orders which have precluded public gatherings (auctions). This is causing sales to be postponed. Little SOL concern as the action has already been initiated.
- No specific tolling language.

Statute of Limitations:

10 years from maturity date listed in the DOT. If no maturity date listed, the 60 years from the date of origination.

- Provides mortgage forbearance options to borrowers if:
 - Loan was current as of Feb 1, 2020
 - Borrower experiencing financial hardship directly or indirectly due to Covid-19
 - Must provide certain notices re incomplete application and denial. If denied, servicer must sign a declaration re denial as part of the foreclosure process.
 - Surrendered properties are exempt. Borrower must confirm in writing or delivery of keys.

COVID-19 Stay at Home/Foreclosure Moratoriums:

No formal foreclosure moratorium. State requested mortgage servicers voluntarily postpone foreclosure sales through December 31, 2020.

Statute of Limitations:

- The Good - 6 years. Installment theory where each installment has its own SOL from the time it becomes due. (Wash. Rev. Code 4.16.040; *Edmundson v. Bank of Am.*, 378 P.3d 272,276 (Wash. Ct. App. 2016))
- The Bad – Might need to waive payments to bring it back to SOL compliance.

Statute of Limitations Continued:

- The Ugly – 9th Circuit Court of Appeals says that a Chapter 7 bankruptcy discharge acts as an acceleration and that you have no recourse if there's no foreclosure prior to the expiration of the 6 year SOL period.
Jarvis v. FNMA (not published)
 - Important points, borrowers did not make any payments after their Ch 7 discharge.

Covid-19 Tolling?:

- No state required moratorium so no state specific tolling.
- The courts may have to decide. Do the GSE moratoriums create SOL tolling?
- What about private investors following the GSE moratoriums?
- Strong argument in favor of tolling the SOL as the state requested servicers voluntarily agree to postpone foreclosure actions to 2021.



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Statute of Limitations-

Reminder - Statutes of Limitations for negotiable instruments and mortgages

Negotiable Instrument/Note Statute of Limitations; KRS 355.3-118(1) provides, in part, that, "... an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six (6) years after the due date or dates stated in the note or, if a due date is accelerated, within six (6) years after the accelerated due date."

Action for recovery of real property; KRS 413.010 provides, in part, that "... an action for the recovery of real property may be brought only within fifteen (15) years after the right to institute it first accrued to the plaintiff, or to the person through whom he claims".

KENTUCKY - Tolling?

Unlike Ohio, Kentucky did not issue any order tolling statute of limitations as a result of COVID pandemic.

Litigation

- Kentucky courts recognize equitable tolling of the statute of limitations. Equitable tolling pauses the running of, or tolls, a statute of limitations when a litigant has pursued his rights diligently but some extraordinary circumstance prevents him from bringing a timely action.” Lozano v. Montoya Alvarez, 572 U.S. 1, 10, 134 S.Ct. 1224, 188 L.Ed.2d 200 (2014)

NON-JUDICIAL

Mortgage foreclosure:

Sec. 5803. No person shall bring or maintain any action or proceeding to foreclose a mortgage on real estate unless he commences the action or proceeding within 15 years after the mortgage becomes due or within 15 years after the last payment was made on the mortgage.

The foreclosure statute specifically states each month is its own independent cause of action (or maturity).

NO TOLLING ORDERS SO THIS IS NOT AN ISSUE IN MICHIGAN

New Jersey & West Virginia Updates



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N.J.S.A. 2A:50-56.1 (Statute of Limitations)

a. Pre April 29, 2019 vs. Post April 29, 2019

- i. Pre April 29, 2019, the statute of limitations on a foreclosure action proscribed that an action must be brought by the earliest of (i) 6 years from the maturity date; (ii) 36 years from the date of recording (or if the mortgage was not recorded, the date of execution) so long as the repayment period under the mortgage does not exceed 30 years; or (iii) 20 years from the date of default.
- ii. Post April 29, 2019, New Jersey Assembly Bill A5001, the statute of limitations was reduced from the 20-year period from the date of default to 6 years for non-payment.

