



**No. 132383**

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**IN THE SUPREME COURT OF THE STATE OF ILLINOIS**

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Chicago Title Land Trust Company,	)	Appeal from the Appellate Court
as Successor Trustee to American	)	First District, No. 1-24-1354
National Bank and Trust Company	)	
Of Chicago, as Trustee under Trust	)	On Appeal from the Circuit Court of
Agreement dated March 1, 1974,	)	Cook County, Chancery Division
as known as Land Trust #32731	)	Case No. 2023-CH-05985
	)	
Plaintiff-Appellant,	)	Hon. Allen Price Walker, Judge Presiding
	)	
Sara Watkin, as Trustee of the	)	
Sara Watkin 2000 Revocable Trust,	)	
	)	
Defendant-Appellee.	)	

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**POINTS AND AUTHORITIES**

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735 ILCS 5/13-115	
■ The 10-year Statute of Limitation Applicable to Mortgage Instruments Formerly, Section 11 of the Limitations Act (Ill. Rev. Stat. 1953, chap. 83, par. 11)	5, 8, 12, 14
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■ The 10-Year Statute of Limitation Applicable to Promissory Notes Formerly, Section 16 of the Limitations Act (Ill. Rev. Stat. 1953, chap. 83, par. 17)	5, 7, 8, 12, 14
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## I. INTRODUCTION

The Association of Foreclosure and Consumer Protection Attorneys (AFCPA) is a 501(c)(6) professional non-profit group dedicated to helping the foreclosure defense bar improve client representation through education, mentoring, shared research, pleadings, and strategies. The members of the AFCPA are attorneys who represent Illinois Homeowners facing foreclosure. The AFCPA formed in the aftermath of the housing crisis of 2008 because there was a great need for sharing best practices and different approaches to defending homeowners and navigating Illinois foreclosure laws. The AFCPA conducts outreach out to the public to educate Illinois Homeowners as to their legal rights and its members provide the highest quality and most affordable legal representation available.

The AFCPA has a substantial interest in the issues presented by this appeal. The judgment of the Circuit Court of Cook County, as affirmed by the First District Court of Appeals, below, disregarded over a century and a half of this Court's legal precedent and misinterpreted Section 13-116 of the Illinois Code of Civil Procedure, which is at times described in this brief as an "ancient mortgage statute." 735 ILCS 5/13-116. As an organization dedicated to the best practices of attorneys who defend Illinois Homeowners facing foreclosure, the AFCPA implores this Honorable Court to uphold its own precedent going back a century and a half, and see Section 13-116 for what it is, a legislative mechanism designed to clear title to properties encumbered by mortgage instruments that are no longer viable, not an extended statute of limitations for mortgage instruments.

In order for the doctrine of *stare decisis* to have any legitimacy in this state, it is incumbent that this Honorable Court reverse the opinion of the First District Court of Appeals which upheld the judgment of the Circuit Court of Cook County and remand this

case with direction that title to Appellant’s property be cleared of a mortgage that, by definition, no longer secures Appellee’s time-barred debt.

Not only is this result mandated by this Honorable Court’s long-standing precedent, quieting the title to properties encumbered by so-called “Zombie Mortgages”<sup>1</sup> that purport to secure time-barred debts supports the federal prohibition against the collection of – or even the threat to collect -- time-barred debts. *See* 12 C.F.R. § 1006.26, entitled: “Collection of Time-Barred Debts,” a part of the Consumer Financial Protection Bureau’s Regulation F, which implements the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* Beyond this, quieting the title to properties encumbered by “Zombie Mortgages” further supports the public policy objective of maintaining the integrity of the real estate market, which in turn, helps to prevent blight and to promote stable communities.

## **II. ARGUMENT**

### **A. Where the Debt is Barred by Limitation The Mortgage is Extinguished by Operation of Law**

The issue presented by this appeal was adjudicated by this Court over a century ago in *Bradley v. Lightcap*, 201 Ill. 511 (1903), wherein this Court recognized:

It was the constant holding of this court ... the title conveyed to the mortgagee is a mere incident of the mortgage debt, available only for the purpose of securing payment; that *the term of its 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.*

*Bradley*, 201 Ill. at 517 (emphasis added).

