No. 132383

In the
Supreme Court of Illinois

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731,

Plaintiff- Petitioner,

v.

Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust,

Defendant-Respondent.

On Petition for Leave to Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-24-1354
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 2023-CH-05985
The Honorable **Allen Price Walker**, Judge Presiding

BRIEF OF PLAINTIFF-APPELLANT

Arthur C. Czaja
ARDC # 6291494
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

Attorney for Plaintiff-Appellant

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NATURE OF THE CASE

This is a quiet title action brought by Plaintiff-Appellant, Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731 ("Plaintiff" or "Chicago Title").[1] Plaintiff sought to quiet title to the subject property located 1220 N. Branch Road, Wilmette, Illinois ("Property") free and clear of the admittedly unenforceable mortgage lien of Defendant-Appellee, Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust ("Defendant" or "Watkin").

The parties did not dispute that the Defendant's promissory note (the "Note") and the mortgage instrument that secured the Note (the "Mortgage") were both unenforceable because the applicable 10-year Statutes of Limitations for both instruments had run. However, the parties disputed the legal effect of that fact.

Plaintiff argued that, because Defendant's Note was barred by the Statute of Limitations for promissory notes found in Section 13-206 (735 ILCS 5/13-206), the corresponding Mortgage that secured the Note was extinguished *by operation of law*. Therefore, Plaintiff sought to remove Defendant's unenforceable Mortgage as a cloud on the title to the Property.

Defendant, on the other hand, acknowledged that any actions on the Note and the Mortgage were barred by the Statutes of Limitations. However, she asserted that a different Statute of Limitations – one found in Section 13-116 (735 ILCS 5/13-116) – preserved the

[1] Marline S. Stein ("Marline") is the beneficial owner of the land trust in which the legal title to the Property is held by Chicago Title. Marline's husband, Melvin R. Stein ("Melvin"), was also a beneficial owner of the Property prior to his death.

lien of her Mortgage for 20-years beyond the maturity date, rather than 10. On that basis, Defendant argued that her Mortgage did not constitute a cloud on title.

The circuit court agreed with Defendant and granted her motion for summary judgment.

The appellate court affirmed. (A043–A060).

This Court granted Plaintiff's Petition for Leave to Appeal. (A001). Plaintiff adopts and incorporates the arguments made in its Petition for Leave to Appeal filed in this Court (A002-A042) and in its Petition for Rehearing filed in the appellate court (A061-A099) with this Brief and respectfully requests that this Honorable Court reverse the decisions of both the circuit court and the appellate court.

ISSUES PRESENTED FOR REVIEW

1. Does a mortgage survive as a lien on the title to real estate when both, any action on the promissory note that the mortgage secures and any enforcement of that mortgage, are barred by the Statute of Limitations?

2. Did Section 13-116 abrogate the common law rule that, when a note is barred by the Statute of Limitations, the mortgage is extinguished by operation of law?

In determining the foregoing issues, the Court is requested to affirm the following principles:

- Promissory notes and the mortgages that secure them both become unenforceable after 10 years of non-enforcement, per Sections 735 ILCS 5/13-206 and 735 ILCS 5/13-115.

- A lien is merely an enforcement mechanism for an underlying claim. Once the underlying claim is no longer enforceable, the lien that secures it becomes a nullity.
- Section 13-116 is a Statute of Limitations that applies to previously unrecorded mortgage extensions as they affect third parties; it does not replace the legal principle that the lien ceases when the underlying debt or obligation becomes unenforceable.
- A quiet title action is a means to remove clouds on title to real property. An unenforceable lien is such a cloud.

STANDARD OF REVIEW

The issues on appeal are ones of law and statutory interpretation. Such issues are reviewed *de novo. Valerio v. Moore Landscapes, LLC*, 2021 IL 126139, ¶ 20. Under the *de novo* standard of review, the Court conducts an independent analysis of the statute involved and affords no deference to the lower court. *Watson v. Legacy Healthcare Fin. Servs., LLC*, 2021 IL App (1st) 210279, ¶ 29; *City of Danville v. C.A. Collins Enters., LLC*, 2023 IL App (5th) 220345, ¶ 21.

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to Illinois Supreme Court Rule 315. The appellate court issued its published opinion affirming the circuit court's grant of summary judgment in favor of Defendant on August 20, 2025. A043-A060. Plaintiff filed a timely petition for rehearing (A061-A099), which the appellate court denied on September 15, 2025. (A100). Plaintiff subsequently filed a Petition for Leave to Appeal to this Court on

October 17, 2025. (A002-A042). This Court allowed Plaintiff's Petition on January 28, 2026. (A001). Plaintiff then filed its Notice of Election to File Additional Brief on February 11, 2026. (A101-A103).

STATEMENT OF FACTS

On June 24, 2011, Marline and Melvin executed the Note in favor of Defendant for a line of credit of up to the sum of $150,000.00. (R. V1, C376-C379) and (A125-A128). The Note had a 1-year term and required a single payment of principal and interest at the rate of 4% per annum, due no later than June 24, 2012. *Id.*

The Note was secured by the Mortgage upon the Property. (R. V1, C365-C374) and (A114-A123). The Mortgage was executed by Plaintiff on June 24, 2011, and was recorded in the Office of the Cook County Recorder of Deeds (n/k/a the Cook County Clerk) on July 22, 2011, as Document No. 1120310049. *Id.*

Prior to Plaintiff filing its quiet title action, Defendant filed a mortgage foreclosure action seeking to foreclose the Mortgage against the Property. Defendant's mortgage foreclosure case was filed in the circuit court of Cook County, was docketed as Case No. 2022-CH-06053 and was captioned as *Sara Ellen Watkin, as Trustee v. Chicago Title Land Trust Company, as Successor Trustee*, *et al.* (the "Foreclosure Case").

Marline moved to dismiss the Foreclosure Case as, *inter alia*, being barred by the Statute of Limitations. (R. V1, C218-C232). The circuit court agreed and granted Marline's motion to dismiss the Foreclosure Case on April 2, 2023. (R. V1, C233). Defendant did not appeal the dismissal of the Foreclosure Case and has never filed any subsequent action related to the Note or Mortgage.

On June 16, 2023, nearly 11 years after the Note's and Mortgage's maturity date and more than 90 days after the Foreclosure Case was dismissed with no appeal taken, Marline, as the beneficiary of Plaintiff and the beneficial owner of the Property, filed her complaint to quiet title that forms the basis of this appeal. (R. V1, C14-C35).

In her complaint, Marline alleged that Defendant's Mortgage lien was a cloud on the title to the Property because the Statute of Limitations on the Note and the Mortgage had each expired and, as a result, her Mortgage was extinguished by operation of law. *Id.* Marline sought an order declaring that the title to the Property was free and clear of Defendant's unenforceable Mortgage. *Id.*

On October 13, 2023, Marline filed a motion for leave to file an amended complaint to correct a scrivener's error in Defendant's name (R. V1, C55-C63), which the circuit court granted. (R. V1, C64). On October 18, 2023, Marline filed her amended complaint. (R. V1, C66-C71).

On January 12, 2024, Defendant appeared and moved to dismiss the amended complaint. (R. V1, C96-C121) and (R. V1, C122-C124).

On January 23, 2024, a briefing schedule was set on Defendant's motion to dismiss. (R. V1, C95).

On February 13, 2024, Marline filed her response to the motion to dismiss (R. V1, C156-C158) and a motion for leave to file a second amended complaint to include omitted exhibits. (R. V1, C159-C210).

On March 5, 2024, Defendant filed her reply in support of her motion to dismiss. (R. V1, C213-C233).

On March 12, 2024, the circuit court granted Marline leave to file a second amended complaint, granted Defendant leave to file a motion for summary judgment directed at the second amended complaint, and set a briefing schedule on Defendant's to-be-filed motion for summary judgment. (R. V1, C234).

On March 13, 2024, a second amended complaint was filed. The second amended complaint correctly named Chicago Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under the Trust Agreement Dated March 1, 1974 and known as Land Trust # 32731 as Plaintiff and owner of the Property and included exhibits A and B that were previously omitted from the amended complaint. (R. V1, C236-C257).

On April 8, 2024, Defendant filed her motion for summary judgment. (R. V1, C259-C314). In that motion Defendant argued that, even though the Statutes of Limitations on the Note and the Mortgage each had expired, the lien created by the Mortgage was not extinguished and was not a cloud on title because Section 13-116 (735 ILCS 5/13-116) provides that a lien of mortgage ceases by limitation after the expiration of 20 years from the due date stated on the face of the mortgage, with the possibility for 10-year extensions. (R. V1, C260-C262).

On April 15, 2024, Defendant filed an appearance through counsel. (R. V1, C315).

On April 22, 2024, Plaintiff filed its combined response to Defendant's motion for summary judgment and a cross-motion for summary judgment. (R. V1, C317-C338).

In its response and cross-motion, Plaintiff argued that Defendant's motion for summary judgment should be denied because any action on the Note that the Mortgage

secured was barred by 10-year Statute of Limitations. Plaintiff pointed out that more than 10 years had passed from the Note's June 24, 2012, maturity date. Because any action on the Note was barred by the Statute of Limitations, Defendant's Mortgage was extinguished by operation of law. (R. V1, C318-C321). Plaintiff therefore argued that Defendant's Mortgage was unenforceable and constituted a cloud on the title to the Property that Plaintiff sought to remove in this action. (R. V1, C321-C322).

On April 30, 2024, the circuit court reset the briefing schedule on the cross motions for summary judgment so that the parties would have additional time to file their respective responses and replies. (R. V1, C340).

On May 13, 2024, Defendant filed her combined reply in support of her motion for summary judgment and her response to Plaintiff's motion for summary judgment. (R. V1, C342-C347). Defendant argued that, even though an action on the Note and the Mortgage were barred by the Statute of Limitations, the lien created by the Mortgage remained separately enforceable pursuant to Section 13-116. *Id.*

On May 20, 2024, Plaintiff filed its reply in support of its motion for summary judgment. (R. V1, C348-C351). In that reply, Plaintiff again argued that where a note is barred by the Statute of Limitations, a mortgage being but incident to the note, is no longer a lien on the property. *Id.*

On May 30, 2024, the circuit court granted Defendant's motion for summary judgment and denied Plaintiff's cross-motion. (R. V1, C353-C354). The court also allowed Plaintiff leave to file a third amended complaint to properly identify the name of the land trust plaintiff. *Id.*

The next day, Plaintiff filed her third amended complaint. (R. V1, C355-C381) and (A104-A130).

On June 24, 2024, Plaintiff filed a motion for clarification. (R. V1, C382-C384).

On June 25, 2024, the circuit court entered 2 orders, the first of which correctly identified the name of Plaintiff and the second of which denied Plaintiff's motion for clarification. (R. V1, C386-C387). The second order made it clear that the orders of June 25, 2024, were "final and appealable." (R. V1, C387).

On June 28, 2024, Plaintiff filed an additional appearance through counsel (R. V1, C388-C389), a notice of appeal (R. V1, C392-C396) and (A131-A135) and request for preparation of the record. (R, V1, C397-C398) and (A136-A137).

The appellate court affirmed the circuit court's grant of summary judgment in favor Defendant, holding that, although foreclosure was barred, "the inability to enforce the mortgage lien does not operate to extinguish the lien." *Chi. Title Land Trust Co. v. Watkin*, 2025 IL App (1st) 241354, ¶22 and (A051, ¶ 22).

Plaintiff filed a timely petition for rehearing on September 10, 2025 (A061-A099), which the appellate court denied on September 15, 2025. (A100).

Plaintiff then filed a timely Petition for Leave to Appeal to this Honorable Court on October 17, 2025. (A002-A042). This Court allowed Plaintiff's Petition for Leave to Appeal on January 28, 2026. (A001). Plaintiff timely filed its Notice of Election to File Additional Brief on February 11, 2026. (A101-A103).

STATUTES INVOLVED

735 ILCS 5/13-206

Except as provided in Section 2-725 of the "Uniform Commercial Code" [810 ILCS 5/2-725], actions on bonds, promissory notes, bills of exchange, written leases, written contracts, or other evidences of indebtedness in writing and actions brought under the Illinois Wage Payment and Collection Act [820 ILCS 115/1 et seq.] shall be commenced within 10 years next after the cause of action accrued; but if any payment or new promise to pay has been made, in writing, on any bond, note, bill, lease, contract, or other written evidence of indebtedness, within or after the period of 10 years, then an action may be commenced thereon at any time within 10 years after the time of such payment or promise to pay. For purposes of this Section, with regard to promissory notes dated on or after the effective date of this amendatory Act of 1997, a cause of action on a promissory note payable at a definite date accrues on the due date or date stated in the promissory note or the date upon which the promissory note is accelerated. With respect to a demand promissory note dated on or after the effective date of this amendatory Act of 1997, if a demand for payment is made to the maker of the demand promissory note, an action to enforce the obligation of a party to pay the demand promissory note must be commenced within 10 years after the demand. An action to enforce a demand promissory note is barred if neither principal nor interest on the demand promissory note has been paid for a continuous period of 10 years and no demand for payment has been made to the maker during that period.735 ILCS 5/13-206.

735 ILCS 5/13-115

No person shall commence an action or make a sale to foreclose any mortgage or deed of trust in the nature of a mortgage, unless within 10 years after the right of action or right to make such sale accrues. 735 ILCS 5/13-115.

735 ILCS 5/13-116

(a) The lien of every mortgage, trust deed in the nature of a mortgage, and vendor's lien, the due date of which is stated upon the face, or ascertainable from the written terms thereof, filed for record either before or after July 16, 1941, which has not ceased by limitation before July 16, 1941, shall cease by limitation after the expiration of 20 years from the time the last payment on such mortgage, trust deed in the nature of a mortgage, or vendor's lien became or becomes due upon its face and according to its written terms, unless the owner of such mortgage or vendor's lien, or the owner or trustee of such trust deed in the nature of a mortgage either

(1) Before July 16, 1941, and within such 20 year period has filed or caused to be filed for record an extension agreement showing the time for which the payment of the indebtedness is extended, and the amount remaining unpaid on such indebtedness; or

(2) After July 16, 1941, and within such 20 year period or within one year after July 21, 1947, provided the due date of the instrument was more than 19 years before July 21, 1947, files or causes to be filed for record, either (i) an affidavit executed by himself or herself or by some person on his or her behalf, stating the amount or amounts claimed to be unpaid on the indebtedness secured by such mortgage, trust deed in the nature of a mortgage, or vendor's lien; or (ii) an extension agreement executed as hereinafter provided.

(b) The lien of every mortgage, trust deed in the nature of a mortgage, and vendor's lien, in which no due date is stated upon the face, or is ascertainable from the written terms thereof, shall cease by limitation after the expiration of 30 years from the date of the instrument creating the lien, unless the owner of such mortgage or vendor's lien, or the owner or trustee of such trust deed in the nature of a mortgage, within such 30 year period or within one year after July 21, 1947, provided the date of the instrument was more than 29 years before July 21, 1947, files or causes to be filed for record either (1) an affidavit executed by himself or herself or by some person on his or her behalf, stating the amount or amounts claimed to be unpaid on the indebtedness secured by such mortgage, trust deed in the nature of a mortgage, or vendor's lien; or (2) an extension agreement executed as hereinafter provided.

The filing for record of an affidavit provided for by this Section, within such 20 or 30 year period or one year period, as the case may be, shall extend the lien for a period of 10 years after the date on which such lien would cease if neither an affidavit nor extension agreement were filed, and no more, and a subsequent affidavit filed within the last 10 year period of the lien, as extended, shall extend the lien for an additional 10 year period, and no more, but successive affidavits may be filed, each extending the lien 10 years.

The filing for record of an extension agreement within such 20 or 30 year period or one year period, as the case may be, whether before or after July 16, 1941, shall extend the lien for 10 years from the date the final payment becomes due under such extension agreement, and no more, but subsequent extension agreements filed before the lien, as extended, ceases, shall extend the lien for an additional 10 year period from the date the final payment becomes due under such extension agreement, and no more. The filing of an extension agreement shall not be construed in any way to cause the lien to cease before it would cease if neither an extension agreement nor an affidavit were filed. Affidavits may be followed by extension agreements, and extension agreements may be followed by affidavits.

An extension agreement executed after July 16, 1941, to be effective for the purpose of continuing the lien of any mortgage, trust deed in the nature of a mortgage, or vendor's lien

shall show the time for which the payment of the indebtedness secured thereby is extended and the amount remaining unpaid on such indebtedness, and shall be executed and acknowledged by the owner of the mortgage, trust deed in the nature of a mortgage, or vendor's lien, or someone on his or her behalf, and by one or more persons representing himself, herself or themselves to be the then owners of the real estate. The affidavit or extension agreement shall be effective only as to the lands within the county or counties wherein such affidavit or extension agreement, or a copy thereof, is filed for record.

When a corporation is the owner or trustee of any such mortgage, trust deed in the nature of a mortgage, or vendor's lien, the affidavit herein described shall be deemed effective for all purposes under this Section when it has been executed by any officer of such corporation, or by any person authorized by the corporation to execute such affidavit.

The Section shall apply to mortgages, trust deeds in the nature of mortgages, and vendor's liens on both registered and unregistered lands. "Filed for record" or "the filing for record" as used in Article XIII of this Act [735 ILCS 5/13-101 et seq.] means filing in the office of the recorder in the county in which the lands are situated, if such lands are unregistered, or in the office of the registrar of titles for such county, if such lands are registered. Nothing herein contained shall be construed to revive the lien of any such instrument which has expired by limitation before July 16, 1941. 735 ILCS 5/13-116.

ARGUMENT

I. The promissory note is the "principal thing," and the mortgage is a mere incident to it; the mortgage is extinguished when the debt it secures is barred by the Statute of Limitations.

For over 150 years, Illinois has adhered to a single, unyielding principle of property law: the promissory note is the principal thing, the mortgage is merely an incident to it, and a mortgage lien cannot survive when the underlying debt becomes unenforceable due to the expiration of the Statute of Limitations. From *Emory v. Keighan*, 88 Ill. 482 (1878), to *First Midwest Bank v. Cobo*, 2018 IL 123038, the rule has remained constant – the debt is the principal, the mortgage its incident, and when the debt is paid, barred by the Statute of Limitations or barred by another procedural rule, the result is the same – the mortgage lien falls with it.

In reaching the opposite conclusion, though, the appellate court discarded this foundational rule, severing the lien from its underlying debt and creating a new category of liens previously unknown under Illinois law – the *unenforceable encumbrance*. Such a species of lien has *never* existed in Illinois.

Under well-settled Illinois law, the note is "the principal thing." *Fish v. Glover*, 154 Ill. 86, 92 (1894). The mortgage is merely an incident to it. *Richey v. Sinclair*, 167 Ill. 184, 194 (1897). Because the mortgage is intrinsically tied to the debt it secures, when an action on the note is barred by the Statute of Limitations, the mortgage is "extinguished by operation of law." *Bradley v. Lightcap*, 201 Ill. 511, 517 (1903).

The existence of a valid, enforceable debt is the lifeblood of a mortgage. In *Emory*, 88 Ill. at 485, this Court made clear that "when the debt is paid, discharged, released, or barred by the Statute of Limitations, the mortgage is gone, and has effect no longer."

Because the debt is the principal thing and the mortgage but an incident to it, this Court has repeatedly held that the Statute of Limitations for mortgages must be read in connection with the Statute of Limitations for promissory notes. See *Schifferstein v. Allison*, 123 Ill. 662, 665 (1888) ("The effect of section 11 [statute of limitations for mortgages], read in connection with section 16 [statute of limitations for promissory notes], is, in our opinion, but to express what the law before implied, namely, that the period of limitation which bars the debt, bars also the mortgage or deed of trust."). As this Court articulated in *Hibernian Banking Ass'n v. Commercial Nat'l Bank*, 157 Ill. 524, 537 (1895), "it has been repeatedly decided by this court that the mortgage is a mere incident of the debt, and is barred when the debt is barred."

The appellate court wrongly dismissed this unbroken line of precedent by claiming these early cases were decided when Illinois followed the "title theory" of mortgages, suggesting their reasoning is inapplicable to modern liens. *Watkin*, 2025 IL App (1st) 241354, ¶ 34 and (A057). The appellate court's logic is entirely backwards. Under the antiquated title theory, a mortgage was considered an actual conveyance of the legal estate, vesting title in the mortgagee. *Harms v. Sprague*, 105 Ill. 2d 215, 222 (1984). Yet, even when a mortgage carried the heavy weight of an actual transfer of title, this Court still held that the expiration of the note's statute of limitations completely extinguished that title. *Bradley*, 201 Ill. at 517.

Today, Illinois operates under the "lien theory," recognizing that a mortgage conveys no independent property right and is purely a security interest. *Kling v. Ghilarducci*, 3 Ill. 2d 454, 460 (1954). By establishing the lien theory, this Court made the mortgage *more* dependent on the underlying note, not less. A lien exists solely to secure an obligation; without an enforceable obligation, it is a nullity. If a time-barred note was powerful enough to extinguish actual legal title under the old theory, it undeniably possesses the power to extinguish a mere security interest today.

The cases Plaintiff relies upon are not relics of antiquated property law either. To the contrary, they remain controlling precedent. A mortgage does not exist in a vacuum. For its existence, a mortgage is based upon and reliant upon the validity of the underlying note. This Court has explicitly recognized that any action to enforce a mortgage is fundamentally based on the promissory note, which is the vehicle granting the right to proceed against the property. See *ABN AMRO Mortg. Group, Inc. v. McGahan*, 237 Ill. 2d

526, 536 (2010) ("The [mortgage] foreclosure action is based on the note, the vehicle which gives the plaintiff the legal right to proceed against the property."). This Court expressly reaffirmed this "old Illinois rule" in *Cobo*, 2018 IL 123038, noting that a mortgage is a mere incident of the debt and is barred when the debt is barred. See *Cobo*, 2018 IL 123038, ¶ 39 n.2.

Indeed, just weeks prior to the decision below, a different panel of the appellate court correctly recognized this same principle, plainly stating that "[a] mortgage is tied to the life of the underlying note." *BMO Bank N.A. v. Vaca*, 2025 IL App (1st) 241793-U, ¶ 17. The relationship is absolute. As the late Professor Chester Smith famously explained in his property law lectures, "The note is the cow and the mortgage the tail. The cow can survive without the tail, but the tail cannot survive without the cow."

The inseparable nature of the note and mortgage is not merely an Illinois quirk; it is a bedrock principle of property law. The Restatement (Third) of Property explicitly dictates that "[u]nless it secures an obligation, a mortgage is a nullity." Restatement (Third) of Property: Mortgages § 1.1, cmt. (1997). Sister jurisdictions echo this rule. Under Michigan law, because a mortgage is merely a security interest, a transfer of a mortgage without the underlying obligation "is a mere nullity," and a mortgage without an underlying enforceable obligation "fails as a matter of law." *Prime Fin. Servs. LLC v. Vinton*, 279 Mich. App. 245, 257 (2008). Kentucky law is equally as absolute: "[A] mortgage is merely incident to the debt or obligation it is given to secure, and…no relief can be granted under the mortgage after the debt or obligation to which it is incident is barred by limitation." *Paintsville Nat'l Bank v. Robinson*, 220 Ky. 418, 421 (1927). "[S]o long as the debt continues to be an

enforceable obligation, the mortgage, which is an incident thereto, may also be enforced." *Craddock v. Lee*, 22 Ky. L. Rptr. 1651 (Ky. 1901). "[W]hen the debt is extinguished or barred by statute of limitations or otherwise, the mortgage is likewise at an end." *Warning's Ex'r v. Tabeling*, 280 Ky. 232, 236 (1939).

By holding that the mortgage lien survives independently of its underlying time-barred note, the appellate court abandoned this well-settled precedent and attempted to rewrite Illinois law. Illinois has historically aligned with numerous other states – including California, Texas, Iowa, and Washington – that strictly enforce the common law rule that the expiration of the Statute of Limitations on a promissory note extinguishes the mortgagee's lien. See Dale Joseph Gilsinger, Annotation, *Survival of Creditor's Rights Created by Mortgage or Deed of Trust as Affected by Running of Limitation Period for Action on Underlying Note*, 36 A.L.R. 6th 387, § 7 (2008).

For over a century, Illinois has stood alongside these jurisdictions in recognizing that the debt is the principal and the lien is the mere incident. The appellate court's decision attempts to sever this historical alignment and adopt a contrary view. Effectuating such a sweeping policy shift to upend generations of settled real estate law is an act of legislation, not judicial interpretation.[2]

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[2] Plaintiff respectfully acknowledges the scholarly analysis of the Honorable William B. Sullivan of the Circuit Court of Cook County, who recently authored an exceptional and exhaustive survey of this national jurisprudence. See *Bank of New York v. Bartelstein*, No. 2007 CH 38051 (Cook Cty. Cir. Ct., Sept. 25, 2025) (meticulously detailing the jurisdictional landscape based on Gilsinger's research). While circuit court opinions are not precedent, Judge Sullivan's synthesis highlights the profound doctrinal disruption the appellate court's decision in the instant case threatens to inflict upon Illinois's historically settled law.

The appellate court's erroneous conclusion was also anchored in a fundamental misunderstanding of property law – the premise that the expiration of a Statute of Limitations operates to bar the availability of a remedy but leaves the underlying debt intact as an "unquestioned moral obligation." *Watkin*, 2025 IL App (1st) 241354, ¶ 23, citing *Fleming v. Yeazel*, 379 Ill. 343 (1942) and (A051-A052). From this, the court leapt to the insupportable conclusion that because a "moral obligation" survives, the recorded mortgage lien must also survive to encumber the real estate.

However, a recorded mortgage lien does not secure a mere "moral obligation"; it secures a legally enforceable right. A lien is strictly an enforcement mechanism. Once the legal enforcement mechanism for the debt is extinguished, keeping a formal encumbrance on the public record serves no legal purpose.

The appellate court also confused a "debt" and a "lien." The appellate court thought Plaintiff was arguing that the running of the Statute of Limitations extinguished the debt. To the contrary, the Plaintiff argued that the running of the Statute of Limitations on the Note and Mortgage extinguished the *lien*, not the debt.

Thus, the appellate court's criticism of the Plaintiff for relying on *Dunas v. Metropolitan Trust Co.*, 41 Ill. App. 2d 167 (1963) was unfounded. The appellate court noted that, while *Dunas* states that a mortgage "is no longer a lien on the property" when the debt is time-barred, the *Dunas* court also immediately thereafter noted that the statute of limitations "does not extinguish the debt itself." *Watkin*, 2025 IL App (1st) 241354, ¶ 35 and (A057-A058).

However, the appellate court's reliance on this quote exposes the flaw in its logic. The fact that an uncollectible *debt* was not itself extinguished does not mean the *lien* that it secured survives. A lien is a legal enforcement tool, not a moral obligation. *Dunas* proves the exact point the appellate court refused to accept: while the time-barred debt may arguably linger in the ether as a philosophical but legally unenforceable concept, as a matter of law, the security instrument – the mortgage – is extinguished and "is no longer a lien on the property." *Dunas*, 41 Ill. App. 2d at 170. By conflating the survival of a debt with the survival of the lien, the appellate court resurrected a lien that the common law explicitly extinguished.

II. Section 13-116 does not abrogate the common law or create an independent lifespan for mortgage liens.

The appellate court erroneously treated Section 13-116 as establishing a different, superseding 20-year Statute of Limitations for all mortgage liens, completely divorced from the enforceability of the underlying promissory note. This interpretation cannot be reconciled with the text of the statute, the structure of the Limitations Act, or the doctrine against the implied abrogation of the common law.

Section 13-116 provides that a mortgage lien "shall cease by limitation" after 20 years unless preserved by a recorded affidavit or extension agreement. 735 ILCS 5/13-116(a) and (b). Phrased as a negative limitation, the statute establishes an absolute outer cap on recorded lien longevity. It does not state that a mortgage shall remain a valid lien for 20 years regardless of whether the underlying indebtedness has already become legally unenforceable. Courts do not infer the abrogation of the common law absent clear and

explicit legislative intent. *McIntosh v. Walgreens Boots Alliance, Inc.*, 2019 IL 123626, ¶ 30. If the General Assembly intended Section 13-116 to completely sever the mortgage from the note, the statute would say so. It does not.

Instead, the legislative history and intended scope of the statute are explicitly clear. Historically, in *Kraft v. Holzmann*, 206 Ill. 548 (1903), this Court held that an unrecorded extension of an underlying note kept the incident mortgage alive, binding even third parties who had no record notice of the extension. Consequently, unrecorded extensions caused titles to remain unmerchantable and removed properties from the flow of commerce.

The legislature enacted the predecessor to Section 13-116 (formerly Section 11(b)) in direct response to *Kraft*. As the appellate court explained in *McCarthy v. Lowenthal*, 327 Ill. App. 166, 169 (1st Dist. 1945), Section 13-116 modified the rule in *Kraft* only "as to subsequent encumbrancers and purchasers," not to change the rule as between the contracting parties. Between the original borrower and lender, an unrecorded extension remains perfectly valid and binding; Section 13-116 only renders it invalid "as against persons *other than* the original parties to the mortgage." (Emphasis added). *Palkey v. Donichy*, 18 Ill. App. 2d 356, 361 (1st Dist. 1958).

