

## Mike Winslow

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**From:** REALPROP@yahoogroups.com on behalf of Eric Nelsen eric@sayrelawoffices.com  
[REALPROP] <REALPROP@yahoogroups.com>  
**Sent:** Tuesday, July 21, 2015 11:22 AM  
**To:** REALPROP@yahoogroups.com  
**Subject:** RE: [REALPROP] RE: statute of limitations question

Carmen--Is this what you were recollecting, see below concerning how acceleration might be triggered:

S/L on an installment note is separate for each missed payment, unless the total amount is accelerated. Here's the authority quoted in an unpublished case, Kirsch v. Cranberry Financial LLC, 69959-8-I (Div. 1, December 23, 2013):

Generally, actions based on written contracts must be commenced within six years after breach. RCW 4.16.040. The general rule for debts payable by installment provides, "A separate cause of action arises on each installment, and the statute of limitations runs separately against each ...." 31 Richard A. Lord, Williston on Contracts § 79:17, at 338 (4th ed. 2004); see also 25 David K. Dewolf, Keller W. Allen & Darlene Barrier Caruso, Washington Practice: Contract Law and Practice § 16:20, at 196 (2012-13 Supp.) ("Where a contract calls for payment of an obligation by installments, the statute of limitations begins to run for each installment at the time such payment is due"); Hassler v. Account Brokers of Larimer County, Inc., 274 P.3d 547, 553 (Colo. 2012) (same); Bay Area Laundry & Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal. 522 U.S. 192, 208-09, 118 S.Ct. 542, 139 L.Ed.2d 553 (1997) (same).<sup>[9]</sup> *But if an obligation that is to be repaid in installments is accelerated— either automatically by the terms of the agreement or by the election of the creditor pursuant to an optional acceleration clause—the entire remaining balance of the loan becomes due immediately and the statute of limitations is triggered for all installments that had not previously become due.* 31 Richard A. Lord, *supra*, § 79:17, at 338; § 79:18, at 347-50; 12 Am.Jur.2d, Bills & Notes § 581 (same); Bay Area, 522 U.S. at 208-09 (same). The statute of limitations commences upon maturity of a note. A.A.C. Corp. v. Reed, 73 Wn.2d 612, 615, 440 P.2d 465 (1968).

FN 9 reads:

Kirsch contests this rule, arguing that Cranberry cites distinguishable family law cases for the proposition that the statute of limitations runs against each installment separately. Though some of Cranberry's cited cases are family law cases, they describe a general proposition of contract law applying to all contracts in which installment payments are due. Further, some of those family law cases cite 82 A.L.R. 316 (1931), which addresses in general terms, "[w]hen Statute of Limitations begins to run against an action to recover upon contract payable in installments" and describes the general rule: "The general rule in such a case is similar to the general rule herewith noted in the case of contract obligations, it having been held that the Statute of Limitations begins to run from the expiration of the period fixed for the payment of each installment as it becomes due, for the part then payable." See Herzog v. Herzog, 23 Wn.2d 382, 388, 161 P.2d 142 (1945).

Sincerely,

# ST. of Limitation

Take a look at *Bingham v. Lechner*, 111 Wn. App. 118 (2002), holding that the issuance of a Notice of Trustee's Sale (i.e., commencement of a non-judicial foreclosure) tolls the 6-year statute of limitations to enforce the promissory note. But note that the SOL is only tolled for a maximum of 120-days from the initial trustee's sale date, the maximum length of time that the sale can be continued.

Conceptually, this means that only the NOTS needs to be issued prior to the end of the promissory note's SOL in order to toll the SOL. The actual trustee's sale can occur after the original SOL date would have run.

Best regards,  
Jensen

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Jensen Mauseth  
Mauseth Legal, PLLC

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Kevin Hanchett