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<sup>1</sup> A “Zombie Mortgage” is a colloquial term used to describe a mortgage remaining of record in the county recorder of deeds office that purports to secure a time-barred debt, such as the one at issue in this appeal.

Those four horsemen of the “Zombie Mortgage Apocalypse” come galloping in when the underlying debt is either:

- Paid;
- Discharged;
- Released; or
- Barred by limitation.

*Bradley*, 201 Ill. at 517. *Accord.*, *Ware v. Schintz*, 190 Ill. 189, 193 (1901) (where the debt has been barred “by the statute of limitations the mortgagee’s title encumbrance must be **extinguished** by operation of law.”); *Richey v. Sinclair*, 167 Ill. 184, 193 (1897), *citing Pollock v. Maison*, 41 Ill. 516, 521 (1866): “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 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.**”); *Emory v. Keighan*, 88 Ill. 482, 485 (1878) (“the existence of the debt, for securing of which a mortgage is given, is **essential to the life of the mortgage**, and that when the debt is **paid, discharged, released, or barred by the statute of limitations...the mortgage is gone, and has effect no longer.**”); and *Pollock v. Maison*, 41 Ill. 516, 521 (1866) (“where the debt, the principal thing, is gone, the incident, the mortgage, is gone also, and that a foreclosure in any mode cannot then be had, either by ejectment, *scire facias*, bill in equity or otherwise. If a bar of the incident should bar the principal, then much more should a bar of the debt, be a bar to its incident. A payment, release or discharge of the debt, **extinguishes the mortgage.**”) (All emphasis added.).

The foregoing cases stand in stark contrast to the First District Court of Appeals' assertion that "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." *Chicago Title Land Trust Co. v. Watkin*, 2025 IL App (1<sup>st</sup>) 241354, at ¶ 16. Indeed, as recently as 1940, this Honorable Court reiterated the maxim where the note, the principal, is *procedurally* barred, its incident, the mortgage, "is no longer a lien on the property." *Markus v. Chicago Title & Trust Co.*, 373 Ill. 557, 560 (1940).

While the First District Court of Appeals "...is free to question the continued vitality of [a line of Supreme Court case precedent], it lacks the authority to declare that precedent a dead letter." *Yakich v. Aulds*, 2019 IL 123667, at ¶ 13. The First District called into question the line of cases cited above, stating "their continued effect is unclear," for the following reasons:

- (1) "...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 mortgage, so the concept of a mortgagee as a lien would have been inapplicable," *citing Kling v. Ghilarducci*, 3 Ill. 2d 454, 460 (1954) ("Our supreme court adopted the 'lien theory' of mortgages... finding that execution of a mortgage results in a lien."); and
- (2) "In addition, those cases were also decided prior to the enactment of section 11b of the Limitations Act."

*Chicago Title Land Trust Co. v. Watkin*, 2025 IL App (1<sup>st</sup>) 241354, at ¶ 34.

First, that we no longer speak in terms of "trust deeds" or "mortgagee's title" only strengthens Appellant's position. Today, a "mortgage" does not connote the passing of title to the mortgagee, rather, it is a "security interest" or a "lien" pledged by the mortgagor to secure the indebtedness, which is evidenced by the underlying promissory note. Intuitively, it would appear more difficult to *divest a mortgagee of his title* in a piece of real estate than

to decree his *lien against the mortgagor's title* is extinguished as a matter of law once the underlying promissory note is no longer enforceable at law. Without the underlying legal right to enforce the promissory note, there no longer remains an equitable right to foreclose the mortgage.

Second, as more fully demonstrated in the following section, the enactment of section 11b of the Limitations Act, now codified at 735 ILCS 5/13-116, is “the reddest of red herrings” that has absolutely no application to the fact pattern presented by case at bar. The passage of this “ancient mortgage statute” has nothing to do with the ten-year statutes of limitation for the enforcement of both written promissory notes, 735 ILCS 5/13-206, and mortgages, 735 ILCS 5/13-115, and does absolutely nothing to vitiate this Court’s jurisprudential precedent dating back more than a century and a half.

