

3 Illinois Updates That Bolster Mortgage Lender Enforcement

By **Stephanie Mulcahy** (October 5, 2026)

Illinois mortgage lenders have faced a period of uncertainty over three related questions concerning mortgage enforcement:

- How long a lender has to enforce a home equity line of credit, or HELOC, secured by a mortgage;
- Whether the limitations period on a note can run out while a timely foreclosure remains pending; and
- Whether a mortgage lien survives after the limitations period for enforcement expires.



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Recent legislative and judicial developments have now definitively resolved all three of those questions in favor of lenders.

A new Illinois law establishes a 10-year limitations period for indebtedness of any kind secured by a mortgage. Similarly, a recent appellate decision confirms that a foreclosure complaint seeking a deficiency judgment asserts a claim under the note preserving the right of enforcement.

Most recently, the Illinois Supreme Court held that a mortgage lien survives even after the statute of limitations on enforcement has expired.

Together, these developments sharpen the enforcement framework and give lenders and their counsel concrete steps to protect mortgage rights.

HELOC Statute of Limitations

The Zbroszczyk Decision

In its June 2025 ruling in *BMO Bank NA v. Zbroszczyk*, the First District of the Appellate Court of Illinois held that a mortgage-secured HELOC was subject to a five-year filing deadline rather than the 10-year deadline lenders generally associate with mortgage debt in Illinois.[1]

The court focused on the revolving nature of a HELOC. A borrower can draw funds, repay them and then draw funds again, so the amount owed is not fixed in the credit agreement. The court therefore concluded that the HELOC did not qualify for the longer limitations period applicable to notes and written contracts, and it upheld dismissal of the lender's foreclosure complaint based on a five-year statute of limitations.

The Illinois Supreme Court denied the lender's petition for leave to appeal. That left the appellate decision in place and raised a broader concern: Namely, could mortgage-secured HELOCs and other revolving or nontraditional credit face a much shorter limitations period than traditional mortgage loans?

S.B. 2951: The Legislative Fix

On Aug. 21, Illinois Gov. J.B. Pritzker signed S.B. 2951 into law as Public Act 104-0842, effective immediately. The law clarifies Sections 13-115 and 13-206 of the Illinois Code of Civil Procedure by providing that indebtedness of any kind secured by a mortgage is subject to a 10-year statute of limitations.

This removes the product-based distinction drawn by the court in *Zbroszczyk*. Whether the underlying obligation is a conventional loan, a HELOC or another form of credit no longer drives the analysis.

The key question for the court is now whether a mortgage secures the debt. For lenders, this provides needed certainty when evaluating or enforcing HELOCs secured by Illinois real estate.

Retroactivity: Why "Clarifies" Matters

How S.B. 2951 applies to mortgage-secured HELOCs and cases predating the Aug. 21 amendment may still be contested.

To decide whether the amendment extends to pending cases, Illinois courts will first look at whether the Legislature has clearly expressed the temporal reach of the statute; any express statement of intent controls, subject to other constitutional limits.

If a statute contains no express provision, Illinois courts follow a modified Landgraf approach,[2] in which Section 4 of the Statute on Statutes governs the reach of all silent statutes by determining whether the change is substantive or procedural.

Illinois courts make this determination by evaluating whether the provision regulates the method of enforcing rights, and is thus procedural, or defines the rights and duties themselves, and is therefore substantive. Courts analyze the amendment's text and structure and may look to legislative history and the necessity of the statute, while ensuring that the application of a procedural change does not impair vested rights or create improper retroactive consequences.

Why does this distinction matter? Procedural changes typically apply to pending cases, but substantive changes apply prospectively only. The question here is whether S.B. 2951 clarified existing law or substantively changed the limitations period. This distinction will determine whether the amendment extends to pending cases.

The 2017 ruling in *First Mortgage Co. v. Dina* offers some guidance. There, the amendment at issue expressly said it was "declarative of existing law." [3] The Second District of the Appellate Court of Illinois found the Legislature's intent was "unmistakably to give the amendment fullest possible retroactive effect." [4]

With S.B. 2951, although there is no express provision, the legislative record supports the position that it is a clarification rather than a substantive change. On the Illinois Senate floor, Sen. Robert Martwick described the bill as "a response to two recent appellate court rulings" and said it "clarifies that the 10-year statute of limitations applies."

Based on this record, lenders have a strong argument that S.B. 2951 is clarification of existing law. A procedural amendment applies to pending cases, including cases involving a *Zbroszczyk*-based limitations defense.

However, that conclusion is not automatic. Because S.B. 2951 does not expressly say it applies retroactively, borrowers will likely argue that the law substantively changed the limitations period rather than merely clarified it, particularly because *Zbroszczyk* was the first Illinois appellate decision to draw the distinction the legislation eliminated.

Courts will ultimately have to decide how much weight to give *Martwick's* statement and whether any constitutional or case-specific limits apply. If you represent a lender facing an existing or anticipated limitations defense, preserve the argument that the word "clarifies" signals retroactive intent.