Crucially, the *McCarthy* court explicitly rejected the argument that the 20-year rule of Section 13-116 repealed the 10-year rule of Section 13-115, finding "no repugnancy between these sections." *McCarthy*, 327 Ill. App. at 169.

The appellate court took this Court's decision in *Livingston v. Meyers*, 6 Ill. 2d 325 (1955), entirely out of context to justify its departure from these principles. *Livingston* dealt

exclusively with clearing the public record to protect property rights for third parties in the absence of an affirmative public recording.

Notably, the *Livingston* Court explicitly confirmed that an action to quiet title was the proper substantive remedy for a time-barred mortgage even before Section 13-116 was enacted, stating: "No doubt a bill to quiet title or to remove a cloud could have been maintained prior to the enactment of section 11 (b) to remove the apparent lien of a mortgage or trust deed under the law as it then existed." *Livingston*, 6 Ill. 2d at 336. The legislature enacted Section 13-116 not to eliminate the right to quiet title against a time-barred debt, but to make such expensive litigation *unnecessary* after 20 years.

Because no third-party purchaser is involved here, Section 13-116 is inapplicable, and the expiration of the Note's Statute of Limitations dictates the extinguishment of the mortgage. The appellate court took Section 13-116 out of context, transforming a notice statute meant to clear titles into a mechanism that clouds title to real estate with unenforceable mortgages for an additional decade. That was not the purpose of Section 13-116. Section 13-116 was designed to encourage lenders to record mortgage extension agreements or risk losing their lien rights against *third parties*.

III. Sections 13-115, 13-206, and 13-116 must be read *in pari materia*.

The appellate court's reliance on Section 13-116 fails for an additional, independent reason: it violates fundamental canons of statutory construction. Courts are obligated to ascertain and give effect to legislative intent, and statutory language must be "interpreted in relation to each other and the entire act, and no word or provision should be rendered meaningless." *Schultz v. St. Clair County*, 2022 IL 126856, ¶ 19. A court must "attempt to

construe the conflicting statutes together *in pari materia*." *People v. Freeman*, 404 Ill. App. 3d 978, 988 (1st Dist. 2010).

The Code of Civil Procedure (the "Code") contains three interconnected provisions: Section 13-206 (the 10-year limitation for written notes), Section 13-115 (the 10-year limitation for mortgage foreclosures), and Section 13-116 (the 20-year outer cap on recorded mortgage liens). Because the debt is the principal thing, and the mortgage but the incident to it (*Schifferstein*, 123 Ill. at 665), this Court has repeatedly held that the Statute of Limitations for mortgages must be read *in pari materia* with the Statute of Limitations for promissory notes. *Emory*, 88 Ill. at 486; *Hibernian Banking Ass'n,* 157 Ill. at 537; *Aetna Life Ins. Co. v. McNeely*, 166 Ill. 540, 544 (1897); *Richey*, 167 Ill. at 193; *Wellman v. Miner*, 179 Ill. 326, 333 (1899); *Murray v. Emery*, 187 Ill. 408, 410 (1900).

By interpreting Section 13-116 as a standalone loophole that allows a mortgage to outlive its note, the appellate court failed to harmonize the statutes. To read Section 13-116 as creating a second, independent statute of limitations for mortgage liens renders Section 13-206 partially meaningless and allows exactly what Section 13-206 forbids: the effective enforcement of time-barred debt through title leverage.

The problems with severing the mortgage lien from the underlying note it secures are best illustrated by the practical consequences. If, *arguendo*, Section 13-116 operates to sever the lien from an unenforceable note, how much money is required to satisfy the mortgage lien? If the mortgage lien is divested of its underlying note, the lienholder could theoretically demand any amount it desires in exchange for the lien's release. The original mortgagor would argue that no money is due, given that the note is legally unenforceable.

Challenging the lien-release amount demanded by the lender places the parties right back in court, litigating the terms of an unenforceable note and mortgage up to a decade after actions on that note and mortgage were barred as a matter of law. This prospect of delayed, convoluted litigation over time-barred instruments proves that mortgage liens are inextricable from their underlying notes.

Properly harmonized, the statutory framework is as follows: Section 13-206 governs the enforceability of the debt; Section 13-115 governs foreclosure actions; and Section 13-116 imposes an outer limit on a lien's existence against third parties absent a recorded affidavit or recorded extension agreement. Section 13-116 *does not prevent* parties from bringing a quiet title action to rid a property of a mortgage once the 10-year Statute of Limitations on the note and mortgage has expired. Rather, Section 13-116 *does not require* such actions to be brought after 20 years if no extension agreement or affidavit of extension is recorded. Most importantly, Section 13-116 does not confer vitality upon an expired mortgage lien once the enforcement of the obligation that the mortgage secures has expired.

IV. The appellate court's refusal to acknowledge that a mortgage is extinguished by operation of law when the Statute of Limitations on the underlying note has run conflicts with the General Assembly's recent reaffirmation of the common law.

Below, the appellate court correctly acknowledged that a mortgage lien may be "discharged by operation of law, which is referred to as extinguishment of the lien," and that this extinguishment may occur "automatically." *Watkin*, 2025 IL App (1st) 241354, ¶ 19 and (A050). Yet, despite recognizing these foundational concepts, the court refused to apply them. Instead, the court misconstrued Section 13-116 and improperly elevated it

above the common law rule that when a note is barred by the Statute of Limitations, the incident mortgage is automatically extinguished.

Subordinating a century of established common law to a statute that contains no express repeal is exactly the type of error the General Assembly recently intervened to stop. Recently, in *SEC v. EquityBuild, Inc.*, 101 F.4th 526, 532 (7th Cir. 2024), the Seventh Circuit Court of Appeals made a similar mistake regarding Illinois mortgage law, holding that under the Illinois Mortgage Act, payment of a debt alone does not extinguish a mortgage lien absent a valid, recorded release. That holding, much like the appellate court's reasoning here, ignored the automatic extinguishment provided by Illinois common law, subordinating it to statutory recording mechanics.

A critical difference, however, is that the Seventh Circuit decided *EquityBuild* before the General Assembly acted to correct this misunderstanding about the common law. Effective August 1, 2025, the legislature enacted Section 17 of the Illinois Mortgage Act, which expressly provides: "The Act does not abrogate the Illinois common law that the payment in full of a debt secured by a mortgage extinguishes the lien." 765 ILCS 905/17.

By the time the appellate court issued its published opinion in this case on August 20, 2025, that amendment was already in full force and effect. The legislature had spoken unequivocally: modern statutes governing mortgages and recording do not abrogate the traditional Illinois common law rules of extinguishment.

Just as the statutory requirement for a release of mortgage does not abrogate the common law rule that payment extinguishes the mortgage lien, nothing in Section 13-116 abrogates the common law rule that the expiration of the Statute of Limitations on the note

extinguishes the incident mortgage. The appellate court's refusal to apply that rule here directly conflicts with this Court's long-standing precedent and undermines the General Assembly's explicit, freshly enacted reaffirmation of Illinois common law.

V. The legislature is presumed to have affirmed this Court's jurisprudence as to the inseparable relationship of mortgages to notes, inasmuch as Section 13-116 contains no language abrogating the rule that a time-barred note extinguishes the mortgage securing it.

"The legislature is presumed to know of existing statutes at the time it enacts new statutes." *Freeman*, 404 Ill. App. 3d at 988. Furthermore, courts must presume that the legislature "knew of prior interpretations placed on particular language by judicial decision." *People v. Bailey*, 375 Ill. App. 3d 1055, 1061 (2d Dist. 2007).

The language currently contained in Section 13-206 regarding the 10-year limitation for written notes was added by the legislature in 1872. Laws, 1871-72, p. 142, §§ 12, 15-16, 24. When the legislature subsequently enacted the predecessor to Section 13-116 in 1941 – Section 11(b) of the Limitations Act (Ill. Rev. Stat. 1941, ch. 83, par. 11(b)) – this Court's jurisprudence on the inseparable nature of notes and mortgages was already deeply entrenched.

For over sixty years prior to that 1941 enactment, Illinois courts held that the Statute of Limitations for a mortgage must always be read in connection with the Statute of Limitations applicable to the underlying promissory note and the mortgage was barred when the note was barred by the Statute of Limitations. It was also the settled, undisputed law of this State that when an action on the note is barred, the mortgage is similarly barred and extinguished by operation of law.

A fundamental aid to statutory construction is the principle that, where the legislature chooses not to amend a statute to alter a judicial construction, it is presumed that the legislature has acquiesced in the court's statement of the law. *Wakulich v. Mraz*, 203 Ill. 2d 223, 233 (2003); see also *Ready v. United/Goedecke Servs.*, 232 Ill. 2d 369, 380 (2008).

If the General Assembly had intended to execute a sweeping reversal of Illinois property law when it enacted the 1941 amendment – if it truly meant to sever the mortgage from the note and grant liens a free-standing, 20-year lifespan regardless of the debt's enforceability under Section 13-206 – it would have explicitly said so. Where a court identifies a statutory omission, the maxim *expressio unius est exclusio alterius* applies, meaning that anything not explicitly mentioned by the statute was excluded by deliberate choice, not inadvertence. *People v. Foster*, 2021 IL App (2d) 190116, ¶ 11.

The plain language of Section 13-116 is entirely devoid of any such mandate. The statute contains absolutely no language suggesting an intent to overrule the principles set forth in *Emory*, *Schifferstein*, or *Hibernian Banking Ass'n*. By interpreting Section 13-116 as silently overturning over a century of settled common law and neutralizing the 1872 protections of Section 13-206, the appellate court violated core tenets of statutory construction.

VI. By allowing an unenforceable lien to fester on title, the appellate court created a backdoor enforcement mechanism for creditors that frustrates the purpose of the Statute of Limitations.

"When interpreting a statute, we may consider the consequences that would result from construing it one way or the other." *Metropolitan Life Ins. Co. v. Hamer*, 2013 IL 114234, ¶ 18. By interpreting Section 13-116 in the manner that it did, the appellate court created a

backdoor mechanism for former creditors to "enforce" unenforceable debts, fundamentally contradicting the appellate court's own conclusion.

The appellate court explicitly acknowledged that "[T]here is no dispute that the statute of limitations on the note and the mortgage have expired, meaning that defendant lacks the ability to pursue an action to foreclose the mortgage." *Watkin*, 2025 IL App (1st) 241354, ¶ 21 and (A051). However, the court failed to recognize that by leaving the recorded lien intact and allowing no means for obtaining the relief normally available through a quiet title action, its decision arms lienholders with an alternate, yet equally coercive weapon of claim enforcement.

Under the opinion below, lienholders need not file an action on the expired, unenforceable note or a foreclosure action. They can simply sit back, wait for the homeowner to sell or refinance the property (or for some other legal claims to arise such as in a foreclosure, deficiency judgment, partition action, bankruptcy, dissolution of marriage, or probate), and then demand payment of any amount they would like on a claim that the law has already declared to be unenforceable.

As any real estate practitioner knows, an unreleased mortgage of record creates title issues that need to be addressed before clear title to a property can be transferred or pledged. By holding that a time-barred mortgage lien survives as a cloud on title for a decade after the mortgage is unenforceable as a matter of law, the appellate court effectively handed former creditors a revived claim, should there be a future sale or refinance. If a homeowner must pay off a stale, legally uncollectible claim to procure a release of mortgage lien and

satisfy a title underwriter's or a subsequent lender's requirements, the former creditor has successfully enforced the "unenforceable" claim of indebtedness.

Ultimately, the appellate court achieved exactly what the Statute of Limitations was designed to prevent: it created a *de facto* (or, actually, a new, *de jure*) collection mechanism that rewards creditors who "slumber on their rights" long after their legal remedies have expired and that disadvantages those who are placed in the position of having to defend against claims based on unenforceable notes and extinguished mortgages with evidence dissipated by the passage of time.

This result eviscerates the very concept of a Statute of Limitations and neuters the promise of achieving equity afforded by quiet title actions. Quiet title actions are designed to do exactly what the appellate court in this case said could not be done – remove *unenforceable* liens. See *Gambino v. Blvd. Mortg. Corp.*, 398 Ill. App. 3d 21, 52 (1st Dist. 2009) (defining a cloud on title as a claim that is "in fact, unfounded or which it would be inequitable to enforce."); see also *CitiMortgage, Inc. v. Maryland at Five LLC*, 2025 IL App (1st) 231548-U, ¶ 45 (recognizing that a cloud on title includes any apparent legal claim that is "actually invalid or unenforceable").

This Court has also long recognized that Statutes of Limitation rest on the principle that, with time, the right to be free of stale claims prevails over the right to pursue them. *Golla v. General Motors Corp.*, 167 Ill. 2d 353, 369-70 (1995). Limitation periods exist to compel timely action while evidence is fresh and therefore promote predictability and finality in the law. *Portwood v. Ford Motor Co.*, 183 Ill. 2d 459, 463 (1998). The appellate court's ruling achieves the exact opposite, arming former creditors with a backdoor

mechanism for enforcing time-barred debts. Under the opinion below, lienholders need not foreclose at all; they can simply sit back indefinitely, wait for the homeowner to sell or refinance, and then demand payment in full on an obligation the law has already declared unenforceable.

One of the other purposes of a Statute of Limitations is to require any necessary litigation to be brought within such time as the particular facts and circumstances may be proved with the utmost certainty and before sufficient proof has become stale or entirely lost. *Horn v. City of Chicago*, 403 Ill 549, 560 (1949). A Statute of Limitations is designed not merely to raise a presumption of payment of a just debt, through the lapse of time, but to protect against stale demands after the true state of the transaction may have been forgotten or be incapable of explanation by reason of the death or removal of witnesses. *Bush v. Continental Casualty Co.*, 116 Ill. App. 2d 94, 102-03 (1st Dist. 1969).

Created here by the appellate court is a "zombie lien;" revived from the dead and unenforceable, yet lurking to profit but with no remedy to the mortgagor. The appellate court's decision transforms extinguished mortgage liens into perpetual roadblocks to future property transactions, burdening homeowners with obligations they no longer legally owe. If a creditor can bypass the judicial system and rely on the coercive power of a clouded title to demand payment for a dead debt, the limitations period guaranteed by the Statute of Limitations is rendered illusory. This Court must reverse the decision below to close this backdoor enforcement mechanism and ensure that when a debt is barred by the Statute of Limitations, it cannot be enforced through the extortionate leverage of a "zombie" lien.

VII. Upholding the appellate court's decision creates an irreconcilable anomaly in Illinois lien law.

The appellate court's ruling elevates mortgage liens to a status alien to Illinois law. In Illinois, a lien is merely a mechanism for enforcing an underlying right or debt. When the time to enforce that right expires, the lien itself is extinguished or forfeited. This principle is also applied to other encumbrances on real property, such as judgment liens and mechanics liens, both of which require an enforceable obligation for the lien to remain valid.

Regarding judgment liens, pursuant to Section 12-101 of the Code, "[u]nless a judgment is revived within seven years of its entry or last revival and a memorandum of the order of revival is filed before the expiration of the prior memorandum of the judgment, a properly filed judgment lien expires seven years from the date of its entry or last revival." *Barth v. Kantowski*, 409 Ill. App. 3d 420, 424 (3d Dist. 2011) (citing 735 ILCS 5/12-101). Therefore, if a judgment creditor fails to properly revive the judgment and file the memorandum prior to the expiration of the lien, the lien is extinguished. The expiration of the enforcement period does not merely bar the remedy while leaving a phantom lien on the public record; it unequivocally extinguishes the encumbrance.

Similarly, mechanics liens are governed by strict timeliness components that unequivocally extinguish the encumbrance if ignored. As the appellate court articulated in *CB Constr. & Design, LLC v. Atlas Brookview, LLC*, 2021 IL App (1st) 200924, ¶ 27, when a party claims a lien under the Mechanics Lien Act, Section 9 dictates that suit "shall be commenced or counterclaim filed within two years after the completion of the contract." Furthermore, if no suit has been filed, a property owner may force the issue of the lien's validity by issuing a written demand under Section 34. *Id.* That Section expressly mandates

that once the demand is served, suit must be commenced within 30 days, "or the lien shall be forfeited." *Id.* (quoting 770 ILCS 60/34(a)).

The court in *CB Construction* explicitly held that a claimant must commence suit within these statutory time limits to avoid forfeiture. If the claimant fails to strictly comply, the lien is lost. The Statute of Limitations for a mechanics lien conditions the right to enforce the lien itself; its expiration does not leave a lingering cloud on title but rather results in the lien's extinguishment.

The appellate court's decision in the instant case defies this cohesive framework that, for its existence, a lien is dependent upon a valid and enforceable debt or obligation. By holding that a mortgage lien survives even after the Statute of Limitations has barred any action on the underlying debt, the court below created a "zombie" lien. There is no justification for extinguishing judgment liens and mechanics liens upon the expiration of their enforcement periods while simultaneously allowing an unenforceable mortgage lien to fester on the chain of title.

Consistency in Illinois real estate law demands that when the underlying debt becomes time-barred and unenforceable, the lien securing that debt must be extinguished. By discarding that standard, the appellate court replaced a unified, logical framework with an arbitrary and unjustified exception for mortgage lenders.

VIII. The appellate court's holding injects uncertainty into Illinois real estate transactions and fosters litigation over unenforceable claims.

The appellate court's new interpretation that Section 13-116 supersedes the 10-year Statute of Limitations on promissory notes and the 10-year Statute of Limitations on the

enforceability of mortgages sows uncertainty across the spectrum of Illinois real estate transactions. Real estate purchases and sales, title insurance, credit lending, mortgage insurance, foreclosures, homestead exemptions, partition actions, and conveyances are all rendered uncertain. The application of other laws, such as for eminent domain, the disbursement of insurance proceeds, enforcement of judgments, bankruptcies, probate, and dissolution of marriage also are affected by the appellate court's ruling. The determination of how much money satisfies the lien is at the core of each of the foregoing other areas of law.

When the limitations period expires, no one should be required to litigate any aspect of a time-barred promissory note or mortgage; not their validity; not how much was paid or not paid; not how much interest accrued on any unpaid balance and from when and at what rate; not any other defenses; and not any offsets. Witnesses disappear, memories fade, and records are lost or disposed of. *Doe v. Hastert*, 2019 IL App (2d) 180250, ¶ 54.

But the appellate court's holding paves the way for years-delayed litigation over all those issues concerning lapsed notes and mortgages. For example, after the limitations period, if the property owner tries to sell the property and is confronted with a demand from the time-barred mortgagee for a pay-off with which the property owner disagrees, the property owner may have no choice but to litigate (either as a plaintiff or a defendant) the issues regarding the time-barred note or mortgage. There is a similar result if a loan is sought secured by the property. There may be years-delayed litigation over the note and mortgage in situations involving partition actions, foreclosures of other encumbrances and liens against the subject property, or regarding priorities amongst competing creditors, or

the amount of equity in the property in bankruptcies, probates, marital dissolutions, and homestead exemption matters, to name a few.

Beyond the potential for years-delayed litigation, the appellate court's holding creates unwarranted leverage for creditors who no longer have any legal right to enforce the underlying note. It is foreseeable that this decision will encourage third parties to purchase stale, discounted mortgage liens expressly to hold them until a property owner attempts to sell or refinance. At that point, the lienholder can demand a substantial payoff in exchange for a lien release. By then, the belated litigation over the note or mortgage may not even involve the original mortgagor and mortgagee. This creates a significant challenge to the administration of justice, as the fair adjudication of such disputes will be severely handicapped by the passage of time, entirely undermining the finality promised by the Statute of Limitations.

IX. The appellate court's decision contravenes timely resolution of foreclosures.

The appellate court's ruling not only contradicts over 150 years of substantive property law, but it directly undermines the administrative and public policy directives established by this very Court. There is a recognized, critical public policy imperative in Illinois to resolve mortgage issues and clear property titles promptly. Just recently, on March 25, 2022, this Court entered Order M.R. 31228, establishing strict time standards for case closures across all Illinois trial courts. Ill. S. Ct., M.R. 31228 (eff. July 1, 2022). As this Court explicitly stated in that Order, implementing time standards establishes a statewide expectation for judges, litigants, and attorneys, serving as the standard for the efficient use of court time and resources and cost-effective litigation. For complex civil

actions, including foreclosures, this Court's adopted standard dictates that 98% of cases must be completely resolved and closed within 36 months.

The appellate court's decision eviscerates this 36-month standard. By holding that a mortgage lien survives *for a decade* after the Statute of Limitations has barred the underlying note and the foreclosure action has been dismissed, the lower court incentivizes endless extrajudicial delay. Under the appellate court's framework, a creditor who fails to adjudicate their rights within the 10-year Statute of Limitations – let alone this Court's 36-month benchmark – suffers no real penalty. They are permitted to bypass the judicial system entirely, sitting on an unenforceable lien for years to leverage a settlement when the homeowner eventually attempts to sell or refinance.

This judicially sanctioned delay breathes life into the modern crisis of "zombie" mortgages – a phenomenon that inflicts severe economic harm on homeowners, cities and municipalities, and the broader real estate market in general. These zombie properties become unmarketable, leading to neighborhood blight, depreciated property values, and an evaporated tax base for local municipalities. The homeowner is trapped: they cannot secure new financing, they cannot transfer clear title, and they are left without any legal recourse to settle the issue and move forward.

A quiet title action is the exact remedy designed to cure this paralysis. When the Statute of Limitations on the underlying debt expires and extinguishes the mortgage by operation of law, quieting title is the only mechanism that returns the property to the stream of commerce and aligns with this Court's mandate for the timely closure of mortgage disputes. By refusing to remove a mortgage lien that everyone agrees can no longer be

legally enforced, the appellate court stripped property owners of their only defense against zombie mortgages. This Court should reverse the decision below to restore certainty to Illinois land titles, protect the real estate market and enforce its own policy demanding the prompt and efficient resolution of mortgage disputes.

CONCLUSION

For more than a century, Illinois law has spoken with one voice: the promissory note is the principal, the mortgage is the incident, and when the enforcement of the debt is barred by the Statute of Limitations, the lien is extinguished by operation of law. The appellate court's decision improperly revokes this fundamental principle, misconstrues the legislative intent of Section 13-116, and directly conflicts with the General Assembly's recent reaffirmation of Illinois common law. If allowed to stand, this ruling will create an irreconcilable anomaly in Illinois lien law and arm former creditors with uncollectible "zombie" mortgages to indefinitely cloud land titles across the State.

WHEREFORE, Plaintiff-Appellant, Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731, respectfully requests that this Honorable Court reverse the decision of the appellate court and the judgment of the circuit court, and remand this cause with instructions to enter a decree quieting title in favor of Plaintiff, free and clear of Defendant's Mortgage.

Respectfully submitted,

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731

By: /s/ *Arthur C. Czaja* .
Arthur C. Czaja
Attorney for Plaintiff-Appellant

Arthur C. Czaja
ARDC # 6291494
Attorney for Plaintiff-Appellant
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

CERTIFICATE OF COMPLIANCE

I certify that this brief complies with the requirements of Rules 341 (a) and (b). The length of this petition, excluding the pages containing the Rule 341(d) cover, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 34 pages.

/s/ *Arthur C. Czaja* .
Arthur C. Czaja
ARDC # 6291494
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

Attorney for Plaintiff-Appellant

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SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721
(217) 782-2035

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

January 28, 2026

In re: Chicago Title Land Trust Company, etc., Appellant, v. Sara Watkin, etc., Appellee. Appeal, Appellate Court, First District. 132383

The Supreme Court today ALLOWED the Petition for Leave to Appeal in the above entitled cause. We call your attention to Supreme Court Rule 315(h) concerning certain notices which must be filed with the Clerk's office.

With respect to oral argument, a case is made ready upon the filing of the appellant's reply brief or, if cross-relief is requested, upon the filing of the appellee's cross-reply brief. Any motion to reschedule oral argument shall be filed within five days after the case has been set for oral argument. Motions to reschedule oral argument are not favored and will be allowed only in compelling circumstances. The Supreme Court hears arguments beginning the second Monday in September, November, January, March, and May. Please see Supreme Court Rule 352 regarding oral argument.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

No. _____

In the
Supreme Court of Illinois

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, as known as Land Trust # 32731,

Plaintiff- Appellant,

v.

Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust,

Defendant-Appellee.

Petition for Leave to Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-24-1354
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 2023-CH-05985
The Honorable **Allen Price Walker**, Judge Presiding

PETITION FOR LEAVE TO APPEAL

Arthur C. Czaja
ARDC # 6291494
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

Attorney for Plaintiff-Appellant

E-FILED
10/17/2025 1:58 PM
CYNTHIA A. GRANT
SUPREME COURT CLERK

PETITION FOR LEAVE TO APPEAL

To the Honorable Justices of the Illinois Supreme Court:

Plaintiff-Appellant, Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust #32731 (the "Plaintiff") petitions for leave to appeal the August 20, 2025, published decision of the Illinois Appellate Court, First District, *Chi. Title Land Trust Co. v. Watkin*, 2025 IL App (1st) 241354, which affirmed the trial court's dismissal of its complaint to quiet title. Plaintiff filed a petition for rehearing in the Appellate Court which was denied on September 15, 2025. This petition is filed within 35 days of the denial of the petition for rehearing, as prescribed by Rule 315(b).

Reasons For Granting Leave to Appeal

Illinois law has never tolerated the notion of a mortgage lien divorced from its debt. For 150 years, this Court has spoken with a single voice: a mortgage lien cannot survive when the obligation it secures is unenforceable. From *Emory v. Keighan*, 88 Ill. 482 (1878), to *First Midwest Bank v. Cobo*, 2018 IL 123038, the rule has remained constant and unshaken—the debt is the principal, the mortgage its incident, and when the debt is paid, barred by the statute of limitations or barred by another procedural rule, the result is the same – the mortgage lien falls with it.

The Appellate Court below rejected that rule and embraced its opposite. It held that, although the note is barred by the Statute of Limitations, the mortgage lien remains effective and enforceable. In so doing, the Appellate Court effectively severed the mortgage lien from the debt it secures, discarded binding precedent, and unsettled the

foundation of more than 150 years of Illinois property law. As a result of the Appellate Court's decision, a mortgage lien can now survive on its own, even without an enforceable underlying debt. This has never been the law in Illinois.

The consequences of such a ruling are profound. It strips the Statute of Limitations of its force, ignoring its purpose and neutering its legal effect. It burdens property owners with encumbrances that no court can enforce, but that nonetheless shadows every attempt to sell, refinance, convey, partition, insure title, or foreclose, and renders uncertain priorities amongst creditors and calculations of the amount of equity in a property. It grants former creditors a lever of pressure long after the debt has been extinguished and unenforceable, thereby enabling extorted settlements, not to satisfy enforceable debts, but to clear away the stain of unenforceable claims so that property transactions may proceed. In short, it transforms the mortgage lien from a security instrument into a perpetual cloud on title, undermining certainty in land transactions across the State.

This Court's intervention is imperative. The opinion below is not merely erroneous; it is destabilizing. It discards precedent reaching back to the nineteenth century, misconstrues section 13-116 of the Code of Civil Procedure, and creates a vision of mortgage lien law alien to Illinois jurisprudence.

The question presented here is one of exceptional importance: whether Illinois will remain governed by the long-settled rule that no mortgage lien can exist without an underlying enforceable debt, or whether it will embrace a new doctrine that severs lien from obligation and unsettles the law of property itself.

Though this appeal presents classical legal issues, the specific question presented is at the cutting-edge of mortgage litigation throughout Illinois. It has led to conflicting decisions, even within the First District from which it emanated. Only this Court can provide the final and definitive answer.

Statement of Facts

On June 24, 2011, Marline and Melvin Stein executed a note in favor of their daughter in law, Defendant-Appellee, Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust ("Defendant") for a line of credit of up to $150,000.00. R, V1, C32-C35. The note had a one-year term and required a single payment of principal and interest at 4% per annum, due no later than June 24, 2012. *Id.* The note was secured by a mortgage lien on the property located at 1220 North Branch Road, Wilmette, Illinois ("Property"), executed the same day and recorded on July 22, 2011 as Document No. 1120310049. R, V1, C21-C30.

Eleven years later, on June 23, 2022, the Defendant filed a foreclosure action with respect to her mortgage lien. Marline moved to dismiss the foreclosure case as, *inter alia*, barred by the Statute of Limitations. R, V1, C218-C232. The trial court agreed and dismissed the foreclosure case on April 2, 2023. R, V1, C233. The Defendant did not appeal the dismissal and never filed any subsequent action on her note or mortgage lien.

On June 16, 2023, more than eleven years after the note's maturity date and more than ninety days after dismissal of the foreclosure case, Marline, as beneficiary of the Plaintiff, filed this quiet title action. R, V1, C14-C35. The complaint alleged that the Defendant's mortgage lien was a cloud on title to the Property because the statute of

limitations on the note had run, and thus the mortgage lien was extinguished by operation of law. *Id*.