In the case at bar, it is undisputed that the underlying debt is *procedurally* barred by limitation. *Chicago Title Land Trust Co. v. Watkin*, 2025 IL App (1<sup>st</sup>) 241354, at ¶ 22. Under this Court’s precedent as set forth above, the “Zombie Mortgage” that once secured the debt has been extinguished by operation of law.<sup>2</sup>

Both the Circuit Court of Cook County as well as the First District Court of Appeals should have recognized this and cleared the title to Appellant’s property. Instead, the lower courts “bit” on Appellee’s argument that 735 ILCS 5/13-116 mandated this “Zombie Mortgage” remain a cloud on title for at least the next twenty years.

It is a disingenuous and a specious argument.

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<sup>2</sup> *Accord, BMO Bank N.A. v. Zbroszczyk*, 2025 IL App (1st) 241333, ¶ 27 (citing *Dunas v. Metropolitan Trust Co.*, 41 Ill. App. 2d 167 (1<sup>st</sup> Dist. 1963) (“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”); *United Central Bank v. KMWC*, 800 F.3d 307, 312 (7<sup>th</sup> Cir. 2015) (“long-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.”)).

**B. Section 13-116 Does Not Justify The First District Court’s Opinion**

**1. Section 13-116 is The Reddest of Red Herrings**

Section 13-116 of the Illinois Code of Civil Procedure has absolutely no application to the fact pattern presented by this case, for it was enacted by our legislature as an “ancient mortgage statute” that serves to automatically terminate a mortgage lien after a set number of years to ensure that property may be pledged or transferred without being haunted by “Zombie Debts” from decades past. 735 ILCS 5/13-116. It is one way title insurance companies can insure over ancient mortgages of record which have not been released. Appellee’s argument that there is one statute of limitations for the enforcement of a promissory note and another statute of limitations for the foreclosure of a mortgage flies in the face of over a century of this Court’s clear precedent:

**“...the term of [the mortgage’s] existence is measured by the debt....”**

*Bradley*, 201 Ill. at 517 (emphasis added).

Indeed, as recently as sixteen years ago, in its seminal opinion of *ABM AMRO v. McGahan*, 237 Ill. 2d 526 (Ill. 2010), this Court recognized the purpose of a mortgage foreclosure proceeding was to enforce the monetary obligation evidenced by the underlying promissory note, finding mortgage foreclosure actions to be *quasi in rem* proceedings against property, that are *ex contractu* in nature. *ABM AMRO v. McGahan*, 237 Ill. 2d 526, 535 (2010). In other words, this Court once again recognized the fact that the note and the mortgage were inseparable. Appellee’s suggestion that there is a separate statute of limitations for the enforcement of one and not the other upends over a century of this Court’s mortgage foreclosure jurisprudence.

The enactment of Section 13-116 does not mandate a contrary result, for this statute was enacted for the benefit of title insurance companies with a view toward clearing “ancient mortgages” from a title commitment without requiring a formal release from the lender or an order of the circuit court clearing title to the property.

Appellant should not be punished for having brought an action to quiet title after prevailing on an action by the lender to foreclose its mortgage and after the lender itself has stipulated, and the First District Court of Appeals has found, the ten-year statute of limitations for bringing any further action to foreclose has expired. *See Chicago Title Land Trust Co. v. Watkin*, 2005 IL App (1<sup>st</sup>) 241354, at ¶ 16 (“...the statute of limitations barred her from enforcing the terms of the note or mortgage.”).

Section 13-116 (formerly Section 11b of the Limitations Act, codified at Ill. Rev. Stat. chap. 83, par. 11b, currently 735 ILCS 5/13-116) was never intended to abrogate the ten-year statute of limitations on the enforcement of the underlying promissory note (formerly codified at Ill. Rev. Stat. ch. 83, par. 17, currently 735 ILCS 5/13-206). Indeed, nearly a century and a half ago, this Court found that where an action on the note is barred by the statute of limitations, an action on the mortgage is also barred. *See Emory v. Keighan*, 88 Ill. 482, 485 (1878) (“the existence of the debt, for securing of which a mortgage is given, is *essential to the life of the mortgage*, and that when the debt is *paid, discharged, released, or barred by the statute of limitations...the mortgage is gone, and has effect no longer.*”).

