

**STATUTE OF LIMITATIONS DOES NOT BAR COLLECTION OF
AMOUNTS MORE THAN FIVE YEARS PAST DUE**

In an opinion issued today, Florida's Fifth District Court of Appeal joined other Florida appellate courts in holding that the five-year statute of limitations to bring an action to enforce a promissory note and/or mortgage does not prohibit a lender from collecting amounts more than five years past due.

In *Grant v. Citizens Bank, N.A.*, slip op., Case No. 5D17-726 (Fla. 5th DCA Dec. 26, 2018), the Fifth District, sitting *en banc*, examined whether the trial judge erred in awarding to a foreclosing lender interest that had accrued more than five years prior to acceleration and the filing of the foreclosure complaint. The court noted that while Florida has a five-year statute of limitations to foreclose, the impact of the statute of limitations is simply that acceleration and foreclosure must be based on a default that occurred within the five year period prior to filing the foreclosure action. Each missed monthly installment payment constitutes a new default on which foreclosure may be based. Furthermore, forbearance from accelerating the note upon a borrower's default does not constitute waiver of the lender's right to subsequently seek all sums due and owing. Therefore, even if the lender does not file an action on a note or mortgage until more than five years after the borrower's initial default, the lender may still recover amounts more than five years past due so long as the action commences within five years of maturity or a subsequent missed installment payment.

In reaching this conclusion, the Fifth District receded from its previous opinions in *Velden v. Nationstar Mortgage, LLC*, 234 So. 3d 850 (Fla. 5th DCA 2018) and *U.S. Bank, N.A. v. Diamond*, 228 So. 3d 177 (Fla. 5th DCA 2017), cases in which the court concluded that the statute of limitations prohibited the collection of amounts more than five years past due. With *Grant*, the Fifth District now joins the Third and Fourth District Courts of Appeal in holding that a lender is entitled to recover all outstanding payments upon maturity or acceleration, even those that came due more than five years earlier. See *Bank of Am., N.A. v. Graybush*, 253 So. 3d 1188 (Fla. 4th DCA 2018); *Gonzalez v. Fed. Nat'l Mortg. Ass'n*, — So. 3d —, 2018 WL 3636467 (Fla. 3d DCA Oct. 1, 2018).

The First and Second Districts have not directly addressed the interaction between the statute of limitations and the amounts a lender may collect.

Given that neither those appellate courts nor the Florida Supreme Court has spoken on the topic, and now that there is no longer interdistrict conflict between the Third, Fourth, and Fifth Districts on the issue, trial courts in all districts of Florida are bound by the *Grant*, *Graybush*, and *Gonzalez* opinions. Thus, lenders throughout the state of Florida are able to recover all amounts owed to them—not just those that accrued within the previous five years.

Download and read The full [Grant opinion](#).