N.J.S.A. 2A:50-56 (g) (Expiration of NOI)

- a. **Effective August 1, 2019 (NJ Assembly Bill 3411)**
- b. If more than 180 days have elapsed since the date the notice required pursuant to this section is sent, and any foreclosure or other legal action to take possession of the residential property which is the subject of the mortgage has not yet been commenced, the lender shall send a new written notice at least 30 days, but not more than 180 days, in advance of that action.
- c. Statute was not tolled during the pandemic period.

WV Code §46-3-118: Six (6) year Statute of Limitation (collect on a note)

(a) Except as provided in subsection (e), an action to enforce the obligation of a party to pay a note payable at a definite time must be commenced within six years after the due date or dates stated in the note or, if a due date is accelerated, within six years after the accelerated due date.

(b) Except as provided in subsection (d) or (e), if demand for payment is made to the maker of a note payable on demand, an action to enforce the obligation of a party to pay the note must be commenced within six years after the demand. If no demand for payment is made to the maker, an action to enforce the note is barred if neither principal nor interest on the note has been paid for a continuous period of ten years.

(e) An action to enforce the obligation of a party to a certificate of deposit to pay the instrument must be commenced within six years after demand for payment is made to the maker, but if the instrument states a due date and the maker is not required to pay before that date, the six-year period begins when a demand for payment is in effect and the due date has passed.

Cont. West Virginia: WV Code §55-2-5.

- B. If an affidavit or extension notice executed by the secured party or beneficiary of the lien instrument or an amendment to the lien instrument executed by the grantor or mortgagor and the secured party or beneficiary is recorded prior to expiration of the original period of limitation, as specified in subsection (a) of this section, the period of limitation is extended as follows:
1. If the final maturity date of the obligation, as extended, secured by the lien instrument is ascertainable from the affidavit, extension notice or amendment, the lien expires five years after the date of final maturity of the obligation, as extended.
 2. If the final maturity date of the obligation, as extended, secured by the lien instrument is not ascertainable from the affidavit, extension notice or amendment, the lien expires thirty-five years after the date of the lien instrument. However, if the lienholder rerecords the lien instrument prior to thirty-five years from the date of the lien instrument and includes a copy of the obligation secured by the lien so that the final maturity is ascertainable, the lien expires five years after the date of maturity.

Cont. West Virginia: WV Code §55-2-5.

C. Any affidavit, extension notice or amendment filed pursuant to subsection (b) of this section after the effective date of this section, shall include, but is not limited to, the following:

1. The unpaid balance of the debt and interest secured by the lien instrument;
2. The final maturity date of the obligation, as extended; and
3. The book and page of recordation of the original lien instrument.

The clerk of the county commission shall record and index any affidavit, extension notice or amendment in the same manner as the original lien instrument and shall note that filing on the margin of the page where the original lien instrument is recorded.

- D. If the lien instrument shows that it secures an obligation payable in installments and the maturity date of the final installment of the obligation is ascertainable from the lien instrument, the time runs from the maturity date of the final installment.
- E. For purposes of this section only, a lien instrument securing an obligation which is payable on demand expresses no maturity date.

Six (6) year Statute of Limitation under §46-3-118 is utilized for personal obligations under a security instrument to collect the debt (actual money owed).

Even if the note has expired under UCC §46-3-118, under WV Code §55-2-5, the security is still enforceable against the property.

WV Code §55-2-5 allows for foreclosure at any time prior to five (5) years after maturity, and if maturity is not evidenced, thirty-five (35) years after execution.

- If the note is no longer enforceable under the UCC, there is still a requirement to send a Demand letter on the loan prior to foreclosing.
- Demand should state that the debt under the Note is no longer collectable, but the lien (Deed of Trust) is still enforceable under WV Code.
 - *Payoff and Reinstatement letters figures do not change even if the debt evidenced by the Note is no longer collectable*
- If the Note is no longer collectable, the client cannot pursue deficiency actions post-foreclosure.