It therefore follows the “Zombie Mortgage” at issue in this case cannot remain a cloud on title of Appellant’s property and must be released.

**2. The Statutory Matrix Explained:  
Statutes of Limitation vs. The “Ancient Mortgage Statute”**

The Illinois Statutory Scheme provides for a ten-year statute of limitations applicable to the enforcement of written promissory notes in the circuit courts that is identical to the ten-year statute of limitations applicable to the enforcement of mortgage instruments in the circuit courts. It further provides an “ancient mortgage statute” designed to clear title to ancient mortgages from the county recorders of deed where no releases of mortgage have been recorded.

The ten-year statute of limitations applicable to the enforcement of written promissory notes in the circuit courts is codified at 735 ILCS 5/13-206 (“Ten year limitation. ...actions on bonds, promissory notes, bills of exchange, written leases, written contracts, or other evidences of indebtedness in writing... shall be commenced within 10 years next after the cause of action accrued; ...”).

The ten-year statute of limitations applicable to the enforcement of mortgage instruments in the circuit courts is codified at 735 ILCS 5/13-115 (“Foreclosure of mortgage. 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.”).

The “ancient mortgage statute” designed to clear title to ancient mortgages from the county recorders of deed where no releases of mortgage have been recorded is codified at 735 ILCS 5/13-116, and provides as follows:

Sec. 13-116. **Lien of mortgage, trust or vendor's lien. (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 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.

(Source: P.A. 83-1362.)

735 ILCS 5/13-116 (emphasis added).

It is respectfully submitted that both the Circuit Court of Cook County and the First District Court of Appeals did not recognize 735 ILCS 5/13-116 for the statutory mechanism it is, namely, to extinguish from the county recorder of deeds office ancient mortgage instruments where a release of mortgage has not been formally recorded, regardless of whether the underlying obligation has been paid, discharged, released (without being recorded in the county recorder of deeds office), or barred by the statute of limitations or other

procedural rule (such as the single-refiling rule bar as articulated by this Court as recently as eight years ago in *First Midwest Bank v. Cobo*, 2018 IL 123038).

Section 13-116 was enacted to protect those homeowners whose unenforceable mortgage obligations still appear of record as clouds on title in the county recorders of deed offices, and not enacted to punish a pro-active property owner who seeks to clear title to his property by bringing a quiet title action in the circuit court after both he and his lender have acknowledged the underlying debt is time-barred and is no longer enforceable.

Mortgagees should not be allowed to escape the limitations imposed by statute any more than any other litigant would be so allowed.

Once again, *Bradley* is instructive:

The power of the State to pass statutes of limitation is unquestioned; and it has always been held that such statutes, even if they affect existing rights, are not unconstitutional if a reasonable time is given for the assertion of the right before the bar takes effect. Whether the statute pre-supposed redemption by the mortgagor or whether any statute of limitations rests upon a presumption is not material, although it is now considered an established rule that such statutes do not rest upon presumptions, but prescribe limitations, founded in wisdom and public policy, to the rights or remedies to which they are applicable. [Citations.] All statutes of limitation are based on *laches*. (*Mettler v. Miller*, 129 Ill. 630.) ***In their final effect the statutes may not only bar the remedy but extinguish the right.***

*Bradley*, 201 Ill. at 520 (emphasis added).

It therefore follows when *the remedy* of enforcing an underlying promissory note is barred by the statute of limitations, *the right to claim a mortgage lien still exists to encumber the property itself is extinguished*, as a matter of fact, equity and law. *Accord.*, *Household Bank, FSB v. Lewis*, 229 Ill. 2d 173, 180 (2008), *citing People v. American National Bank &*

*Trust Co.*, 32 Ill. 2d 115, 120-21 (1965) (“...when, as here, the underlying reason for particular litigation has vanished, the foundation upon which the action stood is ordinarily destroyed.”).