The case proceeded through amended pleadings and briefing. Plaintiff argued that, because any action on the note was time-barred, the mortgage lien —being only incident to the note—was also barred, and the recorded mortgage lien, which was unenforceable, constituted a cloud on title. R, V1, C318-C322. The Defendant argued that, although the Statute of Limitations barred enforcement of the note, the lien of the mortgage remained effective under section 13-116. R, V1, C260-C262.

On May 30, 2024, the trial court granted Defendant's motion for summary judgment and denied Plaintiff's cross-motion. R, V1, C353-C354. The court later entered final and appealable orders on June 25, 2024. R, V1, C386-C387. Plaintiff filed a timely notice of appeal. R, V1, C392-C396.

The Appellate Court affirmed, holding that, although foreclosure was barred, "the inability to enforce the mortgage lien does not operate to extinguish the lien." *Watkin*, 2025 IL App (1st) 241354, ¶22. Plaintiff filed a petition for rehearing on September 10, 2025, which the Appellate Court denied on September 15, 2025.

Importance of the Question Presented

This case presents a question of law that strikes at the foundation of Illinois mortgage practice: can a mortgage lien exist when the debt it secures is barred by the Statute of Limitations? For more than a century, this Court has answered no. The Appellate Court below, however, answered yes, holding that the mortgage lien survives even though the debt cannot be enforced.

That ruling conflicts with this Court's precedents, disregards the intended operation of section 13-116 of the Code, and directly contradicts other recent decisions from the First District. The question is, therefore, one of uniformity of decision, as required by Rule 315(a). It is also a question of exceptional importance. If left uncorrected, the decision below will unsettle foreclosure practice across the State, cloud titles with unenforceable encumbrances, and destabilize the real estate market by allowing former creditors to wield expired debts as leverage against homeowners and their successors and creditors, creating a back-door mechanism for enforcing expired debts. It would impede the insurance of property titles. It would render uncertain priorities amongst creditors. And it would make it impossible to determine how much equity there is in a property.

Importantly, the decision below nulls the intent and the effect of the Statute if Limitations. And the uncertainty created by this new rule will result in increased litigation, not just between property owners and former creditors, but also between property owners and other encumbrancers, between lien holders, and in tangential legal proceedings such as in bankruptcies, partition actions and probates.

The Court's intervention is imperative, not simply to correct the error in this case, but to restore coherence to Illinois law, to resolve an intra-district conflict, and to reaffirm the principle that has guided this Court for generations: there can be no mortgage lien without an underlying enforceable note.

Argument

I. The Appellate Court disregarded binding precedent of this Court.

For over a century, this Court has declared that a mortgage lien cannot outlive the debt it secures. In *Emory*, 88 Ill. at 485, the Court held that "when the debt is paid, discharged, released, or barred by the Statute of Limitations, the mortgage is gone, and has effect no longer." In *Hibernian Banking Ass'n v. Commercial Nat'l Bank*, 157 Ill. 524, 537 (1895), the Court reaffirmed that "the mortgage is a mere incident of the debt, and is barred when the debt is barred." In *Bradley v. Lightcap*, 201 Ill. 511, 517 (1903), the Court emphasized that when the debt is barred, "the mortgagee's title is extinguished by operation of law." And in *Schifferstein v. Allison*, 123 Ill. 662, 665 (1888), the Court made clear that "the debt is the principal thing, and the mortgage but the incident to it."

These are not dusty relics of title theory. They remain controlling law. In *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526, 536 (2010), the Court explained that foreclosure actions "are based on the note, the vehicle which gives the plaintiff the legal right to proceed against the property." And in *Cobo*, 2018 IL 123038, ¶39 n.2, the Court expressly reaffirmed this "old Illinois rule." The Appellate Court below ignored this binding authority, holding instead that the mortgage lien may exist independently of the debt, a proposition alien to Illinois law.

II. The Mortgage Lien is a Mere Incident of the Debt it Secures – When the Debt is Barred by the Statute of Limitations, the Mortgage is "Gone."

A lien is merely an enforcement mechanism for an underlying debt.

Illinois courts have consistently held that mortgage liens are inseparable from the notes or debts they secure. Indeed, in Illinois a mortgage lien is only regarded as a

"mere incident to the debt." *U.S. Bank National Ass'n v. Gagua*, 2020 IL App (1st) 190454, ¶ 49; *Moore v. Lewis*, 51 Ill. App. 3d 388, 391-92 (1st Dist. 1977). Therefore, "where the debt is paid or barred by the Statute of Limitations, a mortgage being but incident to the debt, is no longer a lien on the property." *Dunas v. Metropolitan Trust Co.*, 41 Ill. App. 2d 167, 170 (1st Dist. 1963), *Markus v. Chicago Title & Trust Co.*, 373 Ill 557, 560 (1940).

The existence of the debt is essential to the life of the mortgage lien. *Emory v. Keighan*, 94 Ill. 543, 545 (1880). Subjecting the property to a mortgage lien is only available so long as the debt the mortgage lien secures is in existence and is binding and in force on the mortgagor. In *Richey v. Sinclair*, 167 Ill. 184, 193 (1897), this Court explained that rule as follows:

> "If the mortgage indebtedness was paid or barred by the Statute of Limitations when the action was brought, a bill to foreclose the mortgage could not be maintained. … In *Pollock* v. *Maison,* 41 Ill. 516, it was held that the existence of the debt which a mortgage is given to secure is essential to the life of a mortgage, and when the debt is paid, discharged, released or barred by the Statute of Limitations ***the mortgage is gone*** and has effect no longer." (Emphasis added).

A creditor's rights under a mortgage lien are not of an infinite duration. Rather, a mortgage lien is only valid so long as the debt it secures is enforceable. Just weeks prior to the decision below, a different panel of the same First District Appellate Court correctly recognized this principle, explaining that, "A mortgage is tied to the life of the underlying note." *BMO Bank N.A. v. Vaca*, 2025 IL App (1st) 241793-U, ¶ 17. As the Seventh Circuit Court of Appeals recognized, "[L]ong-standing Illinois law precludes a plaintiff from foreclosing on a mortgage when an action on the underlying note is barred by the statute

of limitations or another procedural rule." *United Central Bank v. KMWC 845, LLC*, 800 F.3d 307, 311 (7th Cir. 2015); *see also Financial Freedom v. Kirgis*, 377 Ill. App. 3d 107, 124 (1st Dist. 2007) (citing the "old principle" that "'where the note is barred, the mortgage being but an incident to it, all right of action on the mortgage is also barred'" quoting *Waughop v. Bartlett*, 165 Ill. 124, 132 (1896), *overruled on other grounds by McGahan*, 237 Ill. 2d at 538)); *Dunas*, 41 Ill. App. 2d at 170 ("'where the debt is paid or barred by the Statute of Limitations, ***a mortgage*** being but incident to the debt, ***is no longer a lien on the property***'" (Emphasis added) (quoting *Markus*, 373 Ill. at 560, *overruled on other grounds by McGahan*, 237 Ill. 2d at 538; *BMO Bank N.A. v. Zbroszczyk*, 2025 IL App (1st) 241333, ¶ 27.

III. Section 13-116 Was Enacted for the Narrow Purpose of Creating Certainty for Third Parties about Unrecorded Extensions and Did Not Create a Different Free-Standing 20-Year Statute of Limitations for Mortgages.

The history of Illinois' limitation law confirms what this Court's precedents have always held: the life of the mortgage lien follows the life of the debt.

In 1872, the legislature reduced the period for bringing actions on notes, bonds, and similar instruments from sixteen to ten years. At the same time, it fixed the same ten-year period for actions to foreclose a mortgage lien. This was no innovation, but rather, a legislative declaration of the existing rule. Courts of law and equity alike had already treated the limitation on the debt as controlling the mortgage lien, holding that when recovery was barred on the note, the mortgage lien was likewise barred. As the Court in *Schifferstein* explained, even without an explicit statutory reference, mortgage liens would have been "subject to the limitation prescribed for the principal thing, the debt, and be

barred in the same time." *Schifferstein v. Allison*, 24 Ill. App. 294, 301 (4th Dist. 1887). The statute relating to the time for bringing an action to foreclose a mortgage lien is construed not as discharging the underlying debt, "but as taking away the remedy for the enforcement of its collection and ***creating a presumption of its payment and a consequent discharge of the lien***." (Emphasis added). *Id*. at 301.

In *Kraft v. Holzmann*, 206 Ill. 548 (1903), the Court held that an extension of indebtedness kept the mortgage lien alive without any recorded extension agreement, because "the debt is the principal thing and the mortgage or trust deed but an incident thereto." *Id*. at 549. Section 11 of the Limitations Act, the Court explained, had to be construed together with the limitation on promissory notes, and "the mortgage will not be barred until the debt is barred." *Id*.

The legislature responded to *Kraft* by enacting in 1935 what became section 11(a) of chapter 83, now codified as section 13-116. That statute provided that the lien of a mortgage, trust deed, or similar instrument would cease twenty years after the maturity date stated on its face or in any recorded extension agreement, with further extensions possible in ten-year increments. The statute thus imposed a ceiling on the effectiveness of *unrecorded extensions*, while still recognizing the fundamental rule that the lien was dependent on the continuing enforceability of the debt. The purpose was not to sever mortgage lien from note, but to protect third parties by requiring record notice of *extensions*. *See McCarthy v. Lowenthal*, 327 Ill. App. 166, 169 (1st Dist. 1945) ("The purpose of Section 11 (b) is to set a limit beyond which unrecorded extensions do not have that effect. If a mortgagee sees fit to extend the date of payment of the indebtedness, he

may do so without prejudice to his lien and without recording the extension agreement for 20 years after the due date of the mortgage by its terms or on its face was due.")

Subsequent decisions confirmed this understanding. In *Zyks v. Bowen*, 351 Ill. App. 491, 495–97 (1st Dist. 1953), the court explained that section 11 was designed to modify *Kraft* only as to subsequent encumbrancers and purchasers, not as between the original parties. *Palkey v. Donichy*, 18 Ill. App. 2d 356, 361 (1st Dist. 1958), likewise confirmed that unrecorded extensions were invalid only "as against persons other than the original parties." And in *Livingston v. Meyers*, 6 Ill. 2d 325, 330–31 (1955), this Court applied the statute in the context of a third-party purchaser, again underscoring its limited scope.

The Appellate Court's decision below wrenched Section 13-116 far beyond its historical and doctrinal role. The Court treated Section 13-116 as creating a free-standing 20-year statute of limitations for mortgage liens, different from and independent of the Statute of Limitations on the note. That interpretation mistakes the very meaning of a lien. A mortgage lien is not a ghostly shadow on title; it represents an enforceable right to foreclose on the security given for an underlying debt. Once foreclosure on the underlying debt is barred, no lien remains.

Section 13-116 never provided a 20-year limitations period for mortgage liens, divorced from the underlying debt. And even if it had, such a provision would still have to be read together with the limitations period applicable to promissory notes. This Court has always insisted that the two rise and fall together. *Livingston*, 6 Ill. 2d at 331; *Schifferstein*, 123 Ill. at 665. To hold otherwise, as the Appellate Court did here, is to

contradict *Kraft*, *Emory*, 88 Ill. at 485, *Schifferstein*, 123 Ill. at 666, and *Hibernian Banking Ass'n*, 157 Ill. at 538.

The result is a distortion of both history and doctrine. Section 13-116 was enacted to close a narrow gap created by *Kraft*—ensuring that unrecorded extensions would not prejudice third parties—not to create perpetual liens without enforceable underlying debts. By transforming Section 13-116 into a free-floating 20-year statute of limitations for mortgage liens, the Appellate Court discarded this Court's teaching and destabilized Illinois land-title law.

IV. The Appellate Court Failed to Apply the Common Law Rules That When a Debt is paid, discharged, released, or barred by limitation, the Mortgage Lien is Extinguished by Operation of Law.

Moreover, even while the Appellate Court acknowledged that there are "several methods by which a lien—including a mortgage lien—may be resolved and thereby removed from title" (*Watkin*, 2025 IL App (1st) 241354, ¶ 19), the Court failed to apply those principles correctly. This Court has long held that a mortgage lien is extinguished not only by affirmative release, but also by operation of law when the debt it secures is no longer enforceable. In *Emory*, 88 Ill. at 485, the Court made clear that "when the debt is paid, discharged, released, or barred by the Statute of Limitations, ***the mortgage is gone***, and has effect no longer." (Emphasis added). Likewise, in *Bradley*, 201 Ill. at 517, the Court held that when the debt is "paid, discharged, released, or barred by limitation, the mortgagee's title is extinguished ***by operation of law.***" (Emphasis added). The Appellate Court below disregarded these binding precedents and, instead, suggested that a mortgage lien remains until affirmatively released of record.

That was error. The Court's statement that "the debt obligation for which the lien serves as security may be satisfied, resulting in the release of the lien. In the case of a mortgage, this must be done through the filing of a release with the office of the recorder of deeds" (*Watkin*, ¶ 19, citing 765 ILCS 905/2) reflects a fundamental misunderstanding. Illinois common law has never required a recorded release for a mortgage lien to be extinguished once the underlying debt has been paid or is barred. Extinguishment follows automatically, ***by operation of law***.

This confusion is not unique to the Appellate Court. In *SEC v. EquityBuild, Inc.*, 101 F.4th 526, 532 (7th Cir. 2024), the Seventh Circuit Court of Appeals similarly erred in holding that, "under the Illinois Mortgage Act, payment alone does not extinguish any pre-existing interest absent a valid release." That holding, like the Appellate Court's reasoning here, ignored Illinois common law. The critical difference, however, is that the Seventh Circuit at least decided *EquityBuild* before the General Assembly acted to correct the misunderstanding. Effective August 1, 2025, section 17 of the Illinois Mortgage Act now expressly provides: "The Act does not abrogate the Illinois common law that the payment in full of a debt secured by a mortgage extinguishes the lien." 765 ILCS 905/17.

By the time the Appellate Court issued its decision in this case, that amendment was already in force. There is, therefore, no excuse for the Appellate Court's misapplication of the law. Nothing in section 13-116 abrogates the common law rule that, (1) when a debt is paid, discharged, released, or barred by limitation, the mortgage lien is extinguished by operation of law; and, (2) the Statute of Limitations applicable to mortgages must be read in tandem with the statute of limitations on promissory notes,

such that when the note is barred, the mortgage lien is barred as well. The Appellate Court's refusal to apply these rules directly conflicts with this Court's precedents and undermines the General Assembly's explicit reaffirmation of Illinois common law.

V. The Appellate Court Misapplied the Principles of Quiet Title—Once the Mortgage Lien Was Shown to Be Unenforceable, Title Should Have Been Quieted in Favor of the Plaintiff.

A quiet title action is an equitable proceeding designed to resolve disputes over ownership and to remove clouds on title—claims that appear valid of record but are in fact invalid or unenforceable. *Gambino v. Blvd. Mortg. Corp.*, 398 Ill. App. 3d 21, 52 (1st Dist. 2009). To prevail, a plaintiff need not show perfect title, only that her title is superior to the defendant's. *Diaz v. Home Federal S&L Ass'n*, 337 Ill. App. 3d 722, 726 (2nd Dist. 2002). And, as the First District has recognized, a quiet title action is the proper vehicle for eliminating unenforceable encumbrances that linger on record. *CitiMortgage, Inc. v. Maryland at Five LLC*, 2025 IL App (1st) 231548-U, ¶ 45.

The Appellate Court here failed to apply these settled principles. It acknowledged that both the note and the mortgage were barred by the statute of limitations (*Watkin*, 2025 IL App (1st) 241354, ¶ 21), yet it refused to grant the relief that quiet title was designed to provide. Once the parties agreed that the mortgage was unenforceable, nothing remained but a recorded shadow on title. That is the very definition of a cloud, and the law is clear that such clouds must be removed through a decree quieting title.

All the Plaintiff was required to show is — and the record demonstrates unequivocally — that the debt was time-barred, leaving no enforceable mortgage lien. That was enough to establish Plaintiff's superior title and to entitle Plaintiff to judgment.

By allowing an extinguished and unenforceable lien to remain, the Appellate Court denied the very purpose of a quiet title action and left property encumbered by an interest everyone agreed can no longer be enforced.

VI. Allowing an Unenforceable Lien to Fester on the Title Creates a Backdoor Mechanism for Former Creditor Enforcement.

The Appellate Court's ruling also creates a dangerous backdoor for former creditors to enforce time-barred debts. Though the Court acknowledged that "there is no dispute that the statute of limitations on the note and the mortgage have expired, meaning that defendant lacks the ability to pursue an action to foreclose the mortgage" (*Watkin*, 2025 IL App (1st) 241354, ¶ 21), it failed to recognize that its decision arms lienholders with a different and equally coercive weapon. Under the opinion below, lienholders need not foreclose at all. They can simply sit back, wait for the homeowner to sell or refinance, and then demand payment in full on an obligation the law has already declared unenforceable.

In effect, the Appellate Court did the very thing it claimed it was not doing: it preserved a mechanism for enforcing a lien after the statute of limitations had run. By holding that the lien continues to cloud title even when foreclosure is barred, the Court handed lienholders leverage to extort payment on stale debts. The decision transforms an extinguished mortgage liens into a perpetual roadblock to future property transactions, burdening homeowners with obligations they no longer owe and defeating the purpose of statutes of limitation.

VII. The decision creates a direct conflict within the First District.

The First District, itself, has recognized the opposite rule as that adopted by the Court below. In *Zbroszczyk*, 2025 IL App (1st) 241333, ¶27, the First District Appellate Court held that, "where the underlying obligation is barred by the statute of limitations, a mortgage foreclosure action is similarly barred." Likewise, in *Vaca*, 2025 IL App (1st) 241793-U, ¶17, the court reiterated that "a mortgage is tied to the life of the underlying note." The decision below severs that tie and declares that a lien may persist even when the right of foreclosure is extinguished.

The resulting intra-district conflict leaves trial courts without guidance and ensures inconsistent treatment of similarly situated litigants. This Court's review is necessary to restore uniformity.

VIII. The Consequences Are Grave and of Statewide Importance.

The opinion below destabilizes foreclosure practice and threatens the integrity of Illinois land titles. By holding that a lien may persist after the underlying debt is extinguished, the Appellate Court effectively nullified the Statute of Limitations on notes and mortgage liens. Creditors who neglect their now-expired rights are rewarded, while property owners and others who rely on statutory repose are punished. Rather than eliminating stale claims, the decision allows them to linger indefinitely as recorded encumbrances long after their legal life has ended.

This Court has recognized that statutes of limitation rest on the principle that, with time, the right to be free of stale claims prevails over the right to pursue them. *Golla v. General Motors Corp.*, 167 Ill. 2d 353, 369 (1995). Statutes of limitation exist to compel

timely action while evidence is fresh, before witnesses are unavailable or their memories fade. *Chase Sec. Corp. v. Donaldson*, 325 U.S. 304, 314 (1945). Limitation periods therefore promote predictability and finality in the law. *Golla*, 167 Ill. 2d at 370; *Portwood v. Ford Motor Co.*, 183 Ill. 2d 459, 463 (1998).

The impact of the decision below will be felt across Illinois; uncertainty will pervade every aspect of real property transactions and other legal proceedings. Homeowners will face liens that no court will enforce, yet that will obstruct every sale, every title insurance policy, every refinancing, every calculation of a property's equity, every foreclosure and foreclosure deficiency, every determination of priority amongst creditors, homeowner's exemptions, credit ratings, and will impact other legal proceedings such as bankruptcies, partition actions, probates, and actions and proceedings to enforce judgments. Lenders, uncertain whether titles are clear, will hesitate to extend credit, chilling real estate transactions and depressing property values. Former creditors will exploit expired obligations as leverage, extorting payments not to satisfy lawful debts but to remove clouds that should not exist. And there are scenarios whereby property owners will have to litigate the very debts that are time-barred. (For example, if the former creditor demands more money to remove the mortgage lien than that which arguably would have been due on the expired note, the property owner will have to seek court relief and to present evidence prejudiced by the passage of time to challenge the former creditor's demands.) In such a system, the repose promised by Statutes of Limitation is reduced to an illusion.

This Court has always recognized that statutes of limitation protect repose, prevent injustice from stale claims, and ensure stability in property rights. The opinion below achieves the opposite. It substitutes perpetual exposure for repose, confusion for certainty, and settled doctrine for a radical departure. The issue goes far beyond the parties to this case. It threatens the coherence of Illinois mortgage law and the security of every land title in the State. This Court's intervention is imperative.

Conclusion

For more than a century, Illinois law has spoken with one voice: the mortgage lien is but the incident, the debt the principal, and when the debt falls, the mortgage lien must fall with it. The opinion below belies that fundamental principle, revoking this Court's precedents and leaving in its wake a distorted and uncertain state of mortgage law in which enforcement liens survive without enforcement rights and encumbrances linger without remedy. If that revision is allowed to stand, foreclosure practice will be destabilized, property transactions will be clouded by uncertainty, and the repose guaranteed by statutes of limitations will be rendered meaningless. Moreover, the very purpose for actions to quiet title – to eliminate the cloud of unenforceable claims against real property -- is neutered.

This case presents a question of exceptional importance: whether Illinois will remain governed by the time-tested rule that debt and mortgage lien are inseparable, or whether it will embrace a novel and unprecedented doctrine that divorces one from the other. The answer cannot be left to conflicting panels of the Appellate Court. Only this

Court can restore coherence, reaffirm its own binding precedents, and protect the integrity of Illinois land title law.

WHEREFORE, the Plaintiff-Appellant respectfully requests that this Court grant this Petition for Leave to Appeal.

Respectfully submitted,

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731

By: /s/ *Arthur C. Czaja* .
Arthur C. Czaja
Attorney for Plaintiff-Appellant

Arthur C. Czaja
ARDC # 6291494
Attorney for Plaintiff-Appellant
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

CERTIFICATE OF COMPLIANCE

I certify that this petition complies with the requirements of Rules 341 (a) and (b). The length of this petition, excluding the pages containing the Rule 341(d) cover, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 18 pages.

/s/ *Arthur C. Czaja* .
Arthur C. Czaja
ARDC # 6291494
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

Attorney for Plaintiff-Appellant

APPENDIX

(Appellate Court's Opinion)

2025 IL App (1st) 241354

First District
Third Division
August 20, 2025

No. 1-24-1354

CHICAGO TITLE LAND TRUST COMPANY, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement Dated March 1, 1974, as Known as Land Trust #32731,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	No. 2023 CH 05985
v.	)	The Honorable Allen Price Walker,
SARA WATKIN, as Trustee of the Sara Watkin 2000 Revocable Trust,	)	Judge Presiding.
Defendant-Appellee.	)	

JUSTICE REYES delivered the judgment of the court, with opinion.
Justices Martin and D.B. Walker concurred in the judgment and opinion.

OPINION

¶ 1 In 2011, plaintiff Chicago Title Land Trust Company, as trustee to a land trust, executed a mortgage in favor of defendant Sara Watkin, as trustee of a revocable trust, which served as security for a one-year line of credit provided to the beneficial owners of the land trust. In 2022, defendant filed a foreclosure action against plaintiff, which was dismissed without prejudice; that dismissal was never appealed, and the complaint was never amended or refiled. In 2023, plaintiff filed a complaint to quiet title, arguing that the mortgage lien was extinguished by operation of law after the expiration of the limitations period for both the debt and the mortgage and therefore constituted a cloud on title. The parties filed cross-motions for summary judgment, and the circuit court granted defendant's motion and denied plaintiff's

motion, finding that the mortgage remained a valid lien on the property even when the debt was unenforceable. Plaintiff appeals, and we affirm.

¶ 2 BACKGROUND

¶ 3 The facts relevant to the instant appeal are largely undisputed. Plaintiff was the trustee of a land trust, and Marline and Melvin Stein (collectively, the Steins) were the beneficial owners of the land trust. On June 24, 2011, plaintiff and the Steins executed a "Secured First Mortgage Note" (note), evidencing a line of credit in which they promised to pay "up to the sum of $150,000.00" to defendant, the trustee of a revocable trust. The note had a one-year term, with a maturity date of June 24, 2012. The note was secured by a mortgage on a parcel of real property located in Wilmette, which was executed by plaintiff in favor of defendant.

¶ 4 Neither plaintiff nor the Steins ever made any payments under the note. Accordingly, on June 23, 2022, defendant filed a complaint in the circuit court of Cook County, seeking to foreclose on the mortgage. The circuit court ultimately granted a motion to dismiss the complaint without prejudice on February 2, 2023, but there is no indication that defendant sought to amend her complaint or otherwise refile the action, nor did defendant appeal the dismissal.

¶ 5 On June 26, 2023, plaintiff[1] filed a complaint to quiet title; the complaint was amended several times, and it is the second amended complaint which is the subject of the instant appeal. The complaint alleged that the statute of limitations on the note had expired, and, as such, action on the mortgage was similarly barred. Since the mortgage was unenforceable, the

[1]The initial complaint was filed by Marline Stein, as beneficial owner of the property. The second amended complaint, however, listed plaintiff as the party filing the complaint.

complaint alleged that it represented a cloud on title and requested an order finding that defendant had no "estate, right, title, or interest in the subject property."

¶ 6 In response, defendant filed a motion for summary judgment. Defendant acknowledged that "the relative statutes of limitation have run (and that the foreclosure case that she filed in Cook County, Illinois *** cannot be re-opened or re-filed at this point)." She, however, contended that "[n]one of that *** affects the validity of her mortgage lien," claiming that the lien remained in effect even if she was procedurally barred from enforcing her rights under the note and mortgage. As such, defendant maintained that plaintiff's claim to unencumbered title was not superior to her mortgage claim, which was a required element for a quiet title action.

¶ 7 Plaintiff filed a response to the motion for summary judgment, in addition to a cross-motion for summary judgment, contending that, where the mortgage and note were barred by the statute of limitations, the mortgage "is no longer a lien on the property" (citing *Markus v. Chicago Title & Trust Co.*, 373 Ill. 557 (1940)).

¶ 8 On May 30, 2024, the circuit court granted defendant's motion for summary judgment, "subject to the furnishing of the proper identification of the plaintiff and proof of its current ownership of the subject property, which will be done via a Third Amended Complaint, to be filed on or before May 31, 2024," and further denied plaintiff's cross-motion for summary judgment.

¶ 9 On May 31, 2024, plaintiff filed a third amended complaint, as directed by the circuit court. Plaintiff also filed a motion for clarification, requesting that the circuit court enter a final and appealable order pursuant to its grant of summary judgment and that it clarify that its order was over plaintiff's objections. On June 25, 2024, the circuit court denied plaintiff's motion for clarification, but indicated that "[t]his order is final and appealable as of the date of its

entry." On June 28, 2024, plaintiff filed a notice of appeal, appealing the circuit court's May 30, 2024, grant of summary judgment in defendant's favor, and this appeal follows.

¶ 10 ANALYSIS

¶ 11 On appeal, plaintiff contends that the circuit court erred in granting summary judgment in favor of defendant, where the note and mortgage were unenforceable due to the expiration of the statute of limitations. As an initial matter, we briefly address our jurisdiction to consider plaintiff's appeal. See *In re J.B.*, 204 Ill. 2d 382, 388 (2003) (a reviewing court has the duty to consider its jurisdiction *sua sponte* if not raised by the parties). The appellate court typically only has jurisdiction to review final judgments from the circuit court. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017). An order granting summary judgment is a final order. *Shutkas Electric, Inc. v. Ford Motor Co.*, 366 Ill. App. 3d 76, 80 (2006). Thus, there would normally be no question that we have jurisdiction to review the circuit court's May 30, 2024, order granting summary judgment in favor of defendant.

¶ 12 In this case, however, the circuit court's order granting summary judgment was "subject to the furnishing of the proper identification of the plaintiff and proof of its current ownership of the subject property, which will be done via a Third Amended Complaint, to be filed on or before May 31, 2024." Plaintiff filed a third amended complaint as instructed, and the circuit court denied its motion for clarification on June 25, 2024. While the order did not address the previous grant of summary judgment, it included a finding that "[t]his order is final and appealable as of the date of its entry." We thus must consider whether either (1) the summary

judgment order or (2) the order denying the motion for clarification operated as a final order that conferred jurisdiction on this court with respect to the instant appeal.[2]

¶ 13 We find that, under the circumstances of this case, the circuit court's orders operated to terminate the litigation between the parties, such that we have jurisdiction to consider the instant appeal. While the circuit court's June 25, 2024, order did not expressly reaffirm its previous grant of summary judgment, its May 30, 2024, order, which granted summary judgment, made it clear that it was permitting plaintiff to amend its complaint solely to add proof of its ownership of the subject property, not to reopen the proceedings. To ensure there was no confusion about the termination of the litigation, the circuit court's June 25, 2024, order included a specific finding that its order was final and appealable. As there can be no question that the circuit court's order resolved all issues between the parties, we find that we have jurisdiction over the instant appeal and proceed to consider the merits of the parties' arguments. See *Shaw v. U.S. Financial Life Insurance Co.*, 2022 IL App (1st) 211533, ¶ 23 (finding motion to reconsider timely where a circuit court's final order granting summary judgment merely effectuated its prior order in which it substantively considered the merits of the motion for summary judgment).

