

MORTGAGE ENFORCEABLE NOTWITHSTANDING EXPIRATION OF STATUTE OF LIMITATIONS FOR UNDERLYING PROMISSORY NOTE

In *In re Fortin*, 598 B.R. 689 (Bankr. D. Mass. 2019), the United States Bankruptcy Court for the District of Massachusetts considered whether a lender may enforce a mortgage despite the unenforceability of the underlying promissory note. The court held that a lender's inability to collect on a note due to the expiration of the statute of limitation for enforcement of the note does not adversely affect enforcement of the mortgage so long as the debt remains unpaid.

In 2007, the borrower obtained a mortgage loan for the purchase of real property in Webster, Massachusetts. He also signed a promissory note in connection with the loan, granting a mortgage on the Webster property to secure the note. After the borrower defaulted on the loan, the holder of the note accelerated payment. Approximately five years later, the holder of the mortgage conducted a foreclosure sale and Federal National Mortgage Association (FNMA) purchased the Webster property. To obtain possession, FNMA filed a summary process action in the Worcester Housing Court. The borrower initiated a bankruptcy case, staying the Housing Court action, and challenging the validity of the mortgage foreclosure in the Bankruptcy Court.

The borrower argued that where the relevant statute of limitations barred enforcement of the underlying note, the mortgage securing that note was also unenforceable. The borrower also argued that the Massachusetts "Obsolete Mortgage Statute" (which bars enforcement of a mortgage more than five years after the maturity date of the underlying note under certain circumstances – see [here](#)), prevented the valid foreclosure of the mortgage.

Relying on longstanding Massachusetts and First Circuit case law, the Bankruptcy Court held that the lender was not barred from foreclosing on the mortgage, notwithstanding the unenforceability of the underlying note. The Court noted that applicable governing case law held that the acceleration of a note has no impact on the limitations period for a lender's right to foreclose its mortgage. Moreover, the Court emphasized that longstanding precedent from the Massachusetts Supreme Judicial Court reinforces the "straightforward principle" that the mere inability to collect on a note due to the expiration of the statute of limitations does not affect the enforceability of the mortgage so long as the debt remains unpaid.

In re Fortin confirms that, to the extent that the debt on the note remains outstanding, lenders in Massachusetts may still successfully enforce a mortgage

even if the applicable statute of limitations has run on the promissory note, whether through acceleration or otherwise.