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- Governor Issues Executive Order (EO)
 - Shelter in Place Order (SIP)
 - Several EO's later
 - Currently bars evictions
- County Courts Issue General Administrative Orders (GAO)
 - Current limitations - County & Judge specific
 - Introduced Electronic/Virtual Appearances
 - Foreclosure Courts
 - Sheriff Sales

Servicers Must Know

- What is the applicable Statute of Limitations
- When Does the Action Accrue

Impact of Failure

- Potential Loss of Collateral
- Potential Loss of ability to seek Deficiency Judgment

Currently No Laws/Orders extending Statue of Limitations

735 ILCS 5/13-206

- Applicability – actions on
 - Notes
 - Written Contracts
 - Other Evidence of Indebtedness
- Expires 10 years from date of Accrual
 - Acceleration
 - Maturity Date (Absent Acceleration)

735 ILCS 5/13-206 Continued

- Exceptions
 - Payments made within 10 years of accrual
 - Actions on Demand Promissory Notes
 - No payment (Principal or Interest) during the 10 years
 - Failure to Demand within the 10 years
 - Other Evidence of Indebtedness
- Maturity Date
 - Acceleration
 - Maturity Date (Absent Acceleration)

735 ILCS 5/13-206 Exceptions Continued

- Tolling
 - Acts as a pause on Statue of Limitations
 - Debtor
 - Out of State
 - A Minor
 - Incapacitated
 - Payments made within 10 years of accrual

735 ILCS 5/13-205

- Oral (Unwritten) Contracts
- Expires 5 years from accrual

Escaraza v. Bank of New York Mellon 2020 WL 6044298

- FDCPA Suit – alleging mortgagee sued on time barred debt
- Issue – When does the Statue of Limitations Accrue
- Background
 - 12/31/18 - Foreclosure filed in Cook County
 - 1/27/2020 - Borrower filed Motion to Dismiss (SOL)
 - 2/11/2020 – Hearing continued into the Covid Abyss
 - Currently being briefed in Cook
 - Hearing to occur in December

Cook Dismissal Borrower Argues

- Action accrues with first missed payment
- Suit filed more than 10 years after first missed payment

Cook Dismissal Mortgagee Argues alleging mortgagee sued on time barred debt

- Action accrues upon acceleration

Currently stayed in Federal Court pending outcome in Cook

Manglangit v. FCI, 2020 WL 5570092

- FDCPA Suit
- Issues
 - What is the applicable Statute of Limitations
 - When does the Statute of Limitations Accrue

Background

- 8/25/2005 – purchase money HELOC secured by Mortgage
- 2013 – Borrower defaults by failing to pay
- 3/2/2018 – Notice of Intent (Acceleration)
- 9/21/2018 & 10/22/2018 – Servicer Issues Periodic Statements
- 2/6/2019 – Foreclosure Filed
 - Unclear whether money judgment sought
- 5/3/2019 – Foreclosure voluntarily Dismissed
- FDCPA Suit initiated in Federal Court

Parties Agree

- 735 ILCS § 5/206 (10 year) Applies to Written Contracts
- 735 ILCS § 5/205 – (5 year) Applies to Oral Contracts

Borrower Argued – FDCPA Violation – Suit Time Barred

- Action brought more than 5 years after missed payment

Mortgagee Argued – Suit Timely

- Filed within 10 years of acceleration

Deciding Issue – Whether 10 year or 5 year SOL Applies

Whether HELOC is an Oral Contract

- 735 ILCS § 5/205 – (5 year) Applies to Oral Contracts

Borrower Argued – FDCPA Violation – Suit Time Barred

- Action brought more than 5 years after missed payment

Mortgagee Argued – Suit Timely

- Filed within 10 years of acceleration

Analysis

HELOC is an Oral Contract

Acceleration not necessary to start SOL

- If accelerated – SOL begins on unpaid PB due at that time
- Debt instrument with Maturity Date
 - SOL runs at Maturity Date

SOL cannot be used as sword based on non-acceleration

Know the Applicable Statute of Limitations

Know the Accrual Date

Don't file After Acceleration unless you have an Exception/Tolling



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Polling Question

Are you seeing or anticipating there will be a rise in Statute of Limitations issues in your state as a result of the COVID-19 pandemic?

- Yes
- No

- Civil Practice Law and Rules 213 provides for a 6 year Statute of Limitations (SOL).
- When does the SOL begin to run?
 - Mortgages payable in installment payments accrue a separate cause of action for each installment not paid and begins to run on the due date for each installment, Or
 - When the mortgagee is entitled to demand full payment, OR
 - When the mortgage has been accelerated by a demand or an action is brought.

