



Support SB 2951

(Sponsors: Sen. Robert Martwick and Rep. Daniel Didech)

Background: Initiative to Clarify Rights of Secured Lenders Holding Mortgages

The impetus for **SB 2951** relates to two recent appellate court rulings adversely impacting the status of secured lenders holding properly perfected mortgage liens, as follows:

- A. September 2024 ruling of the Second District Appellate Court (Carrington Mortgage Services v. Angela Israel, 2024 IL App (2d) 230335-U), which deprived the secured lender holding a properly perfected first mortgage lien of the proceeds of the sale of the encumbered real estate. Instead, the money was distributed to other claimants under the Probate Act classification of claims and the secured lender received virtually nothing.
- B. June 2025 ruling of the First District Appellate Court (BMO Bank, N.A. v. James Zbrozeczyk, 2025 IL App (1st) 241333), which held that the 5-year statute of limitations applies to a home equity line of credit (HELOC), rather than the 10-year statute of limitations.

Support for SB 2951: We urge committee members to **vote “Yes”** on this bill for the following reasons:

- A. **Carrington – Probate Act** (SB 2951 provides clarity that a secured lender’s properly perfected mortgage lien is not extinguished upon the death of the borrower; clarity is important to avoid regulatory safety and soundness issues, and to benefit consumers and lenders in the underwriting and originating of mortgage loans):
 - The Probate Act recognizes the validity and priority of properly perfected mortgage liens held by secured lenders, by authorizing the court to direct the sale of encumbered property free of the mortgage lien and provide for the satisfaction of the lien out of the proceeds of sale (755 ILCS 5/20-6(b)).
 - The Carrington decision creates ambiguity in the Probate Act standard that a secured lender’s properly perfected mortgage lien must be paid before allowing any proceeds of the sale of the property secured by the lien to pass to the deceased borrower’s estate in the probate administration.
 - In this case, despite recognizing that property does not become an asset of the decedent’s probate estate until the lien is discharged, the appellate court concluded “satisfaction” as

required under the Probate Act does not mean “full satisfaction” (the lien was extinguished per a Probate Court order that granted the administrator leave to sell the property and vacated the lien, without specifying that the lien would attach to and be satisfied out of the proceeds of the sale; and there was no appeal of the order). As a result, instead of receiving all the proceeds of the court-approved sale given its first lien status, the secured lender received virtually nothing as a Probate Act 7th class claimant. The lender moved from first place under the Illinois Mortgage Foreclosure Law to last place under the Probate Act, even though it held a properly perfected first mortgage lien!

- SB 2951 clarifies and confirms that satisfaction of a lien means full satisfaction, unless the secured lender agrees otherwise. Without this clarification, the Carrington decision presents a problem for secured lenders and borrowers in Illinois. If a borrower dies, a probate court could order the collateral to be sold free and clear of the secured lender’s security interest and the proceeds paid to other claimants with a higher priority in the probate distribution scheme, even though those claimants had no prior security interest in the property or a subordinate lien to the secured lender’s mortgage. SB 2951 enables the secured lender to avoid a sale of its collateral absent full satisfaction or its approval to accept partial satisfaction.

B. BMO Bank - Code of Civil Procedure (SB 2951 provides clarity that the statute of limitations is 10 years for all loans secured by real estate.):

- The Code of Civil Procedure sets forth a 10-year statute of limitations period on promissory notes, written contracts and other evidence of indebtedness in writing (735 ILCS 5/13-206). It explicitly establishes a 10-year statute of limitations on foreclosure actions (735 ILCS 5/13-115). It goes on to provide for a 5-year statute of limitations on unwritten contracts and civil actions not otherwise provided for (735 ILCS 5/13-205).
- A HELOC is a written contract that contains a promise to pay. It is written evidence of indebtedness that is recorded in the recorder’s office of the County in which the real estate is located, just like any other mortgage. It differs from a closed-end mortgage only in that it permits multiple draws up to the maximum amount of credit available on the line (on a closed-end mortgage loan only a single advance is available).
- In this case, the court concluded the HELOC was not a written contract because parole evidence was required to confirm the amount due from the borrower based on all the draws on the line (it was a revolving credit loan like a credit card). However, even on a closed-end mortgage, parole evidence is required to confirm the amount of accrued interest due on the date of payment, and the closed-end mortgage still has the benefit of the 10-year limitations period.
- SB 2951 clarifies that the 10-year statute of limitations applies to all loans secured by real estate. For the benefit of borrowers and secured lenders alike, there should be a clear and consistent limitations standard, regardless of whether the real estate secured loan is closed-end or open-end in nature.