The Bartelstein Decision: Statute of Limitations During Pending Foreclosure

The Trial Court's Ruling

In *Bank of New York Mellon v. Bartelstein*, the lender declared the loan in default in October 2007 and filed a single-count mortgage foreclosure action in the Circuit Court of Cook County two months later.

After nearly 16 years of litigation, the trial court granted summary judgment for the borrower. It held that the 10-year limitations period to sue on the note had expired while the foreclosure was pending, that filing the foreclosure did not pause or extend that period, and that the mortgage was extinguished once the note became unenforceable. The court ordered the release of the mortgage and awarded the borrower \$160,492.52 in attorney fees.

The Appellate Court's Reversal

On June 30, the First District Appellate Court reversed *Bank of New York Mellon v. Bartelstein*.^[5] The court rejected the idea that the lender needed to plead a separate count on the note to keep the limitations period from expiring.

The court relied on the Illinois Supreme Court's 2018 decision in *First Midwest Bank v. Cobo*, which held that "for practical purposes, the request for a deficiency judgment asserted a second claim, this one under the note."^[6] Because the lender's timely foreclosure complaint requested a personal deficiency judgment, it effectively asserted a claim under the note.

The practical rule is straightforward: A timely foreclosure complaint seeking a deficiency judgment prevents the limitations period on the note from expiring independently while the foreclosure remains pending. The ruling closes off the theory that a borrower can defeat an otherwise timely foreclosure simply by prolonging the litigation beyond the note's limitations period. For lenders with long-pending foreclosures, that is meaningful breathing room.

There is also a pleading lesson. A statutory form foreclosure complaint that seeks deficiency relief does more than request a possible postsale remedy. Under *Cobo* and *Bartelstein*, it effectively asserts the lender's claim under the note.

The Watkin Decision: Mortgage Liens Beyond the Statute of Limitations

In its Sept. 24 opinion in *Chicago Title Land Trust Co. v. Watkin*, the Illinois Supreme Court unanimously affirmed the appellate court's decision that a property owner cannot use a quiet title action to remove a mortgage lien merely because the 10-year statute of

limitations period to foreclose has expired.[7] Although the expiration of the limitations period bars the foreclosure remedy, it does not extinguish the mortgage lien.

The court relied on Chapter 735 of the Illinois Compiled Statutes, Section 13-116, which provides that a mortgage lien ceases 20 years after the last payment became due unless an extension agreement was recorded. Unlike the statute of limitations, which bars actions without addressing the lien's existence, Section 13-116 expressly sets the life of the lien and applies to "every mortgage" without exception; read together, the provisions show that the Legislature intended the lien to end at 20 years, not when the 10-year enforcement period expires.

The court also contrasted Illinois with other states where statutes expressly tie lien extinguishment to the foreclosure limitations period or authorize quiet title relief when foreclosure is time-barred.

The court further emphasized that limitations statutes affect the remedy, not the underlying right, explaining that the limitations statute bars the right to sue but does not extinguish the debt or property right.

The court found that equitable principles point in the same direction: Under the maxim that "he who seeks equity must do equity," an owner who never paid the debt cannot obtain equitable relief removing the lien. The court noted that if an owner wants to remove the lien before the 20-year period expires, they can pay off their debt, which extinguishes the lien.

The practical effect is significant. Even when the foreclosure remedy is time-barred, the lender retains a mortgage lien with residual value and negotiating leverage until the 20-year extinguishment deadline. Borrowers cannot strip the lien between the 10-year and 20-year marks merely by bringing a quiet title action; they must pay off the secured debt to obtain an earlier release.

Lenders should therefore track the last payment due date and, when possible, preserve the lien by recording an extension agreement before the 20-year deadline.

Key Takeaways for Lenders and Servicers

For HELOCs predating the clarification of S.B. 2951 on Aug. 21, it is important to respond to a Zbrozczyk-based limitations defense by asserting that S.B. 2951 clarifies existing law and therefore applies retroactively.

Lenders and servicers should ensure all foreclosure complaints filed in Illinois follow the statutory form and include a request for a deficiency judgment, if sought, in the prayer for relief, or move to amend if necessary.

Lastly, it is important to identify loans approaching or beyond the foreclosure limitations period and evaluate lien-extension steps before the separate extinguishment deadline.

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[1] BMO Bank N.A. v. Zbroszczyk, 2025 IL App (1st) 241333.

[2] Established in the U.S. Supreme Court's 1994 decision in Landgraf v. USI Film Products.

[3] First Mortgage Co. v. Dina, 2017 IL App (2d) 170043, ¶ 26.

[4] Id. at ¶ 31.

[5] Bank of New York Mellon v. Bartelstein, 2026 IL App (1st) 242136.

[6] First Midwest Bank v. Cobo, 2018 IL 123038.

[7] Chicago Title Land Trust Co. v. Watkin, 2026 IL 132383 (Sept. 24, 2026).