### 3. **The Mortgage Has “Ceased by Limitation”**

Appellee’s citation of Section 13-116 is the reddest of red herrings, exactly because the lien of mortgage in the case at bar has already “ceased by limitation” by the expiration of the ten-year statute of limitations to enforce the underlying promissory note set forth in 735 ILCS 5/13-206, as well as the ten-year statute of limitations to foreclose on the mortgage set forth in 735 ILCS 5/13-115.

### C. **The First District Court of Appeals Misapprehended and Misapplied This Court’s Opinion in *Livingston v. Meyers***

*Livingston v. Meyers*, 6 Ill. 2d 325, 330-31 (1955), was a direct appeal to this Court from a decree of the Circuit Court of Cook County dismissing plaintiffs-vendors’ complaint for specific performance of a contract for the purchase of real estate by defendant-purchaser. *Livingston*, 6 Ill. 2d at 326. The parties entered into a contract for the purchase of two certain lots and the purchaser’s attorney rendered a title opinion, based on the abstract of title, that two trust deeds, one on each lot, should be released. *Livingston*, 6 Ill. 2d at 326. That title opinion was based, in pertinent part, “that the notes secured by the trust deed were barred by section 11 of the Limitations Act and the liens of the trust deeds were declared null and void by section 11(b) of the Limitations Act.”<sup>3</sup> *Livingston*, 6 Ill. 2d at 327. Defendant-purchaser

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<sup>3</sup> Section 11(b) of the Limitations Act was the predecessor to Ill. Rev. Stat., Ch. 110, ¶ 13-116, is referred to in this brief as the “ancient mortgage statute,” and is now codified at 735 ILCS 5/13-116.

refused to close because both lots were encumbered by these trust deeds, and the plaintiffs-vendors sued for specific performance.

Defendant-purchaser's "motion to dismiss for failure to state a cause of action was based on the ground that sections 11 and 11(b) referred to in the complaint were not sufficient in law or equity to remove the lien of said trust deeds, or to bar action thereon, or to require defendant to accept the title with the trust deeds unremoved or unreleased of record." *Livingston*, 6 Ill. 2d at 327. The trial court granted the defendant-purchaser's motion, and the plaintiffs-vendors elected to stand on their complaint as pleaded. The trial court then entered a decree dismissing the suit for want of equity. The plaintiffs-vendors took a direct appeal to this Court. At page 327 of its opinion, this Court stated the following:

The sole error assigned as a basis for reversal is the holding of the trial court that section 11(b) of the Limitations Act [this "ancient mortgage statute" is now codified at 735 ILCS 5/13-116] does not render the trust deeds null and void and no longer liens upon the premises.

*Livingston*, 6 Ill. 2d at 327.

The *Livingston* Court ultimately reversed the trial court, and framed the issue as follows:

...the question is squarely presented to this court of whether or not the legislature in enacting section 11(b) of the Limitations Act terminated the lien of the trust deeds under the factual situation before us.

*Livingston*, 6 Ill. 2d at 331.

Answering the question in the affirmative, the *Livingston* Court put it this way, at page 336 of its opinion:

The liens of the trust deeds in question were rendered entirely void by section 11(b) of the Limitations Act prior to the time the plaintiffs and defendant entered into the contract of sale.

*Livingston*, 6 Ill. 2d at 336.

In reversing the decree of the Circuit Court of Cook County, this Court in *Livingston* not only concluded *the trust deeds* were no longer enforceable under the ten-year statute of limitation, but they *were rendered entirely void* by the ancient mortgage statute, as well.

In reaching this conclusion, the *Livingston* Court made it clear:

Section 11 of the Limitations Act (Ill. Rev. Stat. 1953, chap. 83, par. 11) [now codified at 735 ILCS 5/13-115] by its terms bars an action, or a sale, to foreclose any mortgage or trust deed in the nature of a mortgage, unless within ten years after the right of action or right to make such sale accrues.