- Executive Order 202.8
 - "In accordance with the directive of the Chief Judge of the State to limit court operations to essential matters during the pendency of the COVID-19 health crisis, any specific time limit for the commencement, filing, or service of any legal action, notice, motion, or other process or proceeding, as prescribed by the procedural laws of the state, including but not limited to the criminal procedure law, the family court act, the civil practice law and rules, the court of claims act, the surrogate's court procedure act, and the uniform court acts, or by any other statute, local law, ordinance, order, rule, or regulation, or part thereof, is hereby tolled from the date of this executive order until April 19, 2020."
- **EO 202.8 – extended 7 times**

- Administrative Order 78/20
 - "[C]onsistent with the Governor of New York's recent executive order suspending statutes of limitation in legal matters ... effective immediately and until further order, no papers shall be accepted for filing by a county clerk or a court in any matter of a type not included on the list of essential matters attached as Exh. A.

- Where does the Governor's authority to toll or suspend the SOL originate from?
 - Executive Law 29-a
 - Permits the governor to "temporarily suspend any statute, local law, ordinance, or orders, rules or regulations, or parts thereof, of any agency during a state of disaster emergency.'
 - Also permits that the Governor "may provide for the alteration or modification of the requirements of such statute...."

- Interpretation of suspend vs. toll
 - Prior cases have reviewed the Governor's authority
 - Executive Order 113.7 - Scheja v. Sosa: no tolling of claims for the period in which the suspension is in effect
 - Executive Order 52 – courts found that this EO only suspended CPLR 201 and affected only actions whose limitation periods concluded during the state of emergency.

- Arguable differences with EO 202.8:
 - Expressly states that the time limit is "hereby tolled from the date of this order"
 - Not targeted toward CPLR 201 – broadly applies to "any specific time limit"

Webinar Wrap-Up

Questions

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<p>Impact of COVID-19 on Foreclosure Filings and Detailed Information on State Holds for Select States Wednesday, December 9, 2020 12-1:15 Central Time (10-11:15 Pacific, 11-12:15 Mountain, 1-2:15 Eastern)</p>	<p>Legislation & Litigation Hot Topics Friday, December 11, 2020 12-1:15 Central Time (10-11:15 Pacific, 11-12:15 Mountain, 1-2:15 Eastern)</p>
<p>COVID-19 Restrictions and Borrower Defenses Tuesday, December 15, 2020 12-1:15 Central Time (10-11:15 Pacific, 11-12:15 Mountain, 1-2:15 Eastern)</p>	<p>Law Firm & Service Provider Readiness – Planning for the Unknown Thursday, December 17, 2020 12-1:15 Central Time (10-11:15 Pacific, 11-12:15 Mountain, 1-2:15 Eastern)</p>
<p>Post-Foreclosure Issues Monday, December 21, 2020 12-1:15 Central Time (10-11:15 Pacific, 11-12:15 Mountain, 1-2:15 Eastern)</p>	

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<p>Bankruptcy Intersect 2021 March 2021 www.alfn.org</p>	<p>WILLPOWER 2021 April 29-30, 2021 – The Ritz-Carlton Dallas Dallas, TX www.alfn.org <i>Registration Opens December 2020</i></p>
<p>ANSWERS 2021 July 18-21, 2021 – Hyatt Regency Coconut Point Resort Bonita Springs, FL www.alfnanswers.org <i>Registration Opens February 2021</i></p>	<p>Foreclosure Intersect 2021 November 18, 2021 – Marriott Dallas Las Colinas Irving, TX www.alfn.org <i>Registration Opens August 2021</i></p>
<p>ANSWERS 2022 July 17-20, 2022 – Hyatt Regency Tamaya Resort, Santa Ana Pueblo, NM www.alfnanswers.org <i>Registration Opens February 2022</i></p>	<p>ANSWERS 2023 July 16-19, 2023 – Park Hyatt Beaver Creek Resort, Beaver Creek, CO www.alfnanswers.org <i>Registration Opens February 2023</i></p>

Webinar Materials

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