

## Do You Think You Understand a Statute of Limitations? Think Again!

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Statutes of limitations are devious creatures. You may look at one and remember "six months" or "two years," but the amount of time is not the only important part. Equally important is when the time starts running. "Within two years after the maturity of the debt" is very different from "within two years after the most recent payment." These statutes are often ambiguous, leaving courts to fill in the blanks, as one mortgage holder recently learned first-hand in Indiana.

Alkhemer Alialy took out a mortgage from GMAC Mortgage LLC in June 2007. Alialy stopped paying after July 28, 2008. GMAC assigned the loan to Collins Asset Group. Alialy did not make a payment to Collins. Collins accelerated on October 24, 2016, and sued to foreclose in Indiana Superior Court. Alialy moved to dismiss for failure to state a claim. Alialy argued that Collins's lawsuit was outside the six-year limitations period for a suit on a promissory note under Ind. Code Ann. § 34-11-2-9. The trial court granted Alialy's motion. Collins appealed to the Indiana Court of Appeals.

The appellate court upheld the dismissal. The court found that Collins waited too long after Alialy's default to accelerate the loan. As the court explained, if a note includes an acceleration clause, the limitations period begins when the lender accelerates. However, a lender may not wait to accelerate a debt just to avoid the statute of limitations. Collins waited until October 2016, more than eight years after Alialy's July 2008 default, to accelerate Alialy's debt. As a result, the statute of limitations barred Collins's lawsuit.

The relevant statute of limitations, Ind. Code Ann. § 34-11-2-9, begins running when "the cause of action accrues," but the statute does not explain *when* a cause of action accrues. As a result, courts simply determine for themselves what that phrase means. A court, not the legislature, decided that a cause of action accrues when the debtor makes his or her last payment. A court also created the exception to that rule - if the contract includes an optional acceleration clause, the limitations period begins when the creditor accelerates. Finally, a court decided that a creditor that doesn't bother to accelerate within the limitations period loses its right to sue.

You can't know these rules just by reading the statute. The best you can do before looking to the case law is to know what you don't know - when a cause of action accrues. And think carefully before you decide that you know what a statute of limitations means for your credit contract. A court may decide differently.

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*Collins Asset Grp., LLC v. Alialy*, 2018 Ind. App. LEXIS 456 (Ind. App. December 6, 2018)

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