However, *such section must be construed with section 16 of the Limitations Act applicable to promissory notes* (Ill. Rev. Stat. 1953, chap. 83, par. 17) [now codified at 735 ILCS 5/13-206] and *a mortgage will not be barred until the debt is barred.* (*Kraft v. Holtzmann*, 206 Ill. 548.)

*Livingston*, 6 Ill. 2d at 331 (emphasis added).

Notably, both statutes cited by the *Livingston* Court had the same limitations period of ten (10) years, one for an action in chancery to foreclose any mortgage or trust deed in the nature of a mortgage (now codified at 735 ILCS 5/13-115) and the other for an action at law to sue on the underlying promissory note (now codified at 735 ILCS 5/13-206). *If the borrower and lender agree to extend the period to repay the mortgage loan, that agreement does nothing to alter these two ten-year statutes of limitation; however, if such an extension agreement is not recorded in the county recorder of deeds office, the public record will reflect an “ancient mortgage” still encumbers the property at issue.* Section 11(b) of the Limitations Act, now codified at 735 ILCS 5/13-116, was enacted to “encourage” lenders to

record such extension agreements with the county recorders of deed in order to protect the rights of the lender and to put potential purchasers on notice that the property is still encumbered by a mortgage obligation, the term of which has been extended by agreement of the parties.

The *Livingston* Court continued:

Under the decision in the *Kraft* case, *the lien of a mortgage, etc., was kept alive as long as the indebtedness secured thereby was continued in force*, without the necessity of any recording of the extension agreement. By the terms of section 16 of the Limitations Act [now codified at 735 ILCS 5/13-206] and under numerous decisions of this court there have been various means established by which the secured indebtedness, and thereby the lien, were continued in force without the recording of anything further of record.

*Livingston*, 6 Ill. 2d at 331-32 (emphasis added).

As the *Livingston* Court made clear, the life of the mortgage was, is, and always will be inexorably tied to the life of the underlying promissory note. The *Livingston* Court further recognized section 11(b) of the Limitations Act, the “ancient mortgage statute” now codified at 735 ILCS 5/13-116, did nothing to change this fundamental tenet of Illinois mortgage foreclosure law.

The First District Court of Appeals’ tortured analysis of *Livingston* and its misapplication of the “ancient mortgage statute” to a dispute between a lender and a borrower cannot be allowed to stand. To punish a property owner who actually prevailed in a mortgage foreclosure action by refusing to quiet the title to his property after the applicable ten-year statutes of limitation for further litigation on either the note or mortgage expired flies in the face of more than a century and a half of this Court’s sound precedent.

The First District’s ill-conceived and improvident opinion must be reversed.

**D. Public Policy Considerations Favor Appellant**

As stated in the Introduction, 12 C.F.R. § 1006.26, entitled: “Collection of Time-Barred Debts,” a part of the Consumer Financial Protection Bureau (“CFPB”)’s Regulation F, which implements the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.*, prohibits the collection of -- -- or even the threat to collect -- time-barred debts, such as the one at issue in the case at bar:

**12 CFR § 1006.26 Collection of time-barred debts.**

Regulation F

**(a) Definitions.** For purposes of this section:

**(1) Statute of limitations** means the period prescribed by applicable law for bringing a legal action against the consumer to collect a debt.

**(2) Time-barred debt** means a debt for which the applicable statute of limitations has expired.

**(b) Legal actions and threats of legal actions prohibited.** A debt collector must not bring or threaten to bring a legal action against a consumer to collect a time-barred debt. This paragraph (b) does not apply to proofs of claim filed in connection with a bankruptcy proceeding.

