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THE RISE OF STATUTE OF LIMITATIONS CHALLENGES IN NEW YORK MORTGAGE FORECLOSURE ACTIONS

The author discusses the settled and unsettled New York law surrounding the statute of limitations in mortgage foreclosure actions. His subjects are acceleration of installment mortgage loans, the savings clause pursuant to CPLR 205(a), and tolling and resetting the statute of limitations.

By Brian S. McGrath *

The historic financial crisis in 2008 dramatically spiked residential mortgage foreclosures across the country for years. This put significant strain on the legal system, particularly in judicial foreclosure states like New York. Now, a decade later as the overall number of new mortgage foreclosure actions continues to trend downward, the effects are still being felt in states like New York where legislative, judicial, and industry changes made in the midst of the crisis unintentionally created a new problem: statute of limitations defenses to mortgage foreclosure actions. New York Civil Practice Law and Rules § 213(4) sets the statute of limitations for mortgage foreclosure actions as six years. Beyond that clear statutory provision, however, much of the law on statute of limitations in New York is murky, including when the clock starts, stops, and how it can be reset. This article will attempt to outline the settled and unsettled areas of New York statute of limitations law as it now exists, knowing that this is a moving target and by the time you may be reading this article the courts may have clarified or changed the answer to some of these points below.

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NEW YORK STATUTE OF LIMITATIONS: THE SETTLED BASICS AND UNSETTLED TERRAIN

As noted, the statute of limitations on a mortgage foreclosure action in New York is six years.¹ With respect to a mortgage payable in installments, separate causes of action accrue with each installment that is not paid, and a new statute of limitations period begins to run on the date of each missed installment.² However, once the mortgage loan is accelerated, the statute of limitations begins to run on the entire debt.³ The statute

¹ CPLR § 213(4).

² *Wells Fargo Bank, N.A. v. Burke*, 94 A.D.3d 980 (2nd Dept. 2012); *Nationstar Mtge., LLC v. Weisblum*, 143 A.D.3d 866, 867 (2nd Dept. 2016); *Pagano v. Smith*, 201 A.D.2d 632, 633, 608 N.Y.S.2d 268, 270 (2nd Dept. 1994); *Wells Fargo Bank, N.A. v. Cohen*, 80 A.D.3d 753, 754, 915 N.Y.S.2d 569, 571 (2010).

³ *Burke*, 94 A.D.3d at 980 (2nd Dept. 2012).