¶ 14 As noted, the circuit court in this case granted summary judgment in favor of defendant. A circuit court is permitted to grant summary judgment only if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2022). The circuit court must view these documents and exhibits in

[2]We note that plaintiff's notice of appeal, filed on June 28, 2024, was filed within 30 days of both orders. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017) (notice of appeal must be filed "within 30 days after the entry of the final judgment appealed from").

the light most favorable to the nonmoving party. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004). We review a circuit court's decision to grant a motion for summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 15 Summary judgment is a drastic measure and should be granted only if the movant's right to judgment is clear and free from doubt. *Id.* Mere speculation, conjecture, or guess, however, is insufficient to withstand summary judgment. *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill. App. 3d 313, 328 (1999). The party moving for summary judgment bears the initial burden of proof. *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (2007). The movant may meet his burden of proof either by affirmatively demonstrating that some element of the case must be resolved in his favor or by establishing that there is an absence of evidence to support the nonmoving party's case. *Id.* The purpose of summary judgment is not to try an issue of fact but to determine whether a triable issue of fact exists. *Schrager v. North Community Bank*, 328 Ill. App. 3d 696, 708 (2002) (citing *Luu v. Kim*, 323 Ill. App. 3d 946, 952 (2001)). Where, as here, the parties file cross-motions for summary judgment, "they agree that only a question of law is involved and invite the court to decide the issues based on the record." *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. The filing of cross-motions for summary judgment, however, does not establish that there is no issue of material fact, nor does it obligate the court to render summary judgment. *Id.* We may affirm on any basis appearing in the record, regardless of whether or not the circuit court relied on that basis. *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 34.

¶ 16 In this case, the defendant's motion for summary judgment was based exclusively on her contention that she had a valid lien on plaintiff's property, even though the statute of limitations barred her from enforcing the terms of the note or mortgage. The issue on appeal thus asks us

to determine the effect of the statute of limitations on the validity of a mortgage lien. We observe that this court recently considered this precise issue in the context of a case that bears remarkable similarity to the case before us. See *Sims v. Deutsche Bank National Trust Co.*, 2025 IL App (1st) 241112-U. Prior to that decision, however, no court appears to have squarely addressed the question of whether the running of the statute of limitations results in the extinguishment of a mortgage lien. Accordingly, while we ultimately agree with the analysis in *Sims*, we address the matter in full in order to provide additional guidance on an issue on which there is limited applicable authority.[3]

¶ 17 A lien is "a hold or claim that one party has on the property of another for a debt." *Aames Capital Corp. v. Interstate Bank of Oak Forest*, 315 Ill. App. 3d 700, 703 (2000). There are a number of circumstances that may result in the imposition of a lien under the law, including mechanic's liens (770 ILCS 60/1 (West 2022)), broker's liens (770 ILCS 15/10 (West 2022)), and tax liens (35 ILCS 5/1101 (West 2022); 35 ILCS 120/5a (West 2022); 35 ILCS 200/21-75 (West 2022); 35 ILCS 515/8 (West 2022)). As relevant to the case at bar, one such form of lien is a mortgage. See *Aames Capital Corp.*, 315 Ill. App. 3d at 703.

¶ 18 A mortgage is "an interest in land created by written instrument providing security in real estate to secure the payment of a debt." *Id.* (citing *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 111 (1993)); see 735 ILCS 5/15-1207 (West 2022) (defining a mortgage as a "consensual lien created by a written instrument which grants or retains an interest in real estate to secure a debt or other obligation"). The mortgage constitutes a lien on the subject real estate "from the time [the] mortgage is recorded." 735 ILCS 5/15-1301 (West 2022). Additionally,

[3]We also note that *Sims* found it unnecessary to address the applicability of section 13-116 of the Code of Civil Procedure (735 ILCS 5/13-116 (West 2022)), which constitutes a large part of the parties' arguments in the instant appeal.

the mortgage instrument is a contract between the parties and is subject to principles of contract interpretation. *Resolution Trust Corp.*, 248 Ill. App. 3d at 111; *First American Bank v. Poplar Creek, LLC*, 2020 IL App (1st) 192450, ¶ 26.

¶ 19 There are several methods by which a lien—including a mortgage lien—may be resolved and thereby removed from title. Most obviously, the debt obligation for which the lien serves as security may be satisfied, resulting in the release of the lien. In the case of a mortgage, this must be done through the filing of a release with the office of the recorder of deeds. See 765 ILCS 905/2 (West 2022). Additionally, the lien may be discharged by operation of law, which is referred to as extinguishment of the lien. See *In re Application of Rosewell*, 127 Ill. 2d 404, 410 (1989) (" 'An extinguishment of a lien is a discharge by operation of law.' " (quoting *Schreiber v. County of Cook*, 388 Ill. 297, 306 (1944))). This may occur either automatically or through judicial proceedings. See, *e.g.*, 770 ILCS 15/10(g) (West 2022) (providing that "[f]ailure to commence proceedings within 2 years after recording [a broker's] lien shall extinguish the lien"); *Rosewell*, 127 Ill. 2d at 410-11 (a judicial sale of property extinguishes a tax lien).

¶ 20 With respect to a mortgage lien, if the mortgagor defaults on its obligations, the mortgagee may enforce its lien through proceedings in accordance with the Illinois Mortgage Foreclosure Law (Foreclosure Law), which ultimately results in the termination of the mortgagor's interest in the subject real estate and extinguishment of the lien. See 735 ILCS 5/15-1404 (West 2022); *Rosewell*, 127 Ill. 2d at 411 ("When a mortgagee enforces his lien through a foreclosure sale, the lien is extinguished ***." (citing *Ogle v. Koerner*, 140 Ill. 170, 179 (1892))). The statute of limitations on a mortgage foreclosure action is 10 years. 735 ILCS 5/13-115 (West 2022). The mortgage, however, is incident to the underlying debt, as the debt instrument is "the

vehicle which gives the [mortgagee] the legal right to proceed against the property." *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526, 536 (2010). Consequently, "where the underlying obligation is barred by the statute of limitations, a mortgage foreclosure action is similarly barred." *BMO Bank N.A. v. Zbroszczyk*, 2025 IL App (1st) 241333, ¶ 27.

¶ 21 In this case, there is no dispute that the statute of limitations on the note and the mortgage have expired, meaning that defendant lacks the ability to pursue an action to foreclose the mortgage under the Foreclosure Law. Plaintiff, however, contends that the expiration of the statute of limitations has an even greater effect—plaintiff claims that the inability of defendant to enforce her rights under the mortgage results in the extinguishment of the lien altogether.

¶ 22 Plaintiff's argument is based, in large part, on cases setting forth the relationship between the debt instrument and the mortgage. These cases make clear that, as we have observed, our courts have long held that the mortgage is a mere incident of the debt, and it is barred when the debt instrument is barred. See, *e.g.*, *Hibernian Banking Ass'n v. Commercial National Bank of Chicago*, 157 Ill. 524, 537 (1895); *Dunas v. Metropolitan Trust Co.*, 41 Ill. App. 2d 167, 170 (1963); *United Central Bank v. KMWC 845, LLC*, 800 F.3d 307, 311 (7th Cir. 2015); *First Midwest Bank v. Cobo*, 2018 IL 123038, ¶ 39 n.2. The question in this case, however, is not whether an action on the mortgage is procedurally barred—there is no dispute that it is—but instead whether the inability to enforce the mortgage lien operates to extinguish the lien. We agree with the circuit court that it does not and that the mortgage lien in this case remained a valid encumbrance on title such that the circuit court properly granted defendant summary judgment with respect to plaintiff's quiet title action.

¶ 23 It is well settled that the expiration of a statute of limitations operates to bar the availability of a remedy but does not affect the substantive right at issue—while it bars the right to sue for

recovery, it does not extinguish the underlying obligation. See, *e.g.*, *Fleming v. Yeazel*, 379 Ill. 343, 345-46 (1942); *Madison v. City of Chicago*, 2017 IL App (1st) 160195, ¶ 10. Indeed, our supreme court has indicated that a debt continues to constitute " 'an unquestioned moral obligation' " even after the expiration of the statute of limitations, despite the fact that there is no longer any remedy for enforcement of the obligation.[4] *Kallenbach v. Dickinson*, 100 Ill. 427, 434 (1881) (quoting *Keener v. Crull*, 19 Ill. 189, 191 (1857)). For this reason, a promise to pay a time-barred debt may revive the initial obligation, removing the statutory bar to enforcement. *Boatmen's Bank of Mt. Vernon v. Dowell*, 208 Ill. App. 3d 994, 1002 (1991); see 735 ILCS 5/13-206 (West 2022).

¶ 24 We also observe that the expiration of a statute of limitations does not automatically terminate a potential cause of action upon the passage of a certain period of time. Instead, the statute of limitations is an affirmative defense, which must be raised in response to an allegedly time-barred claim. See *Lease Partners Corp. v. R&J Pharmacies, Inc.*, 329 Ill. App. 3d 69, 75-76 (2002) (noting that defendants must plead and prove the running of the statute of limitations as an affirmative defense, and, thus, trial courts may not consider the issue *sua sponte*). In other words, the statute of limitations comes into play only when it is raised by the party attempting to avail itself of the defense; if not raised, it is forfeited. See *Fox v. Heimann*, 375 Ill. App. 3d 35, 45 (2007) ("[T]he expiration of a statute of limitations is an affirmative defense, which is forfeited if not timely raised in the trial court."). There are also a number of situations that result in the tolling of a statute of limitations, such as the discovery rule (see *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 77-79 (1995)), a party's minority or disability

[4]We also note that our supreme court has suggested that it would be unconstitutional if the expiration of the statute of limitations extinguished the underlying debt. See *Fleming*, 379 Ill. at 345-46.

(735 ILCS 5/13-211 (West 2022)), or a party's absence from the jurisdiction (*id.* § 13-208). These characteristics further highlight that a statute of limitations is intended to be a procedural bar, not a substantive discharge of an underlying property interest. As such, we cannot find that the expiration of the statute of limitations with respect to an action on a mortgage automatically results in the extinguishment of the underlying mortgage lien.

¶ 25 Our conclusion is strengthened by the presence of section 13-116 of the Code of Civil Procedure (735 ILCS 5/13-116 (West 2022)), which expressly concerns mortgage liens. Section 13-116 provides, in relevant part:

> "(a) The lien of every mortgage, *** the due date of which is stated upon the face, or ascertainable from the written terms thereof, filed for record either before or after July 16, 1941, which has not ceased by limitation before July 16, 1941, shall cease by limitation after the expiration of 20 years from the time the last payment on such mortgage *** became or becomes due upon its face and according to its written terms, unless the owner of such mortgage ***
>
> ***
>
> (2) After July 16, 1941, and within such 20 year period ***, files or causes to be filed for record, either (i) an affidavit executed by himself or herself or by some person on his or her behalf, stating the amount or amounts claimed to be unpaid on the indebtedness secured by such mortgage ***; or (ii) an extension agreement executed as hereinafter provided." *Id.* § 13-116(a).

The filing of an affidavit or extension agreement pursuant to the statute "shall extend the lien for a period of 10 years after the date on which such lien would cease" without such a filing, and the mortgagee may file successive affidavits or extension agreements. *Id.* § 13-116(b).

¶ 26 Section 13-116 was enacted in 1941 as section 11b of the Limitations Act, and it is substantively unchanged from its initial form. Compare Ill. Rev. Stat. 1941, ch. 83, § 11b, with 735 ILCS 5/13-116 (West 2022). While not cited by either party, we observe that our supreme court thoroughly discussed section 11b—and its relationship with the statute of limitations on mortgage foreclosure actions—in *Livingston v. Meyers*, 6 Ill. 2d 325 (1955), and we find our supreme court's analysis instructive to the issue in the instant appeal.[5]

¶ 27 In *Livingston*, the plaintiff seller and defendant buyer entered into a contract for the sale of two parcels of real property in 1954. *Id.* at 326. Upon receiving the abstract of title, the buyer discovered that there were two trust deeds encumbering the title to the property and refused to complete the sale; the trust deeds at issue had been executed and recorded in 1930 and were given as security for a three-year note. *Id.* at 326-37. The question the supreme court was asked to consider was whether section 11b rendered the trust deeds "null and void and no longer liens upon the premises." *Id.* at 327.

¶ 28 The *Livingston* court observed that the statute of limitations on an action to foreclose a mortgage—or, as applicable, a trust deed—was 10 years. *Id.* at 331 (citing Ill. Rev. Stat. 1953, ch. 83, § 11 (now codified as 735 ILCS 5/13-115)). It, however, also noted that this statute of limitations must be construed with the section applicable to promissory notes, and "a mortgage will not be barred until the debt is barred." *Id.* (citing *Kraft v. Holzmann*, 206 Ill. 548, 549-50 (1903)). The *Livingston* court explained that, under *Kraft*, "the lien of a mortgage, etc., was kept alive as long as the indebtedness secured thereby was continued in

[5]While plaintiff cited *Livingston* in its brief on appeal, it was only for the proposition that the statute of limitations for actions on mortgages must be read in connection with the statute of limitations on the debt instrument. Indeed, plaintiff represented that "[t]here is not a single reported decision from *any* court interpreting section [13-116(a)]" (emphasis in original), which, as we explain in our discussion of *Livingston*, is simply inaccurate.

force, without the necessity of any recording of the extension agreement." *Id.* at 331-32. Since there were a number of ways to extend the life of the underlying indebtedness, the result was that many properties were encumbered by trust deeds and mortgages that had not been released, leading to unmerchantable title. *Id.* at 332.

¶ 29 As the *Livingston* court explained, section 11b "was enacted to terminate the lien of a trust deed and mortgage against real estate titles unless the mortgagee preserved his lien within a specified period of time by affirmative action on his part." *Id.* at 333. The supreme court noted that the statute was not "in the ordinary language of a limitation statute whereby 'no action shall be brought unless.' " *Id.* Instead, the statute provided that the lien "shall 'cease by limitation' " unless, within a specified period of time, the lien is preserved by either a recorded extension agreement or affidavit from the mortgagee. *Id.* The supreme court found that "[t]he clearly expressed intent of the legislature in adopting section [11b] was to remedy the condition of the law as it existed with reference to mortgage and trust deed liens and to bar the enforcement of such liens except as they were preserved of record as therein required, without regard to the continued existence of the secured debt." *Id.* It further clarified that "[s]ection [11b] of the Limitations Act does not limit the bringing of an action but in effect limits the length of existence of a property right in the absence of affirmative action." *Id.* at 334.

¶ 30 The *Livingston* court found that section 11b "was effective to terminate the liens of mortgages and trust deeds at the ends of the periods and under the conditions therein specified." *Id.* at 336. Consequently, it ultimately concluded that the liens of the trust deeds at issue "were rendered entirely void by section [11b] of the Limitations Act prior to the time

the plaintiffs and defendant entered into the contract of sale" and therefore did not constitute defects in title. *Id.*

¶ 31 The supreme court's decision in *Livingston* thus makes clear that section 13-116 operates to extinguish a mortgage lien 20 years after the maturity of the debt instrument unless the mortgagee takes affirmative action to extend the lien. It logically follows that section 13-115 (the statute of limitations for mortgage foreclosure actions) does *not* do the same. First, the *Livingston* court specifically distinguished section 11b—now section 13-116—from a statute of limitations. It noted that the statute does not use "the ordinary language of a limitation statute whereby 'no action shall be brought unless' " (*Livingston*, 6 Ill. 2d at 333) and further clarified that "[s]ection [11b] of the Limitations Act does not limit the bringing of an action but in effect limits the length of existence of a property right in the absence of affirmative action" (*id.* at 334). By contrast, section 13-115 is unquestionably a statute of limitations.

¶ 32 We also observe that, in *Livingston*, both the 10-year limitations period in section 11 and the 20-year period in section 11b had expired. See *id.* at 327. Thus, if the expiration of the statute of limitations had extinguished the liens at issue, the supreme court could easily have rested its decision on that basis. Instead, the entirety of the analysis revolved around the effect of section 11b. See *id.* Where our supreme court went to considerable effort to draw a distinction between a statute of limitations and section 11b, we cannot find that interpreting the two statutes to have the same effect would be consistent with the supreme court's guidance.

¶ 33 We do not find persuasive plaintiff's suggestion that section 13-116 merely "create[d] an outer limit beyond when *unrecorded extensions of mortgages* would no longer affect third parties." (Emphasis in original.) While we agree with plaintiff's position that, consistent with

the holding in *Livingston*, section 13-116 does not represent a separate statute of limitations for mortgage liens, we nevertheless find the statute to be helpful in interpreting the effect of the statute of limitations on a mortgage lien. We also observe that, in *Livingston*, there were no extensions of the trust deeds—recorded or unrecorded—so plaintiff's suggestion that section 13-116 is only relevant to limit unrecorded extensions of mortgages is unavailing.

¶ 34 As a final matter, we recognize that, in several of the cases cited by plaintiff, courts have used language that arguably supports plaintiff's claim that the mortgage lien is extinguished where the statute of limitations bars enforcement of the note and mortgage. Many of those cases, however, occurred in the context of mortgage foreclosure proceedings, where the question was whether the foreclosure action could proceed, not whether the mortgage lien remained as a valid encumbrance on title. See, *e.g.*, *Richey v. Sinclair*, 167 Ill. 184, 193 (1897); *Lightcap v. Bradley*, 186 Ill. 510, 523 (1900). Indeed, several of these cases were decided when Illinois followed the "title theory" of mortgages, in which a mortgage was considered to be a conveyance of legal estate vesting title to the property in the mortgagee, so the concept of a mortgage as a lien would have been inapplicable.[6] See *Harms v. Sprague*, 105 Ill. 2d 215, 222 (1984) (citing *Lightcap* as an example of a court following the title theory). In addition, those cases were also decided prior to the enactment of section 11b of the Limitations Act, so their continued effect is unclear.

¶ 35 We further observe that plaintiff repeatedly conflates the ability to *enforce* the mortgage or note with the very existence of the underlying obligation and cites cases concerning enforcement. As noted, however, the expiration of the statute of limitations bars the right to

[6]Our supreme court adopted the "lien theory" of mortgages in *Kling v. Ghilarducci*, 3 Ill. 2d 454, 460 (1954), finding that execution of a mortgage results in a lien.

sue for recovery but does not extinguish the underlying obligation. See *Fleming*, 379 Ill. at 345-46. Even *Dunas*, a case which plaintiff cites repeatedly, recognizes that principle, despite plaintiff's focus on that case's suggestion that " 'where the debt is paid or barred by the Statute of Limitations, a mortgage being but incident to the debt, is no longer a lien on the property' " (*Dunas*, 41 Ill. App. 2d at 170 (quoting *Markus*, 373 Ill. at 560, *overruled on other grounds by ABN AMRO*, 237 Ill. 2d at 538)). Plaintiff overlooks, however, that the *Dunas* court also immediately thereafter noted that "[t]he running of a statute of limitations bars the remedy for enforcing a debt, but does not extinguish the debt itself." *Id.*

¶ 36 In the case at bar, there is no dispute that defendant does not have the ability to enforce her lien under the Foreclosure Law due to the expiration of the statute of limitations for both the note and the mortgage. We cannot find, however, that the expiration of the statute of limitations also operated to extinguish the mortgage lien altogether. Given that the lien remained a valid encumbrance on title, the circuit court properly granted summary judgment in favor of defendant with respect to plaintiff's action to quiet title. See *Illinois District of American Turners, Inc. v. Rieger*, 329 Ill. App. 3d 1063, 1072 (2002) ("A valid interest in property cannot be a cloud on title."). As the issue is not before us on appeal, we express no opinion as to any further remedies or legal actions available to either party, and nothing in our opinion should be construed otherwise.

¶ 37 CONCLUSION

¶ 38 The circuit court's grant of summary judgment in favor of defendant is affirmed, where the expiration of the statute of limitations for enforcement of the note and mortgage did not extinguish the lien on plaintiff's property.

¶ 39 Affirmed.

No. 1-24-1354

Chicago Title Land Trust Co. v. Watkin, **2025 IL App (1st) 241354**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 2023-CH-05985; the Hon. Allen Price Walker, Judge, presiding.
Attorneys for Appellant:	Arthur C. Czaja, of Niles, for appellant.
Attorneys for Appellee:	Robert T. Kuehl, of Kuehl Law, P.C., of St. Charles, for appellee.

No. _____

In the
Supreme Court of Illinois

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, as known as Land Trust # 32731,
Plaintiff- Appellant,

v.

Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust,
Defendant-Appellee.

Petition for Leave to Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-24-1354
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 2023-CH-05985
The Honorable **Allen Price Walker**, Judge Presiding

NOTICE OF FILING

To: Robert T. Kuehl, Kuehl Law, P.C., Attorney for Defendant, 555 S. Randall Road, Suite 205, St. Charles, Illinois 60174 (via electronic mail to bob@kuehllawpc.com)

Erica Crohn Minchella, Attorney for Plaintiff, Minchella & Associates, Ltd., 7538 St. Louis, Skokie, IL 60076 (via electronic mail to erica@minchellalaw.com)

On **October 17, 2025**, the Plaintiff-Appellant, Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731, by and through its attorney, Arthur C. Czaja, electronically served for filing upon the Clerk of the Supreme Court of the State of Illinois, the enclosed **PETITION FOR LEAVE TO APPEAL** in the above captioned matter.

/s/ Arthur C. Czaja.
Arthur C. Czaja

Attorney for Plaintiff-Appellant
ARDC # 6291494
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

PROOF OF SERVICE

The undersigned, an attorney, certifies that on **October 17, 2025**, he caused a true and correct copy of this Notice and the enclosed **PETITION FOR LEAVE TO APPEAL** to be served upon the party(ies) listed above, by attaching a copy of this Notice and enclosed **PETITION FOR LEAVE TO APPEAL** to an electronic mail transmission and using Green Filing Illinois to the party(ies) identified hereinabove at the electronic mail address(es) identified hereinabove from 7521 N. Milwaukee Avenue, Niles, IL 60714.

/s/ Arthur C. Czaja.
Arthur C. Czaja
Attorney for Plaintiff-Appellant
ARDC # 6291494
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

2025 IL App (1st) 241354

First District
Third Division
August 20, 2025

No. 1-24-1354

CHICAGO TITLE LAND TRUST COMPANY, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement Dated March 1, 1974, as Known as Land Trust #32731,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	No. 2023 CH 05985
v.	)	The Honorable Allen Price Walker,
SARA WATKIN, as Trustee of the Sara Watkin 2000 Revocable Trust,	)	Judge Presiding.
Defendant-Appellee.	)	

JUSTICE REYES delivered the judgment of the court, with opinion.
Justices Martin and D.B. Walker concurred in the judgment and opinion.

OPINION

¶ 1 In 2011, plaintiff Chicago Title Land Trust Company, as trustee to a land trust, executed a mortgage in favor of defendant Sara Watkin, as trustee of a revocable trust, which served as security for a one-year line of credit provided to the beneficial owners of the land trust. In 2022, defendant filed a foreclosure action against plaintiff, which was dismissed without prejudice; that dismissal was never appealed, and the complaint was never amended or refiled. In 2023, plaintiff filed a complaint to quiet title, arguing that the mortgage lien was extinguished by operation of law after the expiration of the limitations period for both the debt and the mortgage and therefore constituted a cloud on title. The parties filed cross-motions for summary judgment, and the circuit court granted defendant's motion and denied plaintiff's

motion, finding that the mortgage remained a valid lien on the property even when the debt was unenforceable. Plaintiff appeals, and we affirm.

¶ 2 BACKGROUND

¶ 3 The facts relevant to the instant appeal are largely undisputed. Plaintiff was the trustee of a land trust, and Marline and Melvin Stein (collectively, the Steins) were the beneficial owners of the land trust. On June 24, 2011, plaintiff and the Steins executed a "Secured First Mortgage Note" (note), evidencing a line of credit in which they promised to pay "up to the sum of $150,000.00" to defendant, the trustee of a revocable trust. The note had a one-year term, with a maturity date of June 24, 2012. The note was secured by a mortgage on a parcel of real property located in Wilmette, which was executed by plaintiff in favor of defendant.

¶ 4 Neither plaintiff nor the Steins ever made any payments under the note. Accordingly, on June 23, 2022, defendant filed a complaint in the circuit court of Cook County, seeking to foreclose on the mortgage. The circuit court ultimately granted a motion to dismiss the complaint without prejudice on February 2, 2023, but there is no indication that defendant sought to amend her complaint or otherwise refile the action, nor did defendant appeal the dismissal.

¶ 5 On June 26, 2023, plaintiff[1] filed a complaint to quiet title; the complaint was amended several times, and it is the second amended complaint which is the subject of the instant appeal. The complaint alleged that the statute of limitations on the note had expired, and, as such, action on the mortgage was similarly barred. Since the mortgage was unenforceable, the

[1]The initial complaint was filed by Marline Stein, as beneficial owner of the property. The second amended complaint, however, listed plaintiff as the party filing the complaint.

complaint alleged that it represented a cloud on title and requested an order finding that defendant had no "estate, right, title, or interest in the subject property."

¶ 6 In response, defendant filed a motion for summary judgment. Defendant acknowledged that "the relative statutes of limitation have run (and that the foreclosure case that she filed in Cook County, Illinois *** cannot be re-opened or re-filed at this point)." She, however, contended that "[n]one of that *** affects the validity of her mortgage lien," claiming that the lien remained in effect even if she was procedurally barred from enforcing her rights under the note and mortgage. As such, defendant maintained that plaintiff's claim to unencumbered title was not superior to her mortgage claim, which was a required element for a quiet title action.

¶ 7 Plaintiff filed a response to the motion for summary judgment, in addition to a cross-motion for summary judgment, contending that, where the mortgage and note were barred by the statute of limitations, the mortgage "is no longer a lien on the property" (citing *Markus v. Chicago Title & Trust Co.*, 373 Ill. 557 (1940)).

¶ 8 On May 30, 2024, the circuit court granted defendant's motion for summary judgment, "subject to the furnishing of the proper identification of the plaintiff and proof of its current ownership of the subject property, which will be done via a Third Amended Complaint, to be filed on or before May 31, 2024," and further denied plaintiff's cross-motion for summary judgment.

¶ 9 On May 31, 2024, plaintiff filed a third amended complaint, as directed by the circuit court. Plaintiff also filed a motion for clarification, requesting that the circuit court enter a final and appealable order pursuant to its grant of summary judgment and that it clarify that its order was over plaintiff's objections. On June 25, 2024, the circuit court denied plaintiff's motion for clarification, but indicated that "[t]his order is final and appealable as of the date of its

entry." On June 28, 2024, plaintiff filed a notice of appeal, appealing the circuit court's May 30, 2024, grant of summary judgment in defendant's favor, and this appeal follows.

¶ 10 ANALYSIS

¶ 11 On appeal, plaintiff contends that the circuit court erred in granting summary judgment in favor of defendant, where the note and mortgage were unenforceable due to the expiration of the statute of limitations. As an initial matter, we briefly address our jurisdiction to consider plaintiff's appeal. See *In re J.B.*, 204 Ill. 2d 382, 388 (2003) (a reviewing court has the duty to consider its jurisdiction *sua sponte* if not raised by the parties). The appellate court typically only has jurisdiction to review final judgments from the circuit court. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017). An order granting summary judgment is a final order. *Shutkas Electric, Inc. v. Ford Motor Co.*, 366 Ill. App. 3d 76, 80 (2006). Thus, there would normally be no question that we have jurisdiction to review the circuit court's May 30, 2024, order granting summary judgment in favor of defendant.

¶ 12 In this case, however, the circuit court's order granting summary judgment was "subject to the furnishing of the proper identification of the plaintiff and proof of its current ownership of the subject property, which will be done via a Third Amended Complaint, to be filed on or before May 31, 2024." Plaintiff filed a third amended complaint as instructed, and the circuit court denied its motion for clarification on June 25, 2024. While the order did not address the previous grant of summary judgment, it included a finding that "[t]his order is final and appealable as of the date of its entry." We thus must consider whether either (1) the summary

judgment order or (2) the order denying the motion for clarification operated as a final order that conferred jurisdiction on this court with respect to the instant appeal.[2]

¶ 13 We find that, under the circumstances of this case, the circuit court's orders operated to terminate the litigation between the parties, such that we have jurisdiction to consider the instant appeal. While the circuit court's June 25, 2024, order did not expressly reaffirm its previous grant of summary judgment, its May 30, 2024, order, which granted summary judgment, made it clear that it was permitting plaintiff to amend its complaint solely to add proof of its ownership of the subject property, not to reopen the proceedings. To ensure there was no confusion about the termination of the litigation, the circuit court's June 25, 2024, order included a specific finding that its order was final and appealable. As there can be no question that the circuit court's order resolved all issues between the parties, we find that we have jurisdiction over the instant appeal and proceed to consider the merits of the parties' arguments. See *Shaw v. U.S. Financial Life Insurance Co.*, 2022 IL App (1st) 211533, ¶ 23 (finding motion to reconsider timely where a circuit court's final order granting summary judgment merely effectuated its prior order in which it substantively considered the merits of the motion for summary judgment).