12 CFR § 1006.26.

A violation of 12 C.F.R. § 1006.26(b) may very well form the basis of a claim under the Fair Debt Collection Practices Act, 15 U.S.C. § 1692.<sup>4</sup> Indeed, as recently as May 1, 2023, the CFPB issued an advisory opinion “...to affirm that the Fair Debt Collection Practices Act and its implementing Regulation F prohibit a debt collector, as that term is defined in the statute and regulation, from suing or threatening to sue to collect a time-barred debt.” Federal Register, Vol. 88, No. 83. The CFPB continued: “Accordingly, an FDCPA

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<sup>4</sup> For example, 15 U.S.C. § 1692e prohibits debt collection by “false, deceptive or misleading representation or means.” § 1692e(2)(A) specifically prohibits misrepresenting the “legal status” of any debt (e.g., implying a debt is legally enforceable when the statute of limitations has passed). § 1692e(5) prohibits the “threat to take any action that cannot legally be taken.” § 1692f prohibits “unfair or unconscionable means” to collect a debt.

debt collector who brings or threatens to bring a State court foreclosure action to collect a time-barred mortgage debt may violate the FDCPA and Regulation F.” Federal Register, Vol. 88, No. 83.

Attempting to collect a time-barred debt could also very well form the predicate of a claim under the Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1, *et al.*, which prohibits both unfair and deceptive acts and practices. 815 ILCS 505/2. Conduct is “unfair” if it: (1) “offends public policy as it has been established by statutes, the common law, or otherwise – whether, in other words, it is within at least the penumbra of some common law, statutory, or otherwise established concept of unfairness”; (2) “is immoral, unethical, oppressive, or unscrupulous”; and / or (3) “causes substantial injury to consumers.” *FTC v. Sperry & Hutchinson Co.*, 405 U.S. 233, 244, n.5 (1972), adopted in *Robinson v. Toyota Motor Credit Corp.*, 201 Ill. 2d 403, 417-18 (2002).

In light of the foregoing, there is absolutely no justification for an extinguished lien of a time-barred debt to remain a cloud on title to property in the state of Illinois.

The First District Court of Appeals opinion below, if allowed to stand, violates the strong public policy to ensure real estate is freely alienable and transferrable. This Honorable Court, for example, has articulated “the need to establish stability in the judicial sale process,” presumably to encourage the marketability of foreclosed homes. *See, e.g., Wells Fargo Bank, N.A. v. McCluskey*, 2013 IL 115469, ¶ 25 (“To allow the borrower to utilize the standards of a section 2-1301(e) motion to both set aside the judicial sale and also unravel the underlying foreclosure judgment -- after being given ample statutory opportunity to respond to the allegations of the complaint, and after being fully informed of the court process -- would indeed be inconsistent with *the need to establish stability in the judicial sale*

*process. See Household Bank[, FSB v. Lewis], 229 Ill. 2d at 181-82 (recognizing the need to promote stability in the conduct of judicial sales).”) (emphasis added).*

To be fair, that which is “good for the goose” must also be “good for the gander.”

The lender in the case at bar was “given ample statutory opportunity” to foreclose Appellant’s interest in the property at issue but was unable to prove it was entitled to a judgment of foreclosure and sale because the lender failed to follow “the court process.” *Chicago Title Land Trust Co. v. Watkin, 2025 IL App (1<sup>st</sup>) 241354, at ¶ 4 (“...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.”).*

Just as this Court has recognized the need to promote stability in the conduct of judicial sales in both *Household Bank* and *McCluskey, supra*, it must also recognize the need to promote the private property rights of all Illinois citizens under its jurisdiction. This would include the private property rights of the beneficiary of Appellant herein, who should not be punished for successfully defending a mortgage foreclosure action brought against him and then daring to seek redress in the Circuit Court of Cook County to quiet title to his property after the applicable statutes of limitations expired.

When an extinguished lien of a time-barred debt remains a cloud on title to real estate, the property becomes effectively frozen. Property owners cannot sell or refinance their properties because they cannot provide a “clean title” to a buyer or a new lender. The public policy as articulated by this Court in both *Household Bank* and *McCluskey, supra*, favors the free movement of capital. Quieting title to properties burdened by the “Zombie

Mortgages” purportedly securing time-barred debts unblocks frozen assets, allowing them to be sold, taxed, and integrated back into the active economy.

