Statute of Limitations and Demand Letters in the Sunshine State.

The prime purpose underlying Statutes of Limitation is to protect defendants from unfair surprise and stale claims [*Major League Baseball v. Morsani*, 790 So. 2d 1071, 1074–75 (Fla. 2001)]. When trying to adhere to the purpose behind the Statute of Limitation, many decisions focus on when the clock for the Statue of Limitation began to run: i.e., at the time the demand letter was sent pursuant to paragraph 22 of the mortgage, when the demand letter expires, or at the time of filing suit. The law is now clear that **Statute of Limitation begins to run at the time of filing suit when the mortgage contains an optional acceleration clause.** [Bank of America, *N.A. v. Graybush*, 253 So. 3d 1188 (Fla. 4th DCA 2018]—the Supreme Court of Florida is currently deciding whether it will accept jurisdiction of this case]. The next question that was of much debate was whether a servicer could sue on an aged default, under the premise that a default under the terms of a mortgage is a continuous default.

After many conflicts, most of the Districts Courts of Appeals in Florida have agreed that a servicer can bring suit on an aged default as long as **the complaint alleges "the default date, and all subsequent payments.**" [Note, however, that the Fifth District Court of Appeal in *Velden v. Nationstar Mortgage,* LLC, 234 So.3d 850 (Fla. 5th DCA 2018) disagrees that you can bring suit on an aged default.] This leads to the last question. If a servicer can bring suit on an aged default, can a servicer collect on all amounts due and owing, including those outside of the five-year statute of limitations? While the law is not yet settled, the Fourth District Court of Appeal has answered this in the affirmative. So while it may have taken a few years, Statute of Limitation is starting to become clearer in the State of Florida. Borrowers also recently prevailed at trial due to a servicer's failure to provide proof that the demand letter was properly mailed [in the case of *Torres v. Deutsche Bank National Trust Company*, Case No. 4D17-2727 (Fla. 4th DCA 2018)].

That case established that evidence that a demand letter was drafted is insufficient, by itself, to establish that it was, in fact, mailed. Rather, **the mailing must be proven by producing additional evidence such as proof of regular business practices, an affidavit swearing that the letter was mailed, or a return receipt.** If the evidence comes by way of witness testimony, **the witness must have personal knowledge of the company's**

general practice in mailing letters. Mere reliance on the boarding process to prove that the notice letter was mailed is insufficient.