¶ 14 As noted, the circuit court in this case granted summary judgment in favor of defendant. A circuit court is permitted to grant summary judgment only if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2022). The circuit court must view these documents and exhibits in

[2]We note that plaintiff's notice of appeal, filed on June 28, 2024, was filed within 30 days of both orders. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017) (notice of appeal must be filed "within 30 days after the entry of the final judgment appealed from").

the light most favorable to the nonmoving party. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004). We review a circuit court's decision to grant a motion for summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 15 Summary judgment is a drastic measure and should be granted only if the movant's right to judgment is clear and free from doubt. *Id.* Mere speculation, conjecture, or guess, however, is insufficient to withstand summary judgment. *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill. App. 3d 313, 328 (1999). The party moving for summary judgment bears the initial burden of proof. *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (2007). The movant may meet his burden of proof either by affirmatively demonstrating that some element of the case must be resolved in his favor or by establishing that there is an absence of evidence to support the nonmoving party's case. *Id.* The purpose of summary judgment is not to try an issue of fact but to determine whether a triable issue of fact exists. *Schrager v. North Community Bank*, 328 Ill. App. 3d 696, 708 (2002) (citing *Luu v. Kim*, 323 Ill. App. 3d 946, 952 (2001)). Where, as here, the parties file cross-motions for summary judgment, "they agree that only a question of law is involved and invite the court to decide the issues based on the record." *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. The filing of cross-motions for summary judgment, however, does not establish that there is no issue of material fact, nor does it obligate the court to render summary judgment. *Id.* We may affirm on any basis appearing in the record, regardless of whether or not the circuit court relied on that basis. *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 34.

¶ 16 In this case, the defendant's motion for summary judgment was based exclusively on her contention that she had a valid lien on plaintiff's property, even though the statute of limitations barred her from enforcing the terms of the note or mortgage. The issue on appeal thus asks us

to determine the effect of the statute of limitations on the validity of a mortgage lien. We observe that this court recently considered this precise issue in the context of a case that bears remarkable similarity to the case before us. See *Sims v. Deutsche Bank National Trust Co.*, 2025 IL App (1st) 241112-U. Prior to that decision, however, no court appears to have squarely addressed the question of whether the running of the statute of limitations results in the extinguishment of a mortgage lien. Accordingly, while we ultimately agree with the analysis in *Sims*, we address the matter in full in order to provide additional guidance on an issue on which there is limited applicable authority.[3]

¶ 17 A lien is "a hold or claim that one party has on the property of another for a debt." *Aames Capital Corp. v. Interstate Bank of Oak Forest*, 315 Ill. App. 3d 700, 703 (2000). There are a number of circumstances that may result in the imposition of a lien under the law, including mechanic's liens (770 ILCS 60/1 (West 2022)), broker's liens (770 ILCS 15/10 (West 2022)), and tax liens (35 ILCS 5/1101 (West 2022); 35 ILCS 120/5a (West 2022); 35 ILCS 200/21-75 (West 2022); 35 ILCS 515/8 (West 2022)). As relevant to the case at bar, one such form of lien is a mortgage. See *Aames Capital Corp.*, 315 Ill. App. 3d at 703.

¶ 18 A mortgage is "an interest in land created by written instrument providing security in real estate to secure the payment of a debt." *Id.* (citing *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 111 (1993)); see 735 ILCS 5/15-1207 (West 2022) (defining a mortgage as a "consensual lien created by a written instrument which grants or retains an interest in real estate to secure a debt or other obligation"). The mortgage constitutes a lien on the subject real estate "from the time [the] mortgage is recorded." 735 ILCS 5/15-1301 (West 2022). Additionally,

[3]We also note that *Sims* found it unnecessary to address the applicability of section 13-116 of the Code of Civil Procedure (735 ILCS 5/13-116 (West 2022)), which constitutes a large part of the parties' arguments in the instant appeal.

the mortgage instrument is a contract between the parties and is subject to principles of contract interpretation. *Resolution Trust Corp.*, 248 Ill. App. 3d at 111; *First American Bank v. Poplar Creek, LLC*, 2020 IL App (1st) 192450, ¶ 26.

¶ 19 There are several methods by which a lien—including a mortgage lien—may be resolved and thereby removed from title. Most obviously, the debt obligation for which the lien serves as security may be satisfied, resulting in the release of the lien. In the case of a mortgage, this must be done through the filing of a release with the office of the recorder of deeds. See 765 ILCS 905/2 (West 2022). Additionally, the lien may be discharged by operation of law, which is referred to as extinguishment of the lien. See *In re Application of Rosewell*, 127 Ill. 2d 404, 410 (1989) (" 'An extinguishment of a lien is a discharge by operation of law.' " (quoting *Schreiber v. County of Cook*, 388 Ill. 297, 306 (1944))). This may occur either automatically or through judicial proceedings. See, *e.g.*, 770 ILCS 15/10(g) (West 2022) (providing that "[f]ailure to commence proceedings within 2 years after recording [a broker's] lien shall extinguish the lien"); *Rosewell*, 127 Ill. 2d at 410-11 (a judicial sale of property extinguishes a tax lien).

¶ 20 With respect to a mortgage lien, if the mortgagor defaults on its obligations, the mortgagee may enforce its lien through proceedings in accordance with the Illinois Mortgage Foreclosure Law (Foreclosure Law), which ultimately results in the termination of the mortgagor's interest in the subject real estate and extinguishment of the lien. See 735 ILCS 5/15-1404 (West 2022); *Rosewell*, 127 Ill. 2d at 411 ("When a mortgagee enforces his lien through a foreclosure sale, the lien is extinguished ***." (citing *Ogle v. Koerner*, 140 Ill. 170, 179 (1892))). The statute of limitations on a mortgage foreclosure action is 10 years. 735 ILCS 5/13-115 (West 2022). The mortgage, however, is incident to the underlying debt, as the debt instrument is "the

vehicle which gives the [mortgagee] the legal right to proceed against the property." *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526, 536 (2010). Consequently, "where the underlying obligation is barred by the statute of limitations, a mortgage foreclosure action is similarly barred." *BMO Bank N.A. v. Zbroszczyk*, 2025 IL App (1st) 241333, ¶ 27.

¶ 21 In this case, there is no dispute that the statute of limitations on the note and the mortgage have expired, meaning that defendant lacks the ability to pursue an action to foreclose the mortgage under the Foreclosure Law. Plaintiff, however, contends that the expiration of the statute of limitations has an even greater effect—plaintiff claims that the inability of defendant to enforce her rights under the mortgage results in the extinguishment of the lien altogether.

¶ 22 Plaintiff's argument is based, in large part, on cases setting forth the relationship between the debt instrument and the mortgage. These cases make clear that, as we have observed, our courts have long held that the mortgage is a mere incident of the debt, and it is barred when the debt instrument is barred. See, *e.g.*, *Hibernian Banking Ass'n v. Commercial National Bank of Chicago*, 157 Ill. 524, 537 (1895); *Dunas v. Metropolitan Trust Co.*, 41 Ill. App. 2d 167, 170 (1963); *United Central Bank v. KMWC 845, LLC*, 800 F.3d 307, 311 (7th Cir. 2015); *First Midwest Bank v. Cobo*, 2018 IL 123038, ¶ 39 n.2. The question in this case, however, is not whether an action on the mortgage is procedurally barred—there is no dispute that it is—but instead whether the inability to enforce the mortgage lien operates to extinguish the lien. We agree with the circuit court that it does not and that the mortgage lien in this case remained a valid encumbrance on title such that the circuit court properly granted defendant summary judgment with respect to plaintiff's quiet title action.

¶ 23 It is well settled that the expiration of a statute of limitations operates to bar the availability of a remedy but does not affect the substantive right at issue—while it bars the right to sue for

recovery, it does not extinguish the underlying obligation. See, *e.g.*, *Fleming v. Yeazel*, 379 Ill. 343, 345-46 (1942); *Madison v. City of Chicago*, 2017 IL App (1st) 160195, ¶ 10. Indeed, our supreme court has indicated that a debt continues to constitute " 'an unquestioned moral obligation' " even after the expiration of the statute of limitations, despite the fact that there is no longer any remedy for enforcement of the obligation.[4] *Kallenbach v. Dickinson*, 100 Ill. 427, 434 (1881) (quoting *Keener v. Crull*, 19 Ill. 189, 191 (1857)). For this reason, a promise to pay a time-barred debt may revive the initial obligation, removing the statutory bar to enforcement. *Boatmen's Bank of Mt. Vernon v. Dowell*, 208 Ill. App. 3d 994, 1002 (1991); see 735 ILCS 5/13-206 (West 2022).

¶ 24 We also observe that the expiration of a statute of limitations does not automatically terminate a potential cause of action upon the passage of a certain period of time. Instead, the statute of limitations is an affirmative defense, which must be raised in response to an allegedly time-barred claim. See *Lease Partners Corp. v. R&J Pharmacies, Inc.*, 329 Ill. App. 3d 69, 75-76 (2002) (noting that defendants must plead and prove the running of the statute of limitations as an affirmative defense, and, thus, trial courts may not consider the issue *sua sponte*). In other words, the statute of limitations comes into play only when it is raised by the party attempting to avail itself of the defense; if not raised, it is forfeited. See *Fox v. Heimann*, 375 Ill. App. 3d 35, 45 (2007) ("[T]he expiration of a statute of limitations is an affirmative defense, which is forfeited if not timely raised in the trial court."). There are also a number of situations that result in the tolling of a statute of limitations, such as the discovery rule (see *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 77-79 (1995)), a party's minority or disability

[4]We also note that our supreme court has suggested that it would be unconstitutional if the expiration of the statute of limitations extinguished the underlying debt. See *Fleming*, 379 Ill. at 345-46.

(735 ILCS 5/13-211 (West 2022)), or a party's absence from the jurisdiction (*id.* § 13-208). These characteristics further highlight that a statute of limitations is intended to be a procedural bar, not a substantive discharge of an underlying property interest. As such, we cannot find that the expiration of the statute of limitations with respect to an action on a mortgage automatically results in the extinguishment of the underlying mortgage lien.

¶ 25 Our conclusion is strengthened by the presence of section 13-116 of the Code of Civil Procedure (735 ILCS 5/13-116 (West 2022)), which expressly concerns mortgage liens. Section 13-116 provides, in relevant part:

> "(a) The lien of every mortgage, *** the due date of which is stated upon the face, or ascertainable from the written terms thereof, filed for record either before or after July 16, 1941, which has not ceased by limitation before July 16, 1941, shall cease by limitation after the expiration of 20 years from the time the last payment on such mortgage *** became or becomes due upon its face and according to its written terms, unless the owner of such mortgage ***
>
> ***
>
> (2) After July 16, 1941, and within such 20 year period ***, files or causes to be filed for record, either (i) an affidavit executed by himself or herself or by some person on his or her behalf, stating the amount or amounts claimed to be unpaid on the indebtedness secured by such mortgage ***; or (ii) an extension agreement executed as hereinafter provided." *Id.* § 13-116(a).

The filing of an affidavit or extension agreement pursuant to the statute "shall extend the lien for a period of 10 years after the date on which such lien would cease" without such a filing, and the mortgagee may file successive affidavits or extension agreements. *Id.* § 13-116(b).

¶ 26 Section 13-116 was enacted in 1941 as section 11b of the Limitations Act, and it is substantively unchanged from its initial form. Compare Ill. Rev. Stat. 1941, ch. 83, § 11b, with 735 ILCS 5/13-116 (West 2022). While not cited by either party, we observe that our supreme court thoroughly discussed section 11b—and its relationship with the statute of limitations on mortgage foreclosure actions—in *Livingston v. Meyers*, 6 Ill. 2d 325 (1955), and we find our supreme court's analysis instructive to the issue in the instant appeal.[5]

¶ 27 In *Livingston*, the plaintiff seller and defendant buyer entered into a contract for the sale of two parcels of real property in 1954. *Id.* at 326. Upon receiving the abstract of title, the buyer discovered that there were two trust deeds encumbering the title to the property and refused to complete the sale; the trust deeds at issue had been executed and recorded in 1930 and were given as security for a three-year note. *Id.* at 326-37. The question the supreme court was asked to consider was whether section 11b rendered the trust deeds "null and void and no longer liens upon the premises." *Id.* at 327.

¶ 28 The *Livingston* court observed that the statute of limitations on an action to foreclose a mortgage—or, as applicable, a trust deed—was 10 years. *Id.* at 331 (citing Ill. Rev. Stat. 1953, ch. 83, § 11 (now codified as 735 ILCS 5/13-115)). It, however, also noted that this statute of limitations must be construed with the section applicable to promissory notes, and "a mortgage will not be barred until the debt is barred." *Id.* (citing *Kraft v. Holzmann*, 206 Ill. 548, 549-50 (1903)). The *Livingston* court explained that, under *Kraft*, "the lien of a mortgage, etc., was kept alive as long as the indebtedness secured thereby was continued in

[5]While plaintiff cited *Livingston* in its brief on appeal, it was only for the proposition that the statute of limitations for actions on mortgages must be read in connection with the statute of limitations on the debt instrument. Indeed, plaintiff represented that "[t]here is not a single reported decision from *any* court interpreting section [13-116(a)]" (emphasis in original), which, as we explain in our discussion of *Livingston*, is simply inaccurate.

force, without the necessity of any recording of the extension agreement." *Id.* at 331-32. Since there were a number of ways to extend the life of the underlying indebtedness, the result was that many properties were encumbered by trust deeds and mortgages that had not been released, leading to unmerchantable title. *Id.* at 332.

¶ 29 As the *Livingston* court explained, section 11b "was enacted to terminate the lien of a trust deed and mortgage against real estate titles unless the mortgagee preserved his lien within a specified period of time by affirmative action on his part." *Id.* at 333. The supreme court noted that the statute was not "in the ordinary language of a limitation statute whereby 'no action shall be brought unless.' " *Id.* Instead, the statute provided that the lien "shall 'cease by limitation' " unless, within a specified period of time, the lien is preserved by either a recorded extension agreement or affidavit from the mortgagee. *Id.* The supreme court found that "[t]he clearly expressed intent of the legislature in adopting section [11b] was to remedy the condition of the law as it existed with reference to mortgage and trust deed liens and to bar the enforcement of such liens except as they were preserved of record as therein required, without regard to the continued existence of the secured debt." *Id.* It further clarified that "[s]ection [11b] of the Limitations Act does not limit the bringing of an action but in effect limits the length of existence of a property right in the absence of affirmative action." *Id.* at 334.

¶ 30 The *Livingston* court found that section 11b "was effective to terminate the liens of mortgages and trust deeds at the ends of the periods and under the conditions therein specified." *Id.* at 336. Consequently, it ultimately concluded that the liens of the trust deeds at issue "were rendered entirely void by section [11b] of the Limitations Act prior to the time

the plaintiffs and defendant entered into the contract of sale" and therefore did not constitute defects in title. *Id.*

¶ 31 The supreme court's decision in *Livingston* thus makes clear that section 13-116 operates to extinguish a mortgage lien 20 years after the maturity of the debt instrument unless the mortgagee takes affirmative action to extend the lien. It logically follows that section 13-115 (the statute of limitations for mortgage foreclosure actions) does *not* do the same. First, the *Livingston* court specifically distinguished section 11b—now section 13-116—from a statute of limitations. It noted that the statute does not use "the ordinary language of a limitation statute whereby 'no action shall be brought unless' " (*Livingston*, 6 Ill. 2d at 333) and further clarified that "[s]ection [11b] of the Limitations Act does not limit the bringing of an action but in effect limits the length of existence of a property right in the absence of affirmative action" (*id.* at 334). By contrast, section 13-115 is unquestionably a statute of limitations.

¶ 32 We also observe that, in *Livingston*, both the 10-year limitations period in section 11 and the 20-year period in section 11b had expired. See *id.* at 327. Thus, if the expiration of the statute of limitations had extinguished the liens at issue, the supreme court could easily have rested its decision on that basis. Instead, the entirety of the analysis revolved around the effect of section 11b. See *id.* Where our supreme court went to considerable effort to draw a distinction between a statute of limitations and section 11b, we cannot find that interpreting the two statutes to have the same effect would be consistent with the supreme court's guidance.

¶ 33 We do not find persuasive plaintiff's suggestion that section 13-116 merely "create[d] an outer limit beyond when *unrecorded extensions of mortgages* would no longer affect third parties." (Emphasis in original.) While we agree with plaintiff's position that, consistent with

the holding in *Livingston*, section 13-116 does not represent a separate statute of limitations for mortgage liens, we nevertheless find the statute to be helpful in interpreting the effect of the statute of limitations on a mortgage lien. We also observe that, in *Livingston*, there were no extensions of the trust deeds—recorded or unrecorded—so plaintiff's suggestion that section 13-116 is only relevant to limit unrecorded extensions of mortgages is unavailing.

¶ 34 As a final matter, we recognize that, in several of the cases cited by plaintiff, courts have used language that arguably supports plaintiff's claim that the mortgage lien is extinguished where the statute of limitations bars enforcement of the note and mortgage. Many of those cases, however, occurred in the context of mortgage foreclosure proceedings, where the question was whether the foreclosure action could proceed, not whether the mortgage lien remained as a valid encumbrance on title. See, *e.g.*, *Richey v. Sinclair*, 167 Ill. 184, 193 (1897); *Lightcap v. Bradley*, 186 Ill. 510, 523 (1900). Indeed, several of these cases were decided when Illinois followed the "title theory" of mortgages, in which a mortgage was considered to be a conveyance of legal estate vesting title to the property in the mortgagee, so the concept of a mortgage as a lien would have been inapplicable.[6] See *Harms v. Sprague*, 105 Ill. 2d 215, 222 (1984) (citing *Lightcap* as an example of a court following the title theory). In addition, those cases were also decided prior to the enactment of section 11b of the Limitations Act, so their continued effect is unclear.

¶ 35 We further observe that plaintiff repeatedly conflates the ability to *enforce* the mortgage or note with the very existence of the underlying obligation and cites cases concerning enforcement. As noted, however, the expiration of the statute of limitations bars the right to

[6]Our supreme court adopted the "lien theory" of mortgages in *Kling v. Ghilarducci*, 3 Ill. 2d 454, 460 (1954), finding that execution of a mortgage results in a lien.

sue for recovery but does not extinguish the underlying obligation. See *Fleming*, 379 Ill. at 345-46. Even *Dunas*, a case which plaintiff cites repeatedly, recognizes that principle, despite plaintiff's focus on that case's suggestion that " 'where the debt is paid or barred by the Statute of Limitations, a mortgage being but incident to the debt, is no longer a lien on the property' " (*Dunas*, 41 Ill. App. 2d at 170 (quoting *Markus*, 373 Ill. at 560, *overruled on other grounds by ABN AMRO*, 237 Ill. 2d at 538)). Plaintiff overlooks, however, that the *Dunas* court also immediately thereafter noted that "[t]he running of a statute of limitations bars the remedy for enforcing a debt, but does not extinguish the debt itself." *Id.*

¶ 36 In the case at bar, there is no dispute that defendant does not have the ability to enforce her lien under the Foreclosure Law due to the expiration of the statute of limitations for both the note and the mortgage. We cannot find, however, that the expiration of the statute of limitations also operated to extinguish the mortgage lien altogether. Given that the lien remained a valid encumbrance on title, the circuit court properly granted summary judgment in favor of defendant with respect to plaintiff's action to quiet title. See *Illinois District of American Turners, Inc. v. Rieger*, 329 Ill. App. 3d 1063, 1072 (2002) ("A valid interest in property cannot be a cloud on title."). As the issue is not before us on appeal, we express no opinion as to any further remedies or legal actions available to either party, and nothing in our opinion should be construed otherwise.

¶ 37 CONCLUSION

¶ 38 The circuit court's grant of summary judgment in favor of defendant is affirmed, where the expiration of the statute of limitations for enforcement of the note and mortgage did not extinguish the lien on plaintiff's property.

¶ 39 Affirmed.

No. 1-24-1354

***Chicago Title Land Trust Co. v. Watkin*, 2025 IL App (1st) 241354**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 2023-CH-05985; the Hon. Allen Price Walker, Judge, presiding.
Attorneys for Appellant:	Arthur C. Czaja, of Niles, for appellant.
Attorneys for Appellee:	Robert T. Kuehl, of Kuehl Law, P.C., of St. Charles, for appellee.

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Thomas D. Palella
Clerk of the Appellate Court
APPELLATE COURT 1ST DISTRICT

No. 1-24-1354

In the
Appellate Court of the State of Illinois
For the First Judicial District

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, as known as Land Trust # 32731,

Plaintiff- Appellant,

v.

Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust,

Defendant-Appellee.

On Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 2023-CH-05985
The Honorable **Allen Price Walker**, Judge Presiding

PLAINTIFF-APPELLANT'S PETITION FOR REHEARING

Arthur C. Czaja
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

Attorney for Plaintiff-Appellant

ORAL ARGUMENT REQUESTED IF PETITION IS ALLOWED

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PETITION FOR REHEARING

NOW COMES the Plaintiff-Appellant, Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust #32731 (the "Plaintiff" or "Chicago Title"), by and through its attorney, Arthur C. Czaja, and respectfully petitions this Honorable Court for rehearing of its August 20, 2025 Opinion in *Chi. Title Land Trust Co. v. Watkin*, 2025 IL App (1st) 241354 (the "Opinion")[1], pursuant to Illinois Supreme Court Rule 367, and in support thereof states as follows:

Standard for Rehearing

Rule 367 permits rehearing where a court has overlooked or misapprehended controlling points of law. Ill. S. Ct. R. 367(a). The circumstances here are exactly those for which the rule was designed. The Opinion misconstrued binding Illinois Supreme Court authority, mischaracterized the Plaintiff's arguments, and departed from this Court's own recent precedent, thereby creating an intra-District conflict.

Further still, the Opinion establishes a new and dangerous rule that provides creditors with a backdoor mechanism to preserve and enforce unenforceable mortgage liens long after the debts they secure are barred by the statute of limitations. Such a departure from settled law destabilizes foreclosure practice, clouds titles, and burdens homeowners with zombie liens that can spring back to life when a homeowner attempts to refinance or sell a property.

[1]A copy of the Opinion is attached hereto as **Exhibit 1**.

Because the Opinion disregards more than a century of precedent and threatens the uniformity and predictability of Illinois law, rehearing is not only warranted but necessary.[2]

Argument

I. The Opinion misapprehended the question presented.

The Opinion recast the legal issue as follows:

> The question in this case, however, is not whether an action on the mortgage is procedurally barred—there is no dispute that it is—but instead whether the inability to enforce the mortgage lien operates to extinguish the lien. *Watkin*, ¶22.

Respectfully, that framing misconceives the true question. This appeal asked whether Defendant's[3] Mortgage was extinguished by operation of law when the Note it secured became barred by the statute of limitations.

The difference is not semantic but substantive. This case does not concern whether a lien may still exist but be unenforceable; it concerns whether the lien itself ceases to exist once the is unenforceable. Illinois courts, for more than 150 years, have answered that question consistently: because the mortgage is inseparable from the debt, it cannot outlive the note. The Opinion therefore misapprehended the very question it was asked to decide.

II. The Illinois Supreme Court has consistently held that a mortgage cannot survive without the debt.

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[2] The Plaintiff also respectfully requests that if this petition is granted that this case be set for oral argument as the Plaintiff believes that oral argument will assist the Court in understanding and deciding the issues involved in this appeal.

[3] The Defendant-Appellee is Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust ("Defendant").

From the earliest days of Illinois jurisprudence, the Supreme Court has recognized that the enforceability of a mortgage is contingent upon the enforceability of the debt it secures. In *Emory v. Keighan*, 88 Ill. 482, 485 (1878), the Court held that "the existence of the debt, for the securing of which a mortgage is given, is essential to the life of the mortgage, and when the debt is paid, discharged, released, or ***barred by the Statute of Limitations***, the ***mortgage is gone***, and ***has effect no longer***." (Emphasis added). That rule is clear, categorical, and leaves no room for a mortgage to persist once the underlying obligation is barred.

That principle was reaffirmed repeatedly. In *Hibernian Banking Ass'n v. Commercial Nat'l Bank*, 157 Ill. 524, 537 (1895), the Court emphasized that "the mortgage is a mere incident of the debt, and is barred when the debt is barred."

A few years later, in *Bradley v. Lightcap*, 201 Ill. 511, 517 (1903), the Court again underscored that the mortgage's existence is measured by the debt, and when the debt is "paid, discharged, released, or barred by limitation, the mortgagee's title is ***extinguished by operation of law***." (Emphasis added).

Similarly, in *Schifferstein v. Allison*, 123 Ill. 662, 665 (1888), the Court stressed that "the debt is the principal thing, and the mortgage but the incident to it," and therefore that there can be no independent cause of action "under a mortgage or deed of trust alone."

These rulings establish a continuous line of authority: the debt is the principal, the mortgage merely the incident, and when the principal is barred, the incident falls with it.

Far from being antiquated, this doctrine remains binding. In *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526, 536 (2010), the Supreme Court reiterated that foreclosure actions "are based on the note, the vehicle which gives the plaintiff the legal right to proceed against the property."

In *First Midwest Bank v. Cobo*, 2018 IL 123038, ¶39 n.2, the Court expressly acknowledged this "old Illinois rule" and noted that it continues to apply.

This Court itself recognized the same principle in *BMO Bank N.A. v. Zbroszczyk*, 2025 IL App (1st) 241333, ¶27 n.3. And in *BMO Bank N.A. v. Vaca*, 2025 IL App (1st) 241793-U, ¶17, the Court once more confirmed that "a mortgage is tied to the life of the underlying note."

The weight of authority—spanning from *Emory* through *Cobo*, and reaffirmed in *Zbroszczyk* and *Vaca*—demonstrates a consistent and binding rule: once the note is barred, the mortgage is extinguished by operation of law.

III. The Opinion contradicted precedent.

The Plaintiff never argued, as the Opinion suggested, that the note itself ceased to exist in some metaphysical sense. The argument was and remains more precise: once the note is barred by the statute of limitations, the mortgage, as an incident to that note, is extinguished. This is exactly what Illinois precedent requires. Federal courts applying Illinois law have recognized the same principle. In *Midwest Bank v. Gingell*, No. 92 C 20210, 1993 U.S. Dist. LEXIS 16620, *14 (N.D. Ill. Nov. 24, 1993), the court observed that "[u]nder Illinois law, when a debt is paid, discharged, released or barred by limitation, the mortgage is extinguished by operation of law," citing directly to *Bradley*, 201 Ill. at 517.

The Opinion also suggested that no court had squarely addressed this issue prior to *Sims v. Deutsche Bank Nat'l Trust Co.*, 2025 IL App (1st) 241112-U. That assertion is incorrect. The Illinois Supreme Court addressed it in *Emory*, *Hibernian Banking*, *Bradley*, *Schifferstein*, *McGahan*, and *Cobo*. This Court is bound by those precedents. It is fundamental that appellate courts are without authority to overrule or modify decisions of the Supreme Court. *Rickey v. Chicago Transit Authority*, 98 Ill. 2d 546, 551 (1983). That principle has been reaffirmed in *People v. Muhammad*, 398 Ill. App. 3d 1013, 1017 (3d Dist. 2010), *In re Clifton R.*, 368 Ill. App. 3d 438, 440 (1st Dist. 2006), and *Gatreaux v. DKW Enters., LLC*, 2011 IL App (1st) 103482, ¶23. The Opinion, in disregarding these controlling decisions, exceeded its authority.

IV. The "title theory" versus "lien theory" distinction is immaterial.

The Opinion also attempted to distinguish Plaintiff's authorities on the ground that some were decided during Illinois' "title theory" era. But that is a distinction without a difference. In *Lightcap v. Bradley*, 186 Ill. *510*, 525–26 (1900), the Court described a mortgage as a lien upon property and held that once the lien had been enforced by sale, it had expended its force and accomplished its purpose. Likewise, in *Richey v. Sinclair*, 167 Ill. 184, 189 (1897), the Court characterized the mortgage at issue as giving only a lien. The First District later confirmed in *Financial Freedom v. Kirgis*, 377 Ill. App. 3d 107, 125 (2007), that the shift from title theory to lien theory did not render the older authorities inapplicable. On the contrary, those cases *recognized* the lender's interest as a lien, making them consistent with current "lien theory."

Thus, the distinction between title and lien theory is no basis to discard the controlling Supreme Court decisions. If anything, the older cases demonstrate an even stronger consequence: under title theory, the statute of limitations on the note extinguished not only the lien but the lender's title itself. If such a drastic consequence followed under title theory, then certainly under lien theory the mortgage must also fall once the note is barred.

V. The Opinion created an intra-District conflict.

The Opinion's recognition of a mortgage right independent of the note directly conflicts with this Court's recent decisions. In *Zbroszczyk*, the Court held that "where the underlying obligation is barred by the statute of limitations, a mortgage foreclosure action is similarly barred." *Zbroszczyk*, 2025 IL App (1st) 241333, ¶ 27. In *Vaca*, the Court reaffirmed that "obligations under a mortgage are not of infinite duration" and that "a mortgage is tied to the life of the underlying note." *Vaca*, 2025 IL App (1st) 241793-U, ¶ 17. By contrast, the Opinion divorces the mortgage from the note, granting a creditor an enduring lien even when the debt is unenforceable.

