

Mortgages or milk - do you need to check your expiration date?

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There are borrowers out there who believe that the Massachusetts Obsolete Mortgage Statute, M.G.L. c. 260 sec. 33, relieves them of their repayment obligations. This statute, amended back in 2006, provides that five years after a mortgage reaches its term (or 35 years after the time the mortgage is recorded where a maturity date is not specified) it will be discharged by operation of law absent the timely recording of an extension or affidavit. The 2006 amendment specifically applied to all existing mortgages. The law is supposed to provide clarity in conveyancing and protect borrowers if their mortgagee or servicer failed to issue a discharge of the mortgage after the mortgage reaches its term.

In *Hayden v. HSBC Mortgage*, the borrowers alleged that the statute should apply to their loan and the loan should be discharged by operation of law because five years had passed from the time the servicer had accelerated the loan. Mortgagees and servicers can rest easy, however, because the First Circuit rejected this theory outright. In a succinct and emphatic rejection, the court held that “[n]othing in the text of the statute supports the Haydens’ assertion that the acceleration of the maturity date of a note affects the five-year limitations period for the related mortgage.” Thus, a borrower’s milk will undoubtedly expire well before his mortgage.

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