

## STATUTE OF LIMITATIONS ON LONG TERM NOTES

A Florida Supreme Court justice [Thursday issued a nearly five-page opinion](#) to point out "the latest symptom of a more serious problem"—a misunderstanding over when the clock starts in foreclosure litigation with multiple defaults and suits.

The confusion centers on whether the date of each missed payment carries any legal significance when calculating lenders' deadline to bring suit on mortgages and other long-term debt.

The answer: A missed payment does not start the clock on the five-year deadline. But new rulings show it does give the lender fresh opportunity to sue.

"The law used to be well-settled and clear," Justice C. Alan Lawson wrote in a special concurrence issued when the high court initially accepted, then declined to review a case involving a lender's second foreclosure of the same loan.

District courts certified a conflict when they disagreed on whether the statute of limitations prevented foreclosure outside a five-year window, or if each default presented a new opportunity for lenders to sue and reset the clock. They fell in line, though, after the [Florida Supreme Court in November](#) held that **LENDERS COULD BRING SUBSEQUENT SUITS OUTSIDE THE FIVE-YEAR WINDOW, IF BORROWERS HAD NEW DEFAULTS ON THE SAME LOAN.** Congruent findings from the Fifth, Fourth and First District Courts of Appeal followed, leading the high court to conclude the DCAs resolved their conflict.

The Supreme Court therefore changed direction Thursday, declining review of a case it initially accepted.

The case, [Bollettieri Resort Villas Condominium Association Inc v. The Bank of New York Mellon](#), turned on whether a bank could recover installment payments that came due more than five years before the lender filed a second foreclosure action.

The Supreme Court rejected the case because the districts had resolved their conflict. But Lawson's special concurrence suggests a continuing

“widespread and fundamental misunderstanding” of how the statute of limitation affects long-term notes and mortgages.

Lenders can sue to collect the entire balance due on long-term debt, but not missed payments, because the total amount does not become due until the loan matures—typically decades after signing. To collect before the maturity date, they must give notice of their intent to act on a default by accelerating the loan, and declaring the entire balance due immediately because of the missed payment.

But here’s the rub: **A lender’s decision not to accelerate after one default does not waive its right to do so at a later date, despite the five-year statute of limitations.** Florida courts have created a special rule that takes into account “the unique nature of the mortgage obligation and the continuing obligations of the parties in that relationship. In doing so, they opened the door for multiple suits between the same parties.

Lawson wrote: “The borrower who agreed that its default did not require suit any earlier has no contractual or other legal basis to bar a lender’s suit based on the lender’s forbearance—unless, of course, we are going to rewrite the contract or abandon the original universal (and correct) rule that **a missed payment does not trigger the running of the statute of limitations when acceleration is optional with the holder.**”