This conflict within the First District leaves trial courts without clear guidance and creates unequal treatment for similarly situated litigants. The very purpose of rehearing is to ensure that the law within a single appellate district is consistent and predictable. Without rehearing, the Opinion undermines that principle.

VI. The Plaintiff's quiet title action was proper.

The Plaintiff's quiet title action sought to do precisely what such an action is designed to accomplish: remove an ***unenforceable*** lien that constitutes a cloud on title.

Illinois courts have long recognized that a "cloud on title" means an apparent legal claim to property that is invalid or ***unenforceable***. *Gambino v. Blvd. Mortg. Corp.*, 398 Ill. App. 3d 21, 52 (1st Dist. 2009).

A plaintiff in such an action need not show perfect title, only a title superior to that of the defendant. *Diaz v. Home Fed. S&L Ass'n*, 337 Ill. App. 3d 722, 726 (2d Dist. 2002); *see also CitiMortgage, Inc. v. Md. at Five LLC*, 2025 IL App (1st) 231548-U, ¶45.

Here, there is no dispute that Defendant's Note and Mortgage were barred by the statute of limitations, and that Defendant lacked the ability to pursue foreclosure. *Watkin*, ¶21. That should have been the end of the matter. Yet the Opinion allowed the Defendant's Mortgage lien to continue to persist, allowing it to fester as a cloud on title. That result contravenes both precedent and the fundamental purpose of a quiet title action.

VII. Section 13-116 does not alter the rule that a mortgage is extinguished when an action on the note is barred as between the parties to the note and mortgage.

Finally, the Court misapprehended the purpose of section 13-116. 735 ILCS 5/13-116. The Opinion treated that statute as altering the long-standing rule that the mortgage is extinguished once the note is barred. In reality, the statute was designed to protect third parties by limiting the effect of unrecorded extensions.

The intended purpose of Section 13-116 was articulated in *Zyks v. Bowen*, 351 Ill. App. 491, 495–96 (1st Dist. 1953), which held that section 11(b) of the Limitations Act (the predecessor to §13-116) was enacted to require recording of extensions for the benefit of subsequent purchasers and encumbrancers. *Palkey v. Donichy*, 18 Ill. App. 2d 356, 361 (1st

Dist. 1958), confirmed the same, explaining that the statute rendered unrecorded extensions invalid only "as against persons other than the original parties to the mortgage."

The Supreme Court's decision in *Livingston v. Meyers*, 6 Ill. 2d 325 (1955), likewise illustrates that the statute was concerned with third-party rights. There, the dispute was between a trust deed holder and a third-party prospective purchaser of the property, not the original parties to the note and trust deed. The Court explained that the legislature intended to address defects of record that discouraged third-party purchasers, not to extend indefinitely the rights of mortgagees as against mortgagors. *Livingston* makes it plain that the Opinion's contrary interpretation stretches § 13-116 beyond its text, purpose, and precedents.

There is not a single reported decision in Illinois refusing to quiet to title to real estate in situation like the present one, that is, where the note is barred by the Statute of Limitations. Section 13-116 did not in any way alter the statutory scheme or change the rule that a mortgage was extinguished when the note that it secures was barred by the Statute of Limitations.

To the contrary, our statutory scheme provides two ***separate*** and ***distinct*** ways that a mortgage or deed of trust can be extinguished: (1) if the Statute of Limitation has run against the obligation; and (2) even though the obligation is not barred by the Statute of Limitations, the lapse of twenty years from the date the obligation becomes due, as appears upon the face of the mortgage unless, before the expiration of said period, an affidavit is filed for record showing the amount due upon the obligation.

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VIII. The consequences of the Opinion are significant and warrant careful reconsideration.

The implications of the Opinion are grave. If left to stand, it would permit creditors to hold liens over property long after the debts are extinguished, impairing alienability, depressing property values, and chilling real estate transactions. Buyers will be reluctant to purchase properties haunted by zombie liens that can spring back to life. Homeowners will be forced to litigate or settle unenforceable debts that should have been removed from title decades earlier. Creditors will gain leverage they are not entitled to under the law.

Illinois courts have always recognized the need for finality in debt enforcement. Statutes of limitations exist to promote repose and to prevent injustice from stale claims. By effectively nullifying that principle in the mortgage context, the Opinion creates uncertainty in the marketplace and inequity for property owners. The burden of such uncertainty falls not only on litigants, but on the entire system of land title in Illinois.

Conclusion

For over 150 years, Illinois law has recognized that the mortgage is inseparable from the debt it secures. From *Emory* and *Hibernian Banking* through *Bradley*, *Schifferstein*, *McGahan*, and *Cobo*, the rule has remained the same: when the debt is barred by the statute of limitations, the mortgage is extinguished by operation of law. The Opinion disregarded this binding precedent, misconstrued Plaintiff's arguments, and

created a direct conflict with *Zbroszczyk* and *Vaca*. In so doing, it destabilized Illinois foreclosure law, clouded titles, and authorized creditors to hold perpetual, unenforceable liens.

WHEREFORE, the Plaintiff-Appellant, Chicago Title Land Trust Company, respectfully requests that this Court grant rehearing, hold that once the note is time-barred the mortgage is likewise extinguished, and order removal of the unenforceable lien as a cloud on title, together with such further relief as this Court deems just and equitable.

Respectfully submitted,

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731

By: /s/ *Arthur C. Czaja* .
Arthur C. Czaja
Attorney for Plaintiff-Appellant

Arthur C. Czaja
Cook County Attorney # 47671
ARDC # 6291494
Attorney for Plaintiff-Appellant
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

CERTIFICATE OF COMPLIANCE

I certify that this petition complies with the requirements of Rules 341 (a) and (b). The length of this petition, excluding the pages containing the Rule 341(d) cover, the Rule 341 (h)(1) statement of points and authorities, the Rule 341 (c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 11 pages.

/s/ *Arthur C. Czaja* .
Arthur C. Czaja
Cook County Attorney #47671
ARDC # 6291494
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

Attorney for Plaintiff-Appellant

EXHIBIT 1

2025 IL App (1st) 241354

First District
Third Division
August 20, 2025

No. 1-24-1354

CHICAGO TITLE LAND TRUST COMPANY, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement Dated March 1, 1974, as Known as Land Trust #32731,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellant,	)	No. 2023 CH 05985
v.	)	The Honorable Allen Price Walker,
SARA WATKIN, as Trustee of the Sara Watkin 2000 Revocable Trust,	)	Judge Presiding.
Defendant-Appellee.	)	

JUSTICE REYES delivered the judgment of the court, with opinion.
Justices Martin and D.B. Walker concurred in the judgment and opinion.

OPINION

¶ 1 In 2011, plaintiff Chicago Title Land Trust Company, as trustee to a land trust, executed a mortgage in favor of defendant Sara Watkin, as trustee of a revocable trust, which served as security for a one-year line of credit provided to the beneficial owners of the land trust. In 2022, defendant filed a foreclosure action against plaintiff, which was dismissed without prejudice; that dismissal was never appealed, and the complaint was never amended or refiled. In 2023, plaintiff filed a complaint to quiet title, arguing that the mortgage lien was extinguished by operation of law after the expiration of the limitations period for both the debt and the mortgage and therefore constituted a cloud on title. The parties filed cross-motions for summary judgment, and the circuit court granted defendant's motion and denied plaintiff's

motion, finding that the mortgage remained a valid lien on the property even when the debt was unenforceable. Plaintiff appeals, and we affirm.

¶ 2 BACKGROUND

¶ 3 The facts relevant to the instant appeal are largely undisputed. Plaintiff was the trustee of a land trust, and Marline and Melvin Stein (collectively, the Steins) were the beneficial owners of the land trust. On June 24, 2011, plaintiff and the Steins executed a "Secured First Mortgage Note" (note), evidencing a line of credit in which they promised to pay "up to the sum of $150,000.00" to defendant, the trustee of a revocable trust. The note had a one-year term, with a maturity date of June 24, 2012. The note was secured by a mortgage on a parcel of real property located in Wilmette, which was executed by plaintiff in favor of defendant.

¶ 4 Neither plaintiff nor the Steins ever made any payments under the note. Accordingly, on June 23, 2022, defendant filed a complaint in the circuit court of Cook County, seeking to foreclose on the mortgage. The circuit court ultimately granted a motion to dismiss the complaint without prejudice on February 2, 2023, but there is no indication that defendant sought to amend her complaint or otherwise refile the action, nor did defendant appeal the dismissal.

¶ 5 On June 26, 2023, plaintiff[1] filed a complaint to quiet title; the complaint was amended several times, and it is the second amended complaint which is the subject of the instant appeal. The complaint alleged that the statute of limitations on the note had expired, and, as such, action on the mortgage was similarly barred. Since the mortgage was unenforceable, the

[1]The initial complaint was filed by Marline Stein, as beneficial owner of the property. The second amended complaint, however, listed plaintiff as the party filing the complaint.

complaint alleged that it represented a cloud on title and requested an order finding that defendant had no "estate, right, title, or interest in the subject property."

¶ 6 In response, defendant filed a motion for summary judgment. Defendant acknowledged that "the relative statutes of limitation have run (and that the foreclosure case that she filed in Cook County, Illinois *** cannot be re-opened or re-filed at this point)." She, however, contended that "[n]one of that *** affects the validity of her mortgage lien," claiming that the lien remained in effect even if she was procedurally barred from enforcing her rights under the note and mortgage. As such, defendant maintained that plaintiff's claim to unencumbered title was not superior to her mortgage claim, which was a required element for a quiet title action.

¶ 7 Plaintiff filed a response to the motion for summary judgment, in addition to a cross-motion for summary judgment, contending that, where the mortgage and note were barred by the statute of limitations, the mortgage "is no longer a lien on the property" (citing *Markus v. Chicago Title & Trust Co.*, 373 Ill. 557 (1940)).

¶ 8 On May 30, 2024, the circuit court granted defendant's motion for summary judgment, "subject to the furnishing of the proper identification of the plaintiff and proof of its current ownership of the subject property, which will be done via a Third Amended Complaint, to be filed on or before May 31, 2024," and further denied plaintiff's cross-motion for summary judgment.

¶ 9 On May 31, 2024, plaintiff filed a third amended complaint, as directed by the circuit court. Plaintiff also filed a motion for clarification, requesting that the circuit court enter a final and appealable order pursuant to its grant of summary judgment and that it clarify that its order was over plaintiff's objections. On June 25, 2024, the circuit court denied plaintiff's motion for clarification, but indicated that "[t]his order is final and appealable as of the date of its

entry." On June 28, 2024, plaintiff filed a notice of appeal, appealing the circuit court's May 30, 2024, grant of summary judgment in defendant's favor, and this appeal follows.

¶ 10 ANALYSIS

¶ 11 On appeal, plaintiff contends that the circuit court erred in granting summary judgment in favor of defendant, where the note and mortgage were unenforceable due to the expiration of the statute of limitations. As an initial matter, we briefly address our jurisdiction to consider plaintiff's appeal. See *In re J.B.*, 204 Ill. 2d 382, 388 (2003) (a reviewing court has the duty to consider its jurisdiction *sua sponte* if not raised by the parties). The appellate court typically only has jurisdiction to review final judgments from the circuit court. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017). An order granting summary judgment is a final order. *Shutkas Electric, Inc. v. Ford Motor Co.*, 366 Ill. App. 3d 76, 80 (2006). Thus, there would normally be no question that we have jurisdiction to review the circuit court's May 30, 2024, order granting summary judgment in favor of defendant.

¶ 12 In this case, however, the circuit court's order granting summary judgment was "subject to the furnishing of the proper identification of the plaintiff and proof of its current ownership of the subject property, which will be done via a Third Amended Complaint, to be filed on or before May 31, 2024." Plaintiff filed a third amended complaint as instructed, and the circuit court denied its motion for clarification on June 25, 2024. While the order did not address the previous grant of summary judgment, it included a finding that "[t]his order is final and appealable as of the date of its entry." We thus must consider whether either (1) the summary

judgment order or (2) the order denying the motion for clarification operated as a final order that conferred jurisdiction on this court with respect to the instant appeal.[2]

¶ 13 We find that, under the circumstances of this case, the circuit court's orders operated to terminate the litigation between the parties, such that we have jurisdiction to consider the instant appeal. While the circuit court's June 25, 2024, order did not expressly reaffirm its previous grant of summary judgment, its May 30, 2024, order, which granted summary judgment, made it clear that it was permitting plaintiff to amend its complaint solely to add proof of its ownership of the subject property, not to reopen the proceedings. To ensure there was no confusion about the termination of the litigation, the circuit court's June 25, 2024, order included a specific finding that its order was final and appealable. As there can be no question that the circuit court's order resolved all issues between the parties, we find that we have jurisdiction over the instant appeal and proceed to consider the merits of the parties' arguments. See *Shaw v. U.S. Financial Life Insurance Co.*, 2022 IL App (1st) 211533, ¶ 23 (finding motion to reconsider timely where a circuit court's final order granting summary judgment merely effectuated its prior order in which it substantively considered the merits of the motion for summary judgment).

¶ 14 As noted, the circuit court in this case granted summary judgment in favor of defendant. A circuit court is permitted to grant summary judgment only if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. 735 ILCS 5/2-1005(c) (West 2022). The circuit court must view these documents and exhibits in

[2]We note that plaintiff's notice of appeal, filed on June 28, 2024, was filed within 30 days of both orders. See Ill. S. Ct. R. 303(a)(1) (eff. July 1, 2017) (notice of appeal must be filed "within 30 days after the entry of the final judgment appealed from").

the light most favorable to the nonmoving party. *Home Insurance Co. v. Cincinnati Insurance Co.*, 213 Ill. 2d 307, 315 (2004). We review a circuit court's decision to grant a motion for summary judgment *de novo*. *Outboard Marine Corp. v. Liberty Mutual Insurance Co.*, 154 Ill. 2d 90, 102 (1992).

¶ 15 Summary judgment is a drastic measure and should be granted only if the movant's right to judgment is clear and free from doubt. *Id.* Mere speculation, conjecture, or guess, however, is insufficient to withstand summary judgment. *Sorce v. Naperville Jeep Eagle, Inc.*, 309 Ill. App. 3d 313, 328 (1999). The party moving for summary judgment bears the initial burden of proof. *Nedzvekas v. Fung*, 374 Ill. App. 3d 618, 624 (2007). The movant may meet his burden of proof either by affirmatively demonstrating that some element of the case must be resolved in his favor or by establishing that there is an absence of evidence to support the nonmoving party's case. *Id.* The purpose of summary judgment is not to try an issue of fact but to determine whether a triable issue of fact exists. *Schrager v. North Community Bank*, 328 Ill. App. 3d 696, 708 (2002) (citing *Luu v. Kim*, 323 Ill. App. 3d 946, 952 (2001)). Where, as here, the parties file cross-motions for summary judgment, "they agree that only a question of law is involved and invite the court to decide the issues based on the record." *Pielet v. Pielet*, 2012 IL 112064, ¶ 28. The filing of cross-motions for summary judgment, however, does not establish that there is no issue of material fact, nor does it obligate the court to render summary judgment. *Id.* We may affirm on any basis appearing in the record, regardless of whether or not the circuit court relied on that basis. *Village of Bartonville v. Lopez*, 2017 IL 120643, ¶ 34.

¶ 16 In this case, the defendant's motion for summary judgment was based exclusively on her contention that she had a valid lien on plaintiff's property, even though the statute of limitations barred her from enforcing the terms of the note or mortgage. The issue on appeal thus asks us

to determine the effect of the statute of limitations on the validity of a mortgage lien. We observe that this court recently considered this precise issue in the context of a case that bears remarkable similarity to the case before us. See *Sims v. Deutsche Bank National Trust Co.*, 2025 IL App (1st) 241112-U. Prior to that decision, however, no court appears to have squarely addressed the question of whether the running of the statute of limitations results in the extinguishment of a mortgage lien. Accordingly, while we ultimately agree with the analysis in *Sims*, we address the matter in full in order to provide additional guidance on an issue on which there is limited applicable authority.[3]

¶ 17 A lien is "a hold or claim that one party has on the property of another for a debt." *Aames Capital Corp. v. Interstate Bank of Oak Forest*, 315 Ill. App. 3d 700, 703 (2000). There are a number of circumstances that may result in the imposition of a lien under the law, including mechanic's liens (770 ILCS 60/1 (West 2022)), broker's liens (770 ILCS 15/10 (West 2022)), and tax liens (35 ILCS 5/1101 (West 2022); 35 ILCS 120/5a (West 2022); 35 ILCS 200/21-75 (West 2022); 35 ILCS 515/8 (West 2022)). As relevant to the case at bar, one such form of lien is a mortgage. See *Aames Capital Corp.*, 315 Ill. App. 3d at 703.

¶ 18 A mortgage is "an interest in land created by written instrument providing security in real estate to secure the payment of a debt." *Id.* (citing *Resolution Trust Corp. v. Holtzman*, 248 Ill. App. 3d 105, 111 (1993)); see 735 ILCS 5/15-1207 (West 2022) (defining a mortgage as a "consensual lien created by a written instrument which grants or retains an interest in real estate to secure a debt or other obligation"). The mortgage constitutes a lien on the subject real estate "from the time [the] mortgage is recorded." 735 ILCS 5/15-1301 (West 2022). Additionally,

[3]We also note that *Sims* found it unnecessary to address the applicability of section 13-116 of the Code of Civil Procedure (735 ILCS 5/13-116 (West 2022)), which constitutes a large part of the parties' arguments in the instant appeal.

the mortgage instrument is a contract between the parties and is subject to principles of contract interpretation. *Resolution Trust Corp.*, 248 Ill. App. 3d at 111; *First American Bank v. Poplar Creek, LLC*, 2020 IL App (1st) 192450, ¶ 26.

¶ 19 There are several methods by which a lien—including a mortgage lien—may be resolved and thereby removed from title. Most obviously, the debt obligation for which the lien serves as security may be satisfied, resulting in the release of the lien. In the case of a mortgage, this must be done through the filing of a release with the office of the recorder of deeds. See 765 ILCS 905/2 (West 2022). Additionally, the lien may be discharged by operation of law, which is referred to as extinguishment of the lien. See *In re Application of Rosewell*, 127 Ill. 2d 404, 410 (1989) (" 'An extinguishment of a lien is a discharge by operation of law.' " (quoting *Schreiber v. County of Cook*, 388 Ill. 297, 306 (1944))). This may occur either automatically or through judicial proceedings. See, *e.g.*, 770 ILCS 15/10(g) (West 2022) (providing that "[f]ailure to commence proceedings within 2 years after recording [a broker's] lien shall extinguish the lien"); *Rosewell*, 127 Ill. 2d at 410-11 (a judicial sale of property extinguishes a tax lien).

¶ 20 With respect to a mortgage lien, if the mortgagor defaults on its obligations, the mortgagee may enforce its lien through proceedings in accordance with the Illinois Mortgage Foreclosure Law (Foreclosure Law), which ultimately results in the termination of the mortgagor's interest in the subject real estate and extinguishment of the lien. See 735 ILCS 5/15-1404 (West 2022); *Rosewell*, 127 Ill. 2d at 411 ("When a mortgagee enforces his lien through a foreclosure sale, the lien is extinguished ***." (citing *Ogle v. Koerner*, 140 Ill. 170, 179 (1892))). The statute of limitations on a mortgage foreclosure action is 10 years. 735 ILCS 5/13-115 (West 2022). The mortgage, however, is incident to the underlying debt, as the debt instrument is "the

vehicle which gives the [mortgagee] the legal right to proceed against the property." *ABN AMRO Mortgage Group, Inc. v. McGahan*, 237 Ill. 2d 526, 536 (2010). Consequently, "where the underlying obligation is barred by the statute of limitations, a mortgage foreclosure action is similarly barred." *BMO Bank N.A. v. Zbroszczyk*, 2025 IL App (1st) 241333, ¶ 27.

¶ 21 In this case, there is no dispute that the statute of limitations on the note and the mortgage have expired, meaning that defendant lacks the ability to pursue an action to foreclose the mortgage under the Foreclosure Law. Plaintiff, however, contends that the expiration of the statute of limitations has an even greater effect—plaintiff claims that the inability of defendant to enforce her rights under the mortgage results in the extinguishment of the lien altogether.

¶ 22 Plaintiff's argument is based, in large part, on cases setting forth the relationship between the debt instrument and the mortgage. These cases make clear that, as we have observed, our courts have long held that the mortgage is a mere incident of the debt, and it is barred when the debt instrument is barred. See, *e.g.*, *Hibernian Banking Ass'n v. Commercial National Bank of Chicago*, 157 Ill. 524, 537 (1895); *Dunas v. Metropolitan Trust Co.*, 41 Ill. App. 2d 167, 170 (1963); *United Central Bank v. KMWC 845, LLC*, 800 F.3d 307, 311 (7th Cir. 2015); *First Midwest Bank v. Cobo*, 2018 IL 123038, ¶ 39 n.2. The question in this case, however, is not whether an action on the mortgage is procedurally barred—there is no dispute that it is—but instead whether the inability to enforce the mortgage lien operates to extinguish the lien. We agree with the circuit court that it does not and that the mortgage lien in this case remained a valid encumbrance on title such that the circuit court properly granted defendant summary judgment with respect to plaintiff's quiet title action.

¶ 23 It is well settled that the expiration of a statute of limitations operates to bar the availability of a remedy but does not affect the substantive right at issue—while it bars the right to sue for

recovery, it does not extinguish the underlying obligation. See, *e.g.*, *Fleming v. Yeazel*, 379 Ill. 343, 345-46 (1942); *Madison v. City of Chicago*, 2017 IL App (1st) 160195, ¶ 10. Indeed, our supreme court has indicated that a debt continues to constitute " 'an unquestioned moral obligation' " even after the expiration of the statute of limitations, despite the fact that there is no longer any remedy for enforcement of the obligation.[4] *Kallenbach v. Dickinson*, 100 Ill. 427, 434 (1881) (quoting *Keener v. Crull*, 19 Ill. 189, 191 (1857)). For this reason, a promise to pay a time-barred debt may revive the initial obligation, removing the statutory bar to enforcement. *Boatmen's Bank of Mt. Vernon v. Dowell*, 208 Ill. App. 3d 994, 1002 (1991); see 735 ILCS 5/13-206 (West 2022).

¶ 24 We also observe that the expiration of a statute of limitations does not automatically terminate a potential cause of action upon the passage of a certain period of time. Instead, the statute of limitations is an affirmative defense, which must be raised in response to an allegedly time-barred claim. See *Lease Partners Corp. v. R&J Pharmacies, Inc.*, 329 Ill. App. 3d 69, 75-76 (2002) (noting that defendants must plead and prove the running of the statute of limitations as an affirmative defense, and, thus, trial courts may not consider the issue *sua sponte*). In other words, the statute of limitations comes into play only when it is raised by the party attempting to avail itself of the defense; if not raised, it is forfeited. See *Fox v. Heimann*, 375 Ill. App. 3d 35, 45 (2007) ("[T]he expiration of a statute of limitations is an affirmative defense, which is forfeited if not timely raised in the trial court."). There are also a number of situations that result in the tolling of a statute of limitations, such as the discovery rule (see *Hermitage Corp. v. Contractors Adjustment Co.*, 166 Ill. 2d 72, 77-79 (1995)), a party's minority or disability

[4]We also note that our supreme court has suggested that it would be unconstitutional if the expiration of the statute of limitations extinguished the underlying debt. See *Fleming*, 379 Ill. at 345-46.

(735 ILCS 5/13-211 (West 2022)), or a party's absence from the jurisdiction (*id.* § 13-208). These characteristics further highlight that a statute of limitations is intended to be a procedural bar, not a substantive discharge of an underlying property interest. As such, we cannot find that the expiration of the statute of limitations with respect to an action on a mortgage automatically results in the extinguishment of the underlying mortgage lien.

¶ 25 Our conclusion is strengthened by the presence of section 13-116 of the Code of Civil Procedure (735 ILCS 5/13-116 (West 2022)), which expressly concerns mortgage liens. Section 13-116 provides, in relevant part:

> "(a) The lien of every mortgage, *** the due date of which is stated upon the face, or ascertainable from the written terms thereof, filed for record either before or after July 16, 1941, which has not ceased by limitation before July 16, 1941, shall cease by limitation after the expiration of 20 years from the time the last payment on such mortgage *** became or becomes due upon its face and according to its written terms, unless the owner of such mortgage ***
>
> ***
>
> (2) After July 16, 1941, and within such 20 year period ***, files or causes to be filed for record, either (i) an affidavit executed by himself or herself or by some person on his or her behalf, stating the amount or amounts claimed to be unpaid on the indebtedness secured by such mortgage ***; or (ii) an extension agreement executed as hereinafter provided." *Id.* § 13-116(a).

The filing of an affidavit or extension agreement pursuant to the statute "shall extend the lien for a period of 10 years after the date on which such lien would cease" without such a filing, and the mortgagee may file successive affidavits or extension agreements. *Id.* § 13-116(b).

¶ 26 Section 13-116 was enacted in 1941 as section 11b of the Limitations Act, and it is substantively unchanged from its initial form. Compare Ill. Rev. Stat. 1941, ch. 83, § 11b, with 735 ILCS 5/13-116 (West 2022). While not cited by either party, we observe that our supreme court thoroughly discussed section 11b—and its relationship with the statute of limitations on mortgage foreclosure actions—in *Livingston v. Meyers*, 6 Ill. 2d 325 (1955), and we find our supreme court's analysis instructive to the issue in the instant appeal.[5]

¶ 27 In *Livingston*, the plaintiff seller and defendant buyer entered into a contract for the sale of two parcels of real property in 1954. *Id.* at 326. Upon receiving the abstract of title, the buyer discovered that there were two trust deeds encumbering the title to the property and refused to complete the sale; the trust deeds at issue had been executed and recorded in 1930 and were given as security for a three-year note. *Id.* at 326-37. The question the supreme court was asked to consider was whether section 11b rendered the trust deeds "null and void and no longer liens upon the premises." *Id.* at 327.

¶ 28 The *Livingston* court observed that the statute of limitations on an action to foreclose a mortgage—or, as applicable, a trust deed—was 10 years. *Id.* at 331 (citing Ill. Rev. Stat. 1953, ch. 83, § 11 (now codified as 735 ILCS 5/13-115)). It, however, also noted that this statute of limitations must be construed with the section applicable to promissory notes, and "a mortgage will not be barred until the debt is barred." *Id.* (citing *Kraft v. Holzmann*, 206 Ill. 548, 549-50 (1903)). The *Livingston* court explained that, under *Kraft*, "the lien of a mortgage, etc., was kept alive as long as the indebtedness secured thereby was continued in

[5]While plaintiff cited *Livingston* in its brief on appeal, it was only for the proposition that the statute of limitations for actions on mortgages must be read in connection with the statute of limitations on the debt instrument. Indeed, plaintiff represented that "[t]here is not a single reported decision from *any* court interpreting section [13-116(a)]" (emphasis in original), which, as we explain in our discussion of *Livingston*, is simply inaccurate.

force, without the necessity of any recording of the extension agreement." *Id.* at 331-32. Since there were a number of ways to extend the life of the underlying indebtedness, the result was that many properties were encumbered by trust deeds and mortgages that had not been released, leading to unmerchantable title. *Id.* at 332.

¶ 29 As the *Livingston* court explained, section 11b "was enacted to terminate the lien of a trust deed and mortgage against real estate titles unless the mortgagee preserved his lien within a specified period of time by affirmative action on his part." *Id.* at 333. The supreme court noted that the statute was not "in the ordinary language of a limitation statute whereby 'no action shall be brought unless.' " *Id.* Instead, the statute provided that the lien "shall 'cease by limitation' " unless, within a specified period of time, the lien is preserved by either a recorded extension agreement or affidavit from the mortgagee. *Id.* The supreme court found that "[t]he clearly expressed intent of the legislature in adopting section [11b] was to remedy the condition of the law as it existed with reference to mortgage and trust deed liens and to bar the enforcement of such liens except as they were preserved of record as therein required, without regard to the continued existence of the secured debt." *Id.* It further clarified that "[s]ection [11b] of the Limitations Act does not limit the bringing of an action but in effect limits the length of existence of a property right in the absence of affirmative action." *Id.* at 334.

¶ 30 The *Livingston* court found that section 11b "was effective to terminate the liens of mortgages and trust deeds at the ends of the periods and under the conditions therein specified." *Id.* at 336. Consequently, it ultimately concluded that the liens of the trust deeds at issue "were rendered entirely void by section [11b] of the Limitations Act prior to the time

the plaintiffs and defendant entered into the contract of sale" and therefore did not constitute defects in title. *Id.*

¶ 31 The supreme court's decision in *Livingston* thus makes clear that section 13-116 operates to extinguish a mortgage lien 20 years after the maturity of the debt instrument unless the mortgagee takes affirmative action to extend the lien. It logically follows that section 13-115 (the statute of limitations for mortgage foreclosure actions) does *not* do the same. First, the *Livingston* court specifically distinguished section 11b—now section 13-116—from a statute of limitations. It noted that the statute does not use "the ordinary language of a limitation statute whereby 'no action shall be brought unless' " (*Livingston*, 6 Ill. 2d at 333) and further clarified that "[s]ection [11b] of the Limitations Act does not limit the bringing of an action but in effect limits the length of existence of a property right in the absence of affirmative action" (*id.* at 334). By contrast, section 13-115 is unquestionably a statute of limitations.