There is a close relation between foreclosed properties and those encumbered by so-called “Zombie Mortgages.” In both cases, especially where the property owner has no equity in the property, there may be a strong financial incentive for the property owner to neglect or simply abandon his or her property. Where, as here, it is established the underlying obligation is time-barred, there is no reason in either law or equity to allow what this Court has recognized from time immemorial to be an extinguished mortgage to remain a cloud on title. Deteriorating and abandoned homes lower the property values of entire neighborhoods and increase the burden on municipal services such as police, fire, code enforcement and the like. Public policy should clearly favor the private property rights of an Illinois citizen who has a legitimate reason to continue to properly maintain and not abandon his property over the non-existent rights of a lender who has sat on its rights and is now statutorily barred from collecting a time-barred debt.

There is no legitimate reason why statutes of limitation should apply to all litigants in this state except mortgage lenders. If the proposition of law advanced by the First District Court of Appeals originated in the Illinois Legislature, it would be stricken down as being in direct contravention of the Illinois Constitution’s prohibition against “special” legislation set forth in Article IV, Section 13. Ill. Const. Art. IV, Sec. 13.<sup>5</sup>

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<sup>5</sup> Moreover, ensuring mortgage lenders win 100% of the time would appear to violate the Holy Bible’s admonition in Leviticus 23:22, against “gleaning the field.” Holy Bible, Leviticus 23:22 (KJV) (“And when ye reap the harvest of your land, thou shalt not make clean riddance of the corners of thy field when thou reapest, neither shalt thou gather any gleaning of thy harvest: thou shalt leave them unto the poor, and to the stranger: I am the Lord your God.”).

### **III. CONCLUSION**

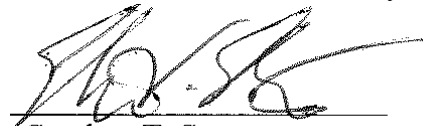
Both the Circuit Court of Cook County as well as the First District Court of Appeals failed to follow centuries of this Honorable Court's clear precedent, from *Emory v. Keighan*, 88 Ill. 482 (1878), to *Bradley v. Lightcap*, 201 Ill. 511 (1903), to *Livingston v. Meyers*, 6 Ill. 2d 325 (1955), through *ABM AMRO v. McGahan*, 237 Ill.2d 526 (2010) and *First Midwest Bank v. Cobo*, 2018 IL 123038, by failing to clear title to Appellant's property from a mortgage lien that even the lien holder has acknowledged is no longer enforceable by expiration of the applicable ten-year statutes of limitation. See *Watkin*, 2025 IL App (1<sup>st</sup>) 241354, at ¶ 6.

The mortgage liens which cloud Appellant's property were extinguished when the underlying debt became barred by limitation years ago and need to be released immediately.

For all of the foregoing reasons, *Amicus Curiae* Association of Foreclosure and Consumer Protection Attorneys respectfully submits this Honorable Court must reverse the opinion of the First District Court of Appeals, as it is abhorrent to one hundred fifty (150) years of this Court's own legal precedent.

**Dated: March 4, 2026**

Respectfully Submitted,  
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**IN THE SUPREME COURT OF THE STATE OF ILLINOIS**


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Chicago Title Land Trust Company,	)	Appeal from the Appellate Court
as Successor Trustee to American	)	First District, No. 1-24-1354
National Bank and Trust Company	)	
Of Chicago, as Trustee under Trust	)	On Appeal from the Circuit Court of
Agreement dated March 1, 1974,	)	Cook County, Chancery Division
as known as Land Trust #32731	)	Case No. 2023-CH-05985
	)	
Plaintiff-Appellant,	)	Hon. Allen Price Walker, Judge Presiding
	)	
Sara Watkin, as Trustee of the	)	
Sara Watkin 2000 Revocable Trust,	)	
	)	
Defendant-Appellee.	)	

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**RULE 341(c) CERTIFICATE OF COMPLIANCE**

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, this Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 20 pages.

**Dated: March 4, 2026**

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

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**CERTIFICATE OF SERVICE**

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Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, the undersigned certifies that the statements in this instrument are true and correct in that he served a true and correct copy of this "Certificate of Service," together with the "Brief of *Amicus Curiae* Association of Foreclosure and Consumer Protection Attorneys" submitted herewith on the parties set forth above via electronic means in accordance with Ill. S. Ct. R. 11, on March 4, 2026, at or before the hour of 1:00 p.m.

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