¶ 32 We also observe that, in *Livingston*, both the 10-year limitations period in section 11 and the 20-year period in section 11b had expired. See *id.* at 327. Thus, if the expiration of the statute of limitations had extinguished the liens at issue, the supreme court could easily have rested its decision on that basis. Instead, the entirety of the analysis revolved around the effect of section 11b. See *id.* Where our supreme court went to considerable effort to draw a distinction between a statute of limitations and section 11b, we cannot find that interpreting the two statutes to have the same effect would be consistent with the supreme court's guidance.

¶ 33 We do not find persuasive plaintiff's suggestion that section 13-116 merely "create[d] an outer limit beyond when *unrecorded extensions of mortgages* would no longer affect third parties." (Emphasis in original.) While we agree with plaintiff's position that, consistent with

the holding in *Livingston*, section 13-116 does not represent a separate statute of limitations for mortgage liens, we nevertheless find the statute to be helpful in interpreting the effect of the statute of limitations on a mortgage lien. We also observe that, in *Livingston*, there were no extensions of the trust deeds—recorded or unrecorded—so plaintiff's suggestion that section 13-116 is only relevant to limit unrecorded extensions of mortgages is unavailing.

¶ 34 As a final matter, we recognize that, in several of the cases cited by plaintiff, courts have used language that arguably supports plaintiff's claim that the mortgage lien is extinguished where the statute of limitations bars enforcement of the note and mortgage. Many of those cases, however, occurred in the context of mortgage foreclosure proceedings, where the question was whether the foreclosure action could proceed, not whether the mortgage lien remained as a valid encumbrance on title. See, *e.g.*, *Richey v. Sinclair*, 167 Ill. 184, 193 (1897); *Lightcap v. Bradley*, 186 Ill. 510, 523 (1900). Indeed, several of these cases were decided when Illinois followed the "title theory" of mortgages, in which a mortgage was considered to be a conveyance of legal estate vesting title to the property in the mortgagee, so the concept of a mortgage as a lien would have been inapplicable.[6] See *Harms v. Sprague*, 105 Ill. 2d 215, 222 (1984) (citing *Lightcap* as an example of a court following the title theory). In addition, those cases were also decided prior to the enactment of section 11b of the Limitations Act, so their continued effect is unclear.

¶ 35 We further observe that plaintiff repeatedly conflates the ability to *enforce* the mortgage or note with the very existence of the underlying obligation and cites cases concerning enforcement. As noted, however, the expiration of the statute of limitations bars the right to

[6]Our supreme court adopted the "lien theory" of mortgages in *Kling v. Ghilarducci*, 3 Ill. 2d 454, 460 (1954), finding that execution of a mortgage results in a lien.

sue for recovery but does not extinguish the underlying obligation. See *Fleming*, 379 Ill. at 345-46. Even *Dunas*, a case which plaintiff cites repeatedly, recognizes that principle, despite plaintiff's focus on that case's suggestion that " 'where the debt is paid or barred by the Statute of Limitations, a mortgage being but incident to the debt, is no longer a lien on the property' " (*Dunas*, 41 Ill. App. 2d at 170 (quoting *Markus*, 373 Ill. at 560, *overruled on other grounds by ABN AMRO*, 237 Ill. 2d at 538)). Plaintiff overlooks, however, that the *Dunas* court also immediately thereafter noted that "[t]he running of a statute of limitations bars the remedy for enforcing a debt, but does not extinguish the debt itself." *Id.*

¶ 36 In the case at bar, there is no dispute that defendant does not have the ability to enforce her lien under the Foreclosure Law due to the expiration of the statute of limitations for both the note and the mortgage. We cannot find, however, that the expiration of the statute of limitations also operated to extinguish the mortgage lien altogether. Given that the lien remained a valid encumbrance on title, the circuit court properly granted summary judgment in favor of defendant with respect to plaintiff's action to quiet title. See *Illinois District of American Turners, Inc. v. Rieger*, 329 Ill. App. 3d 1063, 1072 (2002) ("A valid interest in property cannot be a cloud on title."). As the issue is not before us on appeal, we express no opinion as to any further remedies or legal actions available to either party, and nothing in our opinion should be construed otherwise.

¶ 37 CONCLUSION

¶ 38 The circuit court's grant of summary judgment in favor of defendant is affirmed, where the expiration of the statute of limitations for enforcement of the note and mortgage did not extinguish the lien on plaintiff's property.

¶ 39 Affirmed.

***Chicago Title Land Trust Co. v. Watkin*, 2025 IL App (1st) 241354**

Decision Under Review:	Appeal from the Circuit Court of Cook County, No. 2023-CH-05985; the Hon. Allen Price Walker, Judge, presiding.
Attorneys for Appellant:	Arthur C. Czaja, of Niles, for appellant.
Attorneys for Appellee:	Robert T. Kuehl, of Kuehl Law, P.C., of St. Charles, for appellee.

No. 1-24-1354

In the
Appellate Court of the State of Illinois
For the First Judicial District

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, as known as Land Trust # 32731,
Plaintiff- Appellant,

v.

Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust,
Defendant-Appellee.

On Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 2023-CH-05985
The Honorable **Allen Price Walker**, Judge Presiding

NOTICE OF FILING

To: Robert T. Kuehl, Kuehl Law, P.C., Attorney for Defendant, 555 S. Randall Road, Suite 205, St. Charles, Illinois 60174 (via electronic mail to bob@kuehllawpc.com)

Erica Crohn Minchella, Attorney for Plaintiff, Minchella & Associates, Ltd., 7538 St. Louis, Skokie, IL 60076 (via electronic mail to erica@minchellalaw.com)

On **September 10, 2025**, the Plaintiff-Appellant, Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731, by and through its attorney, Arthur C. Czaja, electronically filed and served the Clerk of the Illinois First District Appellate Court, the enclosed **PLAINTIFF-APPELLANT'S PETITION FOR REHEARING** in the above captioned matter.

/s/ *Arthur C. Czaja* .
Arthur C. Czaja
Attorney for Plaintiff-Appellant

ARDC # 6291494
Cook Cty. Atty. # 47671
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

PROOF OF SERVICE

The undersigned, an attorney, certifies that on **September 10, 2025**, he caused a true and correct copy of this Notice and the enclosed **PLAINTIFF-APPELLANT'S PETITION FOR REHEARING** to be served upon the party(ies) listed above, by attaching a copy of this Notice and enclosed **PLAINTIFF-APPELLANT'S PETITION FOR REHEARING** to an electronic mail transmission and using Green Filing Illinois to the party(ies) identified hereinabove at the electronic mail address(es) identified hereinabove from 7521 N. Milwaukee Avenue, Niles, IL 60714.

/s/ *Arthur C. Czaja* .
Arthur C. Czaja
Attorney for Plaintiff-Appellant
ARDC # 6291494
Cook Cty. Atty. # 47671
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

No. 1-24-1354

IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

CHICAGO TITLE LAND TRUST COMPANY, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement Dated March 1, 1974, as Known as Land Ttust #32731, Plaintiff-Appellant, v. SARA WATKIN, as Trustee of the Sara Watkin 2000 Revocable Trust, Defendant-Appellee.	)	Appeal from the Circuit Court of Cook County No. 2023 CH 05985 Honorable Allen Price Walker, Judge Presiding.

ORDER

IT IS HEREBY ORDERED that Plaintiff-Appellant's petition for rehearing is denied.

DATED: _____

Lecfoy K. Mitchell Jr.
PRESIDING JUSTICE

Jesse D. Reyes
JUSTICE

Debra B. Walker
JUSTICE

ORDER ENTERED

SEP 15 2025

APPELLATE COURT FIRST DISTRICT

No. 132383

In the
Supreme Court of Illinois

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731,
Plaintiff- Petitioner,

v.

Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust,
Defendant-Respondent.

On Petition for Leave to Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-24-1354
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 2023-CH-05985
The Honorable Allen Price Walker, Judge Presiding

NOTICE OF ELECTION TO FILE ADDITIONAL BRIEF

YOU ARE HEREBY NOTIFIED that Petitioner, Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731 elects to file an additional brief to the Appeal to the Supreme Court of Illinois elects to file an additional brief in addition to its petition for leave to appeal in this cause. Petitioner shall file its additional brief on or before March 4, 2026, pursuant to Illinois Supreme Court Rule 315(h).

/s/ *Arthur C. Czaja*.
Arthur C. Czaja
Attorney for Plaintiff-Petitioner
ARDC # 6291494
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

E-FILED
2/11/2026 10:38 AM
CYNTHIA A. GRANT
SUPREME COURT CLERK

No. 132383

In the
Supreme Court of Illinois

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731,
Plaintiff- Petitioner,

v.

Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust,
Defendant-Respondent.

On Petition for Leave to Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-24-1354
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 2023-CH-05985
The Honorable **Allen Price Walker**, Judge Presiding

NOTICE OF FILING

To: Robert T. Kuehl, Kuehl Law, P.C., Attorney for Defendant, 555 S. Randall Road, Suite 205, St. Charles, Illinois 60174 (via e-mail to *bob@kuehllawpc.com*)

Erica Crohn Minchella, Attorney for Plaintiff, Minchella & Associates, Ltd., 7538 St. Louis, Skokie, IL 60076 (via e-mail to *erica@minchellalaw.com*)

On **February 11, 2026**, the Plaintiff-Appellant, Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731, by and through its attorney, Arthur C. Czaja, electronically served for filing upon the Clerk of the Supreme Court of the State of Illinois, the enclosed **NOTICE OF ELECTION TO FILE ADDITIONAL BRIEF** in the above captioned matter.

/s/ *Arthur C. Czaja* .
Arthur C. Czaja
Attorney for Plaintiff-Appellant
ARDC # 6291494

7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on **February 11, 2026**, he caused a true and correct copy of this Notice to be served upon the party(ies) listed above, by attaching a copy of this Notice to an electronic mail transmission and using Green Filing Illinois to the party(ies) identified hereinabove at the electronic mail address(es) identified hereinabove from 7521 N. Milwaukee Avenue, Niles, IL 60714. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ *Arthur C. Czaja* .
Arthur C. Czaja
Attorney for Plaintiff-Appellant
ARDC # 6291494
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

Chicago Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement Dated March 1, 1974 and known as Land Trust #32731	)	No. 2023CH05985
Plaintiff,	)	
v.	)	
Sara Watkin, as Trustee of The Sara Watkin 2000 Revocable Trust,	)	
Defendant.		

THIRD AMENDED COMPLAINT

JURISDICTION AND VENUE

1. Plaintiff Chicago Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, is Trustee of that certain Illinois Land Trust dated March 1, 1974 and known as Land Trust #32731 of record title to the property commonly known as 1220 N. Branch Road, Wilmette, IL 60091 within the County of Cook, State of Illinois as both res and situs of such trust.
2. Defendant is a revocable trust having situs in the State of California.
3. This cause arises out of a purported mortgage transaction securing a certain line of credit under promissory note with instruments pertaining to real property in the State of Illinois, executed and performed in the State of Illinois through Defendant's activities directed upon Plaintiff as a domiciliary of the State of Illinois and resident of Cook County, Illinois.

4. On information and belief, at all times relevant to this claim, Plaintiff has availed itself of the commercial interests of State of Illinois through such systematic contacts at to be essentially at home in the state for purposes of general jurisdiction under 735 ILCS 5/2-209(a)(1).
5. A state may exercise personal jurisdiction over an out-of-state corporate defendant where the state has specific jurisdiction over the Defendant. *McGee v. International Life Insurance,* 355 U.S. 310 (1945).
6. A state may assert specific personal jurisdiction over an out-of-state defendant if the defendant has purposefully directed its activities at residents of the forum and if the litigation results from alleged injuries that arise out of or relate to those activities. *Rios v. Bayer Corp.,* 2020 IL 125020, 178 N.E.3d 1088.
7. Jurisdiction and venue are proper in the Circuit Court of Cook County, Illinois, Chancery Division as this cause stated for equitable relief to be granted upon Plaintiff's complaint of Defendants and with the cause arising under the law of the State of Illinois from a transaction for interests in real property situated in the Village of Wilmette, Cook County, Illinois. *Ill Const. Art 6(9); 735 ILCS 5/2-101 et seq.*

Count I: Action to Quiet Title

8. Plaintiff hereby incorporates and re-alleges Paragraphs 1 – 7 above as though fully set forth herein.
9. An action to quiet title in property is an equitable proceeding in which a party seeks to remove a cloud on his title to the property. *Gambino v. Boulevard Mortg. Corp.,* 398 Ill. App. 3d 21, 922 N.E.2d 380 (2009).

10. For purposes of a quiet title action, a "cloud on title" is the semblance of title, either legal or equitable, appearing in some legal form but which is, in fact, unfounded or which it would be inequitable to enforce. *Id.*

11. A prima facie case to quiet title requires that the party bringing the action must (1) possess good or true title to the property and (2) that title, whether legal or equitable, must be superior to other claimants. Dudley v. Neteler, 392 Ill.App.3d 140, 143, 338 Ill.Dec. 497, 924 N.E.2d 1023 (2009)

12. Plaintiff is the legal owner of the property, pursuant to deed and successorship letter attached hereto as *Exhibit 1*, as described and known certainly as:

    Legal Description: LOT 12 IN ARTHUR M. GOEBELTS'S SUBDIVISION IN THE SOUTH WEST QUARTER OF SECTION 30, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

    Common Address: 1220 N. Branch Road, Wilmette, IL 60091

    Permanent Index Number: 05-30-301-023-0000 (the "Property").

13. Defendant retains upon records of title a mortgage instrument dated June 24, 2011 and recorded with the Cook County Recorder of Deeds on March 10, 2010 as Document No. 1120310049 (*Exhibit A)*.

14. 735 ILCS 5/15-1207 defines any consensual lien created by a written instrument which grants or retains an interest in real estate to secure a debt or other obligation. *735 ILCS 5/15-1207.*

15. By this above Mortgage, Defendant has claimed a lien upon the real estate which is adverse to Plaintiff's rights in title.

16. Provisions of *735 ILCS 5/13-206* applicable to promissory notes are also applicable to mortgages. *Livingston v. Meyers,* 6 Ill. 2d 325, 129 N.E.2d 12 (1955)
17. The statute of limitations on promissory notes and contracts under the law of The State of Illinois is ten years from the date upon which a claim of default has accrued. *735 ILCS 5/13-206.*
18. An action for breach of contract accrues when the breach of the contractual duty or obligation occurs. *Ret. Plan for Chicago Transit Auth. Emps. v. Chicago Transit Auth.,* 2020 IL App (1st) 182510, 156 N.E.3d 86.
19. Under Illinois choice-of-law rules, statutes of limitation are considered procedural in nature, and Illinois courts apply their own statutes of limitation. *ABF Capital Corp. v McLauchlan, N.D. Ill. 2001, 167 F. Supp. 2d 1011*
20. Action on a mortgage is barred when action on the obligation under note is barred. *Livingston v. Meyers,* 6 Ill. 2d 325, 129 N.E.2d 12 (1955)
21. Illinois law states further, "A mortgage is for purpose of securing a debt, and if there is no debt, there is no mortgage." *Evans v. Berko, 1951, 97 N.E. 2d 316, 408 Ill. 438.*
22. Plaintiff did not at any time make a payment required under the terms of the Promissory Note executed by the parties on June 24, 2011 (*Exhibit B)* and incorporated by reference to terms of the Mortgage.
23. The terms of the Note at Paragraph 3(b) indicate that the Plaintiff was obligated to monthly automatic payments from the execution date of June 24, 2011.
24. The terms of the Note at Paragraph 3(a) indicate a maturity date ("Final Payment Date") of June 24, 2012

25. Plaintiff's default under the terms of the mortgage therefore occurred either July 24, 2011 upon her uncured non-payment of monthly balance due or June 24, 2012 at which point her first final payment had come due but then and since has remained unpaid.
26. The statute of limitations on the Note under the Laws of the State of Illinois thus expired upon or about July 23, 2021 or June 23, 2022.
27. The existence of a mortgage recorded to records of title purports itself as a lien upon the real estate that is the subject of the mortgage from the time of recording and secured in accordance with the terms of the mortgage. *735 ILCS 5/15-1301.*
28. Defendant's claim is a cloud on Plaintiff's title having no force and effect due to Defendant's failure to file action upon the mortgage within the applicable Statute of Limitations.
29. As legal owner of the real estate, Plaintiff seeks a declaration that the title to the real estate is vested in Plaintiff alone and that Defendant and Unknown Owners have no estate, right, title, or interest in the subject property and that said Defendant and Unknown Owners be forever enjoined from asserting any estate, right, title, or interest in the subject property adverse to Plaintiff herein.
30. Plaintiff has no adequate remedy at law.

WHEREFORE, Plaintiff respectfully requests that this Court enter an order finding and confirming title in their name in fee simple, free and clear of the purported claims of interest of Defendant and that the Mortgage identified here above shall be held for naught and for such other relief as the Court deems just and equitable.

Respectfully submitted,

__/s/ Erica Crohn Minchella _____

Erica Crohn Minchella, One of their attorneys

Erica Crohn Minchella
Attorney ID: 18526
Minchella & Associates, Ltd
7538 St Louis
Skokie, Illinois 60067
Phone number: 847-677-6772
E-mail: erica@ecminchellalaw.com

Exhibit 1

DEED IN TRUST

132383

22 655 493

Form 191 Rev. 5-63

The above space for recorder's use only

THIS INDENTURE WITNESSETH, THAT THE GRANTORS, MELVIN R. STEIN and MARLINE S. STEIN, his wife, of the County of Cook and State of Illinois, for and in consideration of the sum of TEN AND NO/100- Dollars ($ 10.00), in hand paid, and of other good and valuable considerations, receipt of which is hereby duly acknowledged, Convey and Warrant unto AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association as Trustee under the provisions of a certain Trust Agreement, dated the 1st day of March 19 74, and known as Trust Number 32731, the following described real estate in the County of Cook and State of Illinois, to wit:

Lot 12 in Arthur M. Goebelt's Subdivision in the South West quarter of Section 30, Township 42 North, Range 13, East of the Third Principal Meridian in Cook County, Illinois.

(ADDRESS OF GRANTEE: 33 N. La Salle Street, Chicago, Illinois)

RECORDER OF DEEDS COOK COUNTY ILLINOIS

1974 MAR 15 PM 12 00

MAR-15-74 771205 • 22655493 • A — Rec 5.00

THIS INSTRUMENT WAS PREPARED BY
Richard S Weinberg
OF WEINBERG & WEINBERG, LTD.
ONE No. LASALLE ST.
CHICAGO, ILLINOIS 60602

5 00

TO HAVE AND TO HOLD the said real estate with the appurtenances, upon the trusts, and for the uses and purposes herein and in said Trust Agreement set forth.

Full power and authority is hereby granted to said Trustee to improve, manage, protect and subdivide said real estate or any part thereof, to dedicate parks, streets, highways or alleys to vacate any subdivision or part thereof, and to resubdivide said real estate as often as desired, to contract to sell, to grant options to purchase, to sell on any terms, to convey either with or without consideration, to convey said real estate or any part thereof to a successor or successors in trust and to grant to such successor or successors in trust all of the title, estate, powers and authorities vested in said Trustee, to donate, to dedicate, to mortgage, pledge or otherwise encumber said real estate, or any part thereof, to lease said real estate, or any part thereof, from time to time, in possession or reversion, by leases to commence in praesenti or in futuro, and upon any terms and for any period or periods of time, not exceeding in the case of any single demise the term of 198 years, and to renew or extend leases upon any terms and for any period or periods of time and to amend, change or modify leases and the terms and provisions thereof at any time or times hereafter, to contract to make leases and to grant options to lease and options to renew leases and options to purchase the whole or any part of the reversion and to contract respecting the manner of fixing the amount of present or future rentals, to partition or to exchange said real estate, or any part thereof, for other real or personal property, to grant easements or charges of any kind, to release, convey or assign any right, title or interest in or about or easement appurtenant to said real estate or any part thereof, and to deal with said real estate and every part thereof in all other ways and for such other considerations as it would be lawful for any person owning the same to deal with the same, whether similar to or different from the ways above specified, at any time or times hereafter.

In no case shall any party dealing with said Trustee, or any successor in trust, in relation to said real estate, or to whom said real estate or any part thereof shall be conveyed, contracted to be sold, leased or mortgaged by said Trustee, or any successor in trust, be obliged to see to the application of any purchase money, rent or money borrowed or advanced on said real estate, or be obliged to see that the terms of this trust have been complied with, or be obliged to inquire into the authority, necessity or expediency of any act of said Trustee, or be obliged or privileged to inquire into any of the terms of said Trust Agreement: and every deed, trust deed, mortgage, lease or other instrument executed by said Trustee, or any successor in trust, in relation to said real estate shall be conclusive evidence in favor of every person (including the Registrar of Titles of said county) relying upon or claiming under any such conveyance, lease or other instrument, (a) that at the time of the delivery thereof the trust created by this indenture and by said Trust Agreement was in full force and effect, (b) that such conveyance or other instrument was executed in accordance with the trusts, conditions and limitations contained in this Indenture and in said Trust Agreement or in all amendments thereof, if any, and binding upon all beneficiaries thereunder, (c) that said Trustee, or any successor in trust, was duly authorized and empowered to execute and deliver every such deed, trust deed, lease, mortgage or other instrument and (d) if the conveyance is made to a successor or successors in trust, that such successor or successors in trust have been properly appointed and are fully vested with all the title, estate, rights, powers, authorities, duties and obligations of its, his or their predecessor in trust.

This conveyance is made upon the express understanding and conditions that neither American National Bank and Trust Company of Chicago, individually or as Trustee, nor its successor or successors in trust shall incur any personal liability or be subjected to any claim, judgement or decree for anything it or they or its or their agents or attorneys may do or omit to do in or about the said real estate or under the provisions of this Deed or said Trust Agreement or any amendment thereto, or for injury to person or property happening in or about said real estate, any and all such liability being hereby expressly waived and released. Any contract, obligation or indebtedness incurred or entered into by the Trustee in connection with said real estate may be entered into by it in the name of the then beneficiaries under said Trust Agreement as their attorney-in-fact, hereby irrevocably appointed for such purposes, or, at the election of the Trustee, in its own name, as Trustee of an express trust and not individually (and the Trustee shall have no obligation whatsoever with respect to any such contract, obligation or indebtedness except only so far as the trust property and funds in the actual possession of the Trustee shall be applicable for the payment and discharge thereof). All persons and corporations whomsoever and whatsoever shall be charged with notice of this condition from the date of the filing for record of this Deed.

The interest of each and every beneficiary hereunder and under said Trust Agreement and of all persons claiming under them or any of them shall be only in the earnings, avails and proceeds arising from the sale or any other disposition of said real estate, and such interest is hereby declared to be personal property, and no beneficiary hereunder shall have any title or interest, legal or equitable, in or to said real estate as such, but only an interest in earnings, avails and proceeds thereof as aforesaid, the intention hereof being to vest in said American National Bank and Trust Company of Chicago the entire legal and equitable title in fee simple, in and to all of the real estate above described.

If the title to any of the above real estate is now or hereafter registered, the Registrar of Titles is hereby directed not to register or note in the certificate of title or duplicate thereof, or memorial, the words "in trust," or upon condition, or "with limitations," or words of similar import, in accordance with the statute in such case made and provided.

And the said grantor ..... hereby expressly waive ..... and release ..... any and all right or benefit under and by virtue of any and all statutes of the State of Illinois, providing for exemption or homesteads from sale on execution or otherwise.

In Witness Whereof, the grantor S aforesaid have hereunto set their hand S and seal S this 1st day of March 19 74.

[SEAL] Melvin R. Stein [SEAL]

[SEAL] Marline S. Stein [SEAL]

STATE OF ILLINOIS, COUNTY OF COOK } ss.

I, Richard S. Weinberg, a Notary Public in and for said County, in the State aforesaid, do hereby certify that MELVIN R. STEIN and MARLINE S. STEIN, his wife,

personally known to me to be the same person S whose name S are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered the said instrument as their free and voluntary act, for the uses and purposes therein set forth, including the release and waiver of the right of homestead.

Given under my hand and notarial seal this 1st day of March A.D., 1974

Richard S Weinberg
Notary Public

My commission expires 9/14/74

RICHARD S. WEINBERG NOTARY PUBLIC COOK COUNTY, ILL.

American National Bank and Trust Company of Chicago
Box 221

1220 N. Branch Road, Wilmette, Ill.
For information only insert street address of above described property.

All

This space for affixing Riders and Revenue Stamps

NO TAXABLE CONSIDERATION

Document Number 22655493

C 362

Chicago Title Land Trust Company

15255 S 94th Ave., Suite 604
Orland Park, IL 60452

AFFIDAVIT OF SUCCESSOR TRUSTEE

I, Linda Lee Lutz, being duly sworn, do hereby state as follows:

1. I am a Trust Officer with CHICAGO TITLE LAND TRUST COMPANY successor trustee to LASALLE BANK NATIONAL ASSOCIATION, successor trustee to AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO whose main office is 10 South LaSalle, Suite 2750, Chicago, IL 60603

2. That on various dates LASALLE BANK NATIONAL ASSOCIATION, successor trustee to AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO became successor trustee to land trusts previously administered by the institutional trustees listed alphabetically on Exhibit A and in order of succession on Exhibit B attached hereto and made a part hereof;

3. That this action occurred pursuant to the Corporate Fiduciary Act, 205 ILCS 620/3-3 and the terms of various purchase and sale agreements relating to land trust business by and between and among LASALLE BANK NATIONAL ASSOCIATION, successor trustee to AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO and the trustees listed on EXHIBIT A by which AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO succeeded to all of the land trust accounts of certain of the predecessor trustees listed on Exhibit A , some of which were already acting as successor trustees to others of the trustees listed on Exhibit A. as more fully set forth on Exhibit B, together with all the rights, powers and duties granted to or imposed upon the said predecessor trustee;

4. That on October 1, 2005 CHICAGO TITLE LAND TRUST COMPANY became successor trustee to LASALLE BANK NATIONAL ASSSOCIATION;

5. That CHICAGO TITLE LAND TRUST COMPANY is currently acting as successor trustee to the LASALLE BANK NATIONAL ASSOCIATION land trust department and has all powers and duties accorded to successor trustees under the Corporate Fiduciary Act of the laws of the State of Illinois.

FURTHER AFFIANT SAYETH NAUGHT.
Date: September 26, 2017

CHICAGO TITLE LAND TRUST COMPANY CORPORATE SEAL CHICAGO, ILLINOIS

Linda Lee Lutz
Assistant Vice President
and Trust Officer

Subscribed and sworn this 26th day of
September, 2017

OFFICIAL SEAL
EILEEN F. MEARY
Notary Public - State of Illinois
My Commission Expires 11/30/2019

Notary Public

Hearing Date: 10/24/2023 9:30 AM
Location: Court Room 2402
Judge: Price Walker, Allen

EXHIBIT A

Illinois Anti-Predatory Lending Database Program

Certificate of Exemption

Report Mortgage Fraud
800-532-8785

1120310049

Doc#: 1120310049 Fee: $54.00
Eugene "Gene" Moore RHSP Fee:$10.00
Cook County Recorder of Deeds
Date: 07/22/2011 04:14 PM Pg: 1 of 10

The property identified as: **PIN:** 05-30-301-023-0000

Address:
Street: 1220 North Branch Road
Street line 2:
City: Wilmette **State:** IL **ZIP Code:** 60091

Lender: Sara Ellen Watkin ~ Sara Watkin 2000 Revocable Trust

Borrower: Chicago Title Land Trust Company ~ Land Trust #32731

Loan / Mortgage Amount: $150,000.00

This property is located within the program area and the transaction is exempt from the requirements of 765 ILCS 77/70 et seq. because the application was taken by an exempt entity.

Certificate number: DF20F9D2-6E33-4B00-AC5F-21F78F7CD3E8 **Execution date:** 07/06/2011

This document prepared and
upon recording to be returned to:

Jay Stein, Esq.
P.O. Box 24323
Los Angeles, CA 90024

This space reserved for Recorder's use only.

MORTGAGE

THIS MORTGAGE ("Security Instrument") is given on June 24, 2011. The mortgagor is Chicago Title Land Trust Company, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731 ("Borrower"). This Security Instrument is given to Sara Ellen Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust, whose address is P.O. Box 24323, Los Angeles, California 90024 ("Lender"). Borrower owes Lender up to the principal sum of One Hundred Fifty Thousand Dollars ($150,000.00). This debt is evidenced by Borrower's note dated the same date as this Security Instrument ("Note"), which provides for monthly payments, with full debt, if not paid earlier, due and payable on June 24, 2012. This Security Instrument secures to Lender: (a) the repayment of the debt evidenced by the Note, with interest, and all renewals, extensions and modifications of the Note; (b) the payment of all other sums, with interest, advanced under paragraph 7 to protect the security of this Security Instrument; and (c) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender the property located in Cook County, Illinois, which bears the address of 1220 North Branch Road, Wilmette, Illinois ("Property Address"), more fully described on Exhibit A attached hereto and made a part hereof.

THIS MORTGAGE is given to secure a revolving credit loan and shall secure not only presently existing indebtedness under the Note but also future advances, whether such advances are obligatory or to be made at the option of the Mortgagee, or otherwise, as are made within 5 years from the date hereof to the same extent as if such future advances were made on the date of the execution of this Mortgage and although there may be no indebtedness secured hereby outstanding at the time any advance is made. The lien of this Mortgage shall be valid as to all indebtedness secured hereby, including future advances, from the time of its filing for record in the recorder's office of Cook County, Illinois. This Mortgage secures, amount other indebtedness, a "revolving credit" arrangement within the meaning of 815 ILCS 205/4.1 and 205 ILCS 5/52. The total amount of indebtedness secured hereby may increase or decrease from time to time, but the total unpaid balance of indebtedness secured hereby plus interest thereon and any disbursements which the Mortgagee may make under the Mortgage, the Note or any other document with respect hereto (e.g. for payment of taxes or insurance) and interest on such

disbursements shall not, at any one time outstanding, exceed the total sum of One Hundred Fifty Thousand Dollars ($150,000.00). This Mortgage is intended to and shall be valid and have priority over all subsequent lines and encumbrances, including statutory liens, excepting taxes and assessments levied on the real estate, to the extent of the maximum amount secured hereby.

TOGETHER WITH all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property."

BORROWER COVENANTS that Borrower is lawfully seized on the estate hereby conveyed and has the right to mortgage, grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal and Interest; Prepayment and Late Charges**. Borrower shall promptly pay when due the principal of and interest on the debt evidenced by the Note and any prepayment and late charges due under the Note.

2. **Funds for Taxes and Insurance**. Subject to applicable law or to a written waiver by Lender, Borrower shall pay when due, until the Note is paid in full, a sum ("Funds") for:

(a) yearly taxes and assessments which may attain priority over this Security Instrument as a lien on the Property;

(b) yearly flood insurance premiums, if any;

If Borrower fails to make the payments for Taxes and Insurance Obligations, upon notice to Borrowers, Lender may advance the funds and pay for any of the Taxes and Insurance Obligations, and add the amount paid to the principal due under the Note. Lender shall give to Borrower, without charge, an annual accounting of the Taxes and Insurance Obligations, showing credits and debits to the Taxes and Insurance Obligations and the purpose for which each debit or payment was made.

3. **Application of Payments**. Unless applicable law provides otherwise, all payments received by Lender under paragraphs 1 and 2 shall be applied: first, to any prepayment charges due under the Note; second, to amounts payable under paragraph 2; third, to interest due; fourth, to principal due; and last, to any late charges due under the Note.

4. **Charges; Liens**. Borrower shall pay all taxes, assessments, charges, fines and impositions attributable to the Property which may attain priority over this Security Instrument, and leasehold payments or ground rents, if any. Borrower shall pay these obligations in the

manner provided in paragraph 2, or if not paid in that manner, Borrower shall pay them on time directly to the person owed payment. Borrower shall promptly furnish to Lender all notices of amounts to be paid under this paragraph. If Borrower makes these payments directly, Borrower shall promptly furnish to Lender receipts evidencing the payments.

Borrower shall promptly discharge any lien which has priority over this Security Instrument unless Borrower: (a) agrees in writing to the payment of the obligation secured by the lien in a manner acceptable to Lender; (b) contests in good faith the lien by, or defends against enforcement of the lien in, legal proceedings which in the Lender's option operate to prevent the enforcement of the lien; or (c) secures from the holder of the lien an agreement satisfactory to Lender subordinating the lien to this Security Instrument. If Lender determines that any part of the Property is subject to a lien which may attain priority over this Security Instrument, Lender may give Borrower a notice identifying the lien. Borrower shall satisfy the lien or take one or more of the actions set forth above within 10 days of the giving of notice.

5. **Hazard or Property Insurance**. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage" and any other hazards, including floods or flooding, for which Lender requires insurance. If Borrower fails to maintain coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property in accordance with paragraph 7.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with any excess paid to Borrower. If Borrower abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay sums secured by this Security Instrument, whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Borrower otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of the monthly payments referred to in paragraphs 1 and 2 or change the amount of the payments. If under paragraph 17 the Property is acquired by Lender, Borrower's right to any insurance policies and proceeds resulting from damage to the Property prior to the acquisition shall pass to Lender to the extent of the sums secured by this Security Instrument immediately prior to the acquisition.

6. **Occupancy, Preservation, Maintenance and Protection of the Property; Borrower's Loan Application; Leaseholds**. Borrower shall occupy, establish, and use the Property as Borrower's principal residence unless Lender otherwise agrees in writing, which consent shall not be unreasonably withheld, or unless extenuating circumstances exist which are beyond Borrower's control. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate, or commit waste on the Property. Borrower shall be in default if any forfeiture action or proceeding, whether civil or criminal, is begun that in Lender's good faith

judgment could result in forfeiture of the Property or otherwise materially impair the lien created by this Security Instrument or Lender's security interest. Borrower may cure such a default and reinstate, as provided in paragraph 15, by causing the action or proceeding to be dismissed with a ruling that, in Lender's good faith determination, precludes forfeiture of the Borrower's interest in the Property or other material impairment of the lien created by this Security Instrument or Lender's security interest

7. **Protection of Lender's Rights in the Property**. If Borrower fails to perform the covenants and agreements contained in this Security Instrument, or there is a legal proceeding that may significantly affect Lender's rights in the Property (such as a proceeding in bankruptcy, probate, for condemnation or forfeiture or to enforce laws or regulations), then Lender may do and pay for whatever is necessary to protect the value of the Property and Lender's rights in the Property. Lender's actions may include paying any sums secured by a lien which has priority over this Security Instrument, appearing in court, paying reasonable attorneys' fees and entering on the Property to make repairs. Although Lender may take action under this paragraph 7, Lender does not have to do so.

Any amounts disbursed by Lender under this paragraph 7 shall become additional debt of Borrower secured by this Security Instrument. Unless Borrower and Lender agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable with interest, upon notice from Lender to Borrower requesting payment.

8. **Borrower Not Released; Forbearance By Lender Not a Waiver**. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to any successor in interest of Borrower shall not operate to release the liability of the original Borrower or Borrower's successors in interest. Lender shall not be required to commence proceedings against any successor in interest or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or Borrower's successors in interest. Any forbearance by Lender in exercising any right or remedy shall not be a waiver of or preclude the exercise of any right or remedy.

9. **Successors and Assigns Bound; Joint and Several Liability; Co-signers**. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender and Borrower, subject to the provisions of paragraph 14. Borrower's covenants and agreements shall be joint and several. Any Borrower who co-signs this Security Instrument but does not execute the Note: (a) is co-signing this Security Instrument only to mortgage, grant and convey that Borrower's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower may agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without that Borrower's consent.

10. **Loan Charges**. If the loan secured by this Security Instrument is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to

the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge under the Note.

11. **Notices**. Any notice to Borrower provided for in this Security Instrument shall be given by delivering it or by mailing it by first class mail, unless applicable law requires use of another method. The notice shall be directed to the Property Address or any other address Borrower designates by notice to Lender. Any notice to Lender shall be given by first class mail to Lender's address stated herein or any other address Lender designates by notice to Borrower. Any notice provided for in this Security Instrument shall be deemed to have been given to Borrower or Lender when given as provided in this paragraph.

12. **Governing Law; Severability**. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. In the event that any provision or clause of this Security Instrument or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision. To this end the provisions of this Security Instrument and the Note are declared to be severable.

13. **Borrower's Copy**. Upon request, Borrower shall be given one conformed copy of the Note and of this Security Instrument.

14. **Transfer of the Property or a Beneficial Interest in Borrower**. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by this Security Instrument. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument.

If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period, Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

15. **Borrower's Right to Reinstate**. If Borrower meets certain conditions, Borrower shall have the right to have enforcement of this Security Instrument discontinued at any time prior to the earlier of: (a) 5 days (or such other period as applicable law may specify for reinstatement) before sale of the Property pursuant to any power of sale contained in this Security Instrument; or (b) entry of a judgment enforcing this Security Instrument. Those conditions are that Borrower: (a) pays Lender all sums which then would be due under this Security Instrument and the Note as if no acceleration had occurred; (b) cures any default of any other covenants or agreements; (c) pays all expenses incurred in enforcing this Security Instrument, including, but not limited to, reasonable attorneys' fees; and (d) takes such action as Lender may reasonably require to assure that the lien of this Security Instrument, Lender's

rights in the Property and Borrower's obligation to pay the sums secured by this Security Instrument shall continue unchanged. Upon reinstatement by Borrower, this Security Instrument and the obligations secured hereby shall remain fully effective as if no acceleration had occurred. However, this right to reinstate shall not apply in the case of acceleration under paragraph 17.

16. **Sale of Note**. The Note or a partial interest in the Note (together with this Security Instrument) may not be sold without prior notice to Borrower.

NON-UNIFORM COVENANTS. Borrower and Lender further covenant and agree as follows:

17. **Acceleration; Remedies**. Lender shall give notice to Borrower prior to acceleration following Borrower's breach of any covenant or agreement in this Security Instrument (but not prior to acceleration under paragraph 14 unless applicable law provides otherwise). The notice shall specify: (a) the default; (b) the action required to cure the default (c) a date, not less than 30 days from the date the notice is given to Borrower, by which the default must be cured; and (d) that failure to cure the default on or before the date specified in the notice may result in acceleration of the sums secured by this Security Instrument, foreclosure by judicial proceeding and sale of the Property. The notice shall further inform Borrower of the right to reinstate after acceleration and the right to assert in the foreclosure proceeding the non-existence of a default or any other defense of Borrower to acceleration and foreclosure. If the default is not cured on or before the date specified in the notice, Lender at its option may require immediate payment in full of all sums secured by this Security Instrument without further demand and may foreclose this Security Instrument by judicial proceeding. Lender shall be entitled to collect all expenses incurred in pursuing the remedies provided in this paragraph 17, including, but not limited to, reasonable attorneys' fees and costs of title evidence.

18. **Release**. Upon payment of all sums secured by this Security Instrument, Lender shall release this Security Instrument without charge to Borrower. Borrower shall pay any recordation costs.

19. **Waiver of Homestead**. Borrower waives all right of homestead exemption in the Property.

20. **Exculpatory Clause For Chicago Title Land Trust Company, as Trustee Under Trust Agreement Dated March 1, 1974, and Known as Land Trust # 32731.** It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal

liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against CHICAGO TITLE LAND TRUST COMPANY, on account of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

BY SIGNING BELOW, Borrower accepts and agrees to the terms and covenants contained in this Security Instrument executed by Borrower and recorded with it.

CHICAGO TITLE LAND TRUST COMPANY CORPORATE SEAL CHICAGO, ILLINOIS

Chicago Title Land Trust Company, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731

By: _____
TRUST OFFICER

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, the undersigned, a Notary Public in and for said County, in the State aforesaid, DO HEREBY CERTIFY, that LIDIA MARINCA TRUST OFFICER, personally known to me to be the same persons who appeared before me this day in person and acknowledged that they signed and delivered the said document as their free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and Notarial Seal, this 6th day of July, 2011.

"OFFICIAL SEAL"
MARIO V. GOTANCO
Notary Public, State of Illinois
My Commission Expires 04/07/12

Notary Public

Printed Name

EXHIBIT A

LEGAL DESCRIPTION

LOT 12 IN ARTHUR M. GOEBELTS'S SUBDIVISION IN THE SOUTH WEST QUARTER OF SECTION 30, TOWNSHIP 42 NORTH, RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN IN COOK COUNTY, ILLINOIS

Address: 1220 North Branch Road, Wilmette, Illinois

Property Index Number: 05-30-301-023-0000

Hearing Date: 10/24/2023 9:30 AM
Location: Court Room 2402
Judge: Price Walker, Allen

FILED
6/26/2023 4:16 PM
IRIS Y. MARTINEZ
CIRCUIT CLERK
COOK COUNTY, IL
2023CH05985
Calendar, 3
23294915

EXHIBIT B

SECURED FIRST MORTGAGE NOTE

$150,000 **Date: June 24, 2011**
WILMETTE, IL

Property: 1220 North Branch Road, Wilmette, Illinois

1. **Borrower's Promise to Pay and Security.** In return for a loan received, the undersigned, Chicago Title Land Trust Company, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731, and Marline S. Stein and Melvin R. Stein (as the "Borrower" hereunder) promise to pay up to the sum of $150,000.00 U.S. Dollars (this amount is called "principal"), plus interest to the order of the Lender. The Lender is Sara Ellen Watkin, Trustee of the Sara Watkin 2000 Revocable Trust. The Lender may transfer ownership of this Note. The Lender or anyone who takes this Note by transfer and who is entitled to receive payments under this Note is called the "Note Holder." THIS NOTE IS SECURED BY A FIRST-IN-PRIORITY MORTGAGE LIEN OF EVEN DATE ON CERTAN PROPERTY LOCATED AT 1220 NORTH BRANCH ROAD, WILMETTE, ILLINOIS.

2. **Interest.** Interest will be charged on unpaid principal until the full amount of principal has been paid. Interest will be charged at a Four (4%) percent ***per annum*** rate.

3. **Payments.**

(a) Time and Place of Payments. Interest shall accrue until maturity (the Final Payment Date below) and Borrower will make a lump sum payment of principal and accrued and unpaid interest at or before the maturity date of June 24, 2012 (the "Final Payment Date").

(b) Borrower will make these payments to Lender at P.O. Box 24323, Los Angeles, California 90024 or such other address as designated by Lender. Borrower agrees to make arrangements with Borrower's bank for automatic monthly payments to Lender.

4. **Borrower's Right to Prepay.** Borrower shall have the right to make payments of principal at any time before they are due. A payment of principal only is known as a "prepayment." If Borrower makes a partial prepayment, there will be no changes in the due date or in the amount of my monthly payment unless the Note Holder agrees in writing to those changes.

5. **Loan Charges.** If a law, which applies to this loan and which sets maximum loan charges, is finally interpreted so that the interest or other loan charges collected or to be collected in connection with this loan exceed the permitted legal limits, then: (i) any

such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (ii) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the principal Borrower owes under this Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment.

6. **Borrower's Failure to Make Payments.**

(a) Late Charge for Overdue Payments. If the Note Holder has not received the full amount of any payment by the end of fifteen (15) calendar days after the date it is due, Borrower will pay a late charge to the Note Holder. The amount of the charge will be five percent (5%) of my overdue monthly payment. Borrower will pay this late charge promptly but only once on each late payment.

(b) Default. If Borrower does not pay the full amount of each monthly payment on the date it is due, it will constitute a default.

(c) Notice of Default. If the loan is in default, the Note Holder may send a written notice advising Borrower that if Borrower does not pay the overdue amount by a certain date, the Note Holder may require Borrower to pay immediately the full amount of principal which has not been paid and all the interest that is owed on that amount. That date must be at least 30 days after the date on which the notice is delivered or mailed to Borrower.

(d) No Waiver By Note Holder. Even if, at a time when Borrower is in default, if the Note Holder does not require Borrower to pay immediately in full as described above, the Note Holder will still have the right to do so if there is a default at a later time.

(e) Payment of Note Holder's Costs and Expenses. If the Note Holder has required Borrower to pay immediately in full as described above, the Note Holder will have the right to be paid back by Borrower for all of the Note Holder's costs and expenses in enforcing this Note to the extent not prohibited by applicable law. Those expenses include, for example, reasonable attorneys' fees and court costs and filing files.

7. **Giving of Notices.** Unless applicable law requires a different method, any notice that must be given to Borrower under the terms of this Note will be given by delivering it or by mailing it by first class mail to Borrower at the Property Address above or at a different address if the Borrowers give the Note Holder a notice of a different address. Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address started in Section 1 above or at a different address if Borrower is given a notice of that different address.

8. **Waivers.** Borrower waives the rights of presentment and notice of dishonor. "Presentment" means the right to require the Note Holder to demand payment of amounts due. "Notice of dishonor" means the right to require the Note Holder to give notice to other persons that amounts due have not been paid.

9. **Uniform Secured Note.** This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a mortgage (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if the Borrower fails to keep the promises that are made in this Note. This Note is a uniform instrument with limited variations in some jurisdictions. In addition to the protections given to the Note Holder under this Note, a Mortgage, (the "Security Instrument"), dated the same date as this Note, protects the Note Holder from possible losses which might result if Borrower does not keep the promises which are made in this Note. That Security Instrument describes how and under what conditions the undersigned may be required to make immediate payment in full of all amounts owed under this Note. Some of those conditions are described as follows:

Transfer of the Property or a Beneficial Interest in Borrower. If all or any part of the Property or any interest in it is sold or transferred (or if a beneficial interest in Borrower is sold or transferred and Borrower is not a natural person) without Lender's prior written consent, Lender may, at its option, require immediate payment in full of all sums secured by the Security Instrument securing this Note. However, this option shall not be exercised by Lender if exercise is prohibited by federal law as of the date of this Security Instrument. If Lender exercises this option, Lender shall give Borrower notice of acceleration. The notice shall provide a period of not less than 30 days from the date the notice is delivered or mailed within which Borrower must pay all sums secured by this Security Instrument. If Borrower fails to pay these sums prior to the expiration of this period. Lender may invoke any remedies permitted by this Security Instrument without further notice or demand on Borrower.

10. **EXCULPATORY CLAUSE FOR CHICAGO TITLE LAND TRUST COMPANY AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 1, 1974, AND KNOWN AS TRUST #32731.**

It is expressly understood and agreed by and between the parties hereto, anything to the contrary notwithstanding, that each and all of the warranties, indemnities, representations, covenants, undertakings and agreements herein made on the part of the Trustee while in form purporting to be the warranties, indemnities, representations, covenants, undertakings and agreements of said Trustee are nevertheless each and every one of them, made and intended not as personal warranties, indemnities, representations, covenants, undertakings and agreements by the Trustee or for the purpose or with the intention of binding said Trustee personally but are made and intended for the purpose of binding only that portion of the trust property specifically described herein, and this instrument is executed and delivered by said Trustee not in its own right, but solely in the exercise of the powers conferred upon it as such Trustee; and that no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against CHICAGO TITLE LAND TRUST COMPANY, on account

of this instrument or on account of any warranty, indemnity, representation, covenant or agreement of the said Trustee in this instrument contained, either expressed or implied, all such personal liability, if any, being expressly waived and released.

IN WITNESS whereof, the undersigned has signed this Note as of the date and year first above-written.

Borrowers:

CHICAGO TITLE LAND TRUST COMPANY CORPORATE SEAL CHICAGO, ILLINOIS

Chicago Title Land Trust Company, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731

By: _____

_____
Marline S. Stein

_____
Melvin R. Stein

Exhibit 1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS COUNTY DEPARTMENT, CHANCERY DIVISION

SARA ELLEN WATKIN, Trustee of the Sara Watkin 2000 Revocable Trust Plaintiff, v. CHICAGO TITLE LAND TRUST COMPANY AS SUCCESSOR TRUSTEE TO AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, AS TRUSTEE UNDER TRUST AGREEMENT DATED MARCH 1, 1974, AND KNOWN AS LAND TRUST #32731, MARLINE S. STEIN, MELVIN R. STEIN, DECEASED,UNKNOWN OWNERS & NON-RECORD CLAIMANTS, Defendants.	*Case No. 2023CH05985*

NOTICE OF Filing

TO: **Smith Amundsen** / Michael Cortina - *mcortina@smithamundsen.com*

NOTICE OF FILING TO: See attached Service List PLEASE TAKE NOTICE that we have this Friday, May 31, 2024, submitted for electronic filing with the Circuit Clerk of Cook County, Illinois, the attached PLAINTIFF'S THIRD AMENDED COMPLAINT JURISDICTION AND VENUE.

5/31/2024

Erica Crohn Minchella

Erica Crohn Minchella,
Attorney No. 18526
ERICA CROHN MINCHELLA, LTD.
7538 St. Louis Ave.
Skokie, IL 60076
(847) 677-6772
ARDC # 6180610

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731 Plaintiff,	)	Case No. 2023-CH-05985
v.	)	
Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust Defendant.	)	

NOTICE OF APPEAL

NOW COMES the Plaintiff-Appellant, Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731 ("Plaintiff"), by and through its undersigned attorneys, and pursuant to Supreme Court Rules 301 and 303, appeals to the Appellate Court of Illinois for the First District from the following order entered in this matter in the circuit court of Cook County, Illinois:

1. The trial court's order of May 30, 2024, which granted Defendant Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust's ("Defendant") motions for summary judgment and denied Plaintiff's cross-motion for summary judgment. A copy of the order being appealed is attached hereto as **Exhibit 1**.

WHEREFORE, the Plaintiff, by and through this Appeal, will ask the Appellate Court to reverse or vacate the order of May 30, 2024 that granted Defendant's motion for summary judgment and denied Plaintiff's cross-motion for summary judgment, remand this cause for further proceedings, and for such other and further relief that this Court deems necessary and just.

Respectfully submitted,

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731

By: /s/ *Arthur C. Czaja*
Arthur C. Czaja
Attorney for Plaintiff-Appellant

Arthur C. Czaja
Attorney for Plaintiff-Appellant
Cook County Attorney #: 47671
ARDC#: 6291494
7521 N. Milwaukee Avenue
Niles, Illinois 60714
Telephone: (224) 388-3908
Email: arthur@czajalawoffices.com

EXHIBIT 1

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT - CHANCERY DIVISION

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731,	)	
Plaintiff,	)	Case No.: 23 CH 05985
v.	)	
Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust,	)	
Defendant.	)	

ORDER

This matter having come before the Court for hearing on Defendant's motion for summary judgment and Plaintiff's cross-motion for summary judgment, counsel for each side and Defendant having appeared and the Court being fully advised in the premises,

IT IS HEREBY ORDERED:

1. For the reasons set forth on the record in open court, Defendant's motion for summary judgment is granted, subject to the furnishing of the proper identification of the plaintiff and proof of its current ownership of the subject property, which will be done via a Third Amended Complaint, to be filed on or before May 31, 2024, and Plaintiff's cross-motion for summary judgment is denied;
2. Defendant's request for costs is denied; and
3. This matter is set for status on June 25, 2024 at 10:00 a.m. CST in Courtroom 2402 as accessible via Zoom Meeting ID Zoom Meeting ID 955 0046 1687 and Passcode 640378 or dial in (312) 626-6799.

Associate Judge
Allen Price Walker

Date:

Entered:

MAY 30 2024

Circuit Court - 2071

The Honorable Judge Allen P. Walker

Prepared by:
Robert T. Kuehl (ARDC #: 6271281)
Kuehl Law, P.C.
Attorney for Defendant
Cook #: 47997
555 S. Randall Road, Suite 205
St. Charles, Illinois 60174
312-375-9402
877-794-1380 (fax)
bob@kuehllawpc.com

Request for Preparation of Record on Appeal **(12/01/20) CCA 0025 A**

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FROM THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS

COUNTY **DEPARTMENT,** CHANCERY **DIVISION/DISTRICT**

Chicago Title Land Trust Company,

Plaintiff/ ◉ Appellant ○ Appellee

v.

Sara Watkin, as Trustee

Defendant/ ○ Appellant ◉ Appellee

Reviewing Court No.: _____

Circuit Court No.: 2023-CH-05985

Honorable Allen P. Walker
Trial Judge

Date Notice of Appeal Filed: 6/28/24

REQUEST FOR PREPARATION OF RECORD ON APPEAL

◉ Atty. No.: 47671 ARDC No.: 6291494
○ Pro Se 99500

Atty Name: Arthur C. Czaja

Atty. for: Defendant

Address: 7521 N. Milwaukee Ave.

City: Niles

State: IL Zip: 60714

Telephone: 224-388-3908

Primary Email: arthur@czajalawoffices.com

NOTICE IS HEREBY GIVEN to the Clerk of the Circuit Court of Cook County that

Chicago Title Land Trust Company, as successor trustee requests the preparation of the Record on Appeal in the above case.

Iris Y. Martinez, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

DESIGNATION OF RECORD

The Clerk of the Circuit Court of Cook County shall prepare the Record on Appeal in accordance with Illinois Supreme Court Rule 321. The record on Appeal shall include the common law record, which consists of documents filed and judgments and orders entered by the trial court and:

☐ All documentary exhibits entered at trial, except for those other exhibits that cannot ordinarily be included for review and are subject to motion.

☐ Reports of Proceedings prepared in accordance with Illinois Supreme Court Rule 323.

☐ Documents filed under seal on the following dates and unsealed:

A copy of the trial court Order authorizing these documents to be unsealed for the purpose of inclusion in the Record on Appeal is attached hereto or will be provided by the Appellant to the Civil Appeals Division at least 30 days in advance of the date on which the Record on Appeal is scheduled to be transmitted to the Appellate Court. Upon return of the Record on Appeal to the Circuit Court, it is the responsibility of the parties to obtain an Order resealing these records, if the records are to be resealed.

☐ Documents filed under seal on the following dates, which are to remain sealed:

Please note that, pursuant to Rule 17 of Appellate Court of Illinois, "No record, exhibit, or brief may be filed under seal in the Appellate Court, unless Appellate Court has first given leave for filing under seal, notwithstanding that the material was filed under seal in the Circuit Court."

FEES

Payment may be made by Cash, Check or Money Order. Cash payments accepted for in-person payments only. Checks or money order should be made to Clerk of the Circuit Court of Cook County. Pursuant to 705 ILCS 105/27.2a(k) and 27.2(k), the Clerk of the Circuit Court of Cook County must charge fees for Records on Appeal in advance as follows:

100 pages or less, $70

100 - 200 pages, $100

Each page in excess of 200, $.25/page

All prescribed fees are due in advance of transmission of the Record on Appeal. It is understood and agreed that once a request for preparation of a Record on Appeal is made by submission of this form, the Appellant is responsible for the costs of preparing the Record on Appeal, regardless of whether the Appeal is successful, dismissed, the time is extended, or a party elects to not transmit the Record on Appeal to the Appellate Court. The Clerk of the Circuit Court of Cook County reserves the right to pursue a claim to recover the costs and expenses, including reasonable attorneys' fees, related to preparation of the Record on Appeal.

Arthur C. Czaja

Name

/s/ Arthur Czaja

Signature of Appellant or Appellant's Attorney

Iris Y. Martinez, Clerk of the Circuit Court of Cook County, Illinois
cookcountyclerkofcourt.org

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE COOK JUDICIAL CIRCUIT
COOK COUNTY, ILLINOIS

CHICAGO TITLE LAND TRUST COMPANY,
ET AL

Plaintiff/Petitioner

v.

SARA WATKINS, ET AL.

Defendant/Respondent

Reviewing Court No: 1-24-1354
Circuit Court/Agency No: 2023CH05985
Trial Judge/Hearing Officer: ALLEN PRICE WALKER

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No. 132383

In the
Supreme Court of Illinois

Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731,
Plaintiff- Petitioner,

v.

Sara Watkin, as Trustee of the Sara Watkin 2000 Revocable Trust,
Defendant-Respondent.

On Petition for Leave to Appeal from the Appellate Court of Illinois,
First Judicial District, No. 1-24-1354
There Heard on Appeal from the Circuit Court of Cook County, Illinois,
County Department, Chancery Division, No. 2023-CH-05985
The Honorable **Allen Price Walker**, Judge Presiding

NOTICE OF FILING

To: Robert T. Kuehl, Kuehl Law, P.C., Attorney for Defendant, 555 S. Randall Road, Suite 205, St. Charles, Illinois 60174 (via e-mail to *bob@kuehllawpc.com*)

Erica Crohn Minchella, Attorney for Plaintiff, Minchella & Associates, Ltd., 7538 St. Louis, Skokie, IL 60076 (via e-mail to *erica@minchellalaw.com*)

On **March 4, 2026**, the Plaintiff-Appellant, Chicago Title Land Trust Company, as Successor Trustee to American National Bank and Trust Company of Chicago, as Trustee under Trust Agreement dated March 1, 1974, and known as Land Trust # 32731, by and through its attorney, Arthur C. Czaja, electronically served for filing upon the Clerk of the Supreme Court of the State of Illinois, the enclosed **BRIEF OF PLAINTIFF-APPELLANT** in the above captioned matter.

/s/ *Arthur C. Czaja* .
Arthur C. Czaja
Attorney for Plaintiff-Appellant
ARDC # 6291494

7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com

CERTIFICATE OF SERVICE

The undersigned, an attorney, certifies that on **March 4, 2026**, he caused a true and correct copy of this Notice to be served upon the party(ies) listed above, by attaching a copy of this Notice to an electronic mail transmission and using Green Filing Illinois to the party(ies) identified hereinabove at the electronic mail address(es) identified hereinabove from 7521 N. Milwaukee Avenue, Niles, IL 60714. Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

/s/ *Arthur C. Czaja* .
Arthur C. Czaja
Attorney for Plaintiff-Appellant
ARDC # 6291494
7521 N. Milwaukee Avenue
Niles, Illinois 60714
+ (224) 388-3908
arthur@czajalawoffices.com