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ALEX E. HINRICHSEN AND JANICE M. HINRICHSEN, APPELLEES, V. RCTS PROPERTIES, L.L.C., APPELLANT.

___ N.W.3d ___

Filed November 20, 2026. No. S-25-777.

1. **Foreclosure: Equity.** An action to foreclose on real estate is an action in equity.
2. **Equity: Appeal and Error.** On appeal from an equity action, an appellate court decides factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the trial court's determination.
3. **Limitations of Actions.** Which statute of limitations applies is a question of law.
4. ____. The point at which a statute of limitations begins to run is a factual question to be determined from the facts of each case.
5. **Secured Transactions: Acceleration Clauses.** Where acceleration of the maturity of a security agreement and note is made optional with the holder of the security agreement, some affirmative action must be taken by the holder evidencing the holder's election to take advantage of the acceleration provision, and until such action, the provision has no operation.
6. **Foreclosure: Mortgages: Limitations of Actions.** An action to foreclose a real estate mortgage may be brought within the statutory 10-year limitations period for foreclosing mortgages, even though an action on the debt is time barred.

Appeal from the District Court for Buffalo County: JOHN H. MARSH, Judge. Affirmed.

Bradley Holbrook and Samantha Merrill, of Jacobsen, Orr, Lindstrom & Holbrook, P.C., L.L.O., for appellant.

Drew A. Graham, of Svehla Law Offices, P.C., L.L.O., for appellees.

Funke, C.J., Cassel, Stacy, Papik, Freudenberg, Bergevin, and Vaughn, JJ.

Papik, J.

Many years after RCTS Properties, L.L.C., stopped making installment payments on a debt it owed Alex and Janice Hinrichsen, the Hinrichsens filed an action to judicially foreclose real property pledged as security for the debt. RCTS did not dispute the validity of the debt or that most installment payments remained unpaid. Rather, RCTS argued that the Hinrichsens waited too long to institute foreclosure proceedings. RCTS primarily contended that the statute of limitations began running over 10 years before the initiation of foreclosure proceedings when a member of RCTS and the guarantor of RCTS' obligation filed for bankruptcy and the Hinrichsens filed a proof of claim in those bankruptcy proceedings. RCTS argued that its member's filing for bankruptcy and the Hinrichsens' filing of a proof of claim accelerated the debt and therefore started the statute of limitations clock. The district court found no merit to RCTS' arguments and entered a decree of foreclosure in favor of the Hinrichsens. Now on appeal, RCTS renews its statute of limitations' arguments. We find no merit to those arguments and therefore affirm.

I. BACKGROUND

1. Execution of Promissory Note, Deed of Trust, and Guaranty

In December 2010, RCTS purchased a building in Elm Creek, Nebraska, from the Hinrichsens. RCTS paid a portion of the purchase price upfront, but the remaining $100,000 was financed by the Hinrichsens. This case concerns that $100,000 obligation.

On December 31, 2010, RCTS executed a promissory note in favor of the Hinrichsens for $100,000. The note required

RCTS to repay the loan in monthly installments starting in March 2011, with a final payment due in January 2026. Chad Messersmith and Jeffrey Moore, the sole members and owners of RCTS, signed the note on behalf of the company. RCTS also executed a deed of trust to secure the loan, which named the Hinrichsens as beneficiaries. The terms of the deed of trust obligated RCTS to pay the debt in accordance with the terms of the promissory note. Around the same time the parties executed the deed of trust, Messersmith signed a personal guaranty. The guaranty obligated Messersmith to pay the $100,000 in the event RCTS failed to do so.

Both the promissory note and the deed of trust contained an acceleration clause. In the event RCTS defaulted, the note granted the Hinrichsens the option to "elect to declare the entire remaining balance immediately due and payable." The deed of trust likewise provided the Hinrichsens with the option to "require immediate payment in full of all sums secured by [the deed of trust]."

2. RCTS Fails to Make Payments on Note

For over a year, RCTS made installment payments on the note. But after a May 2012 payment, it made no further payments.

3. Messersmith's Bankruptcy

In August 2012, Messersmith filed for bankruptcy in his personal capacity. As part of his bankruptcy case, Messersmith disclosed the personal guaranty on the note with a balance of $95,026.

About a month after Messersmith filed for bankruptcy, the Hinrichsens, through counsel, filed a proof of claim in the bankruptcy proceedings for $121,624.96. The parties agree that this amount represented Messersmith's liability on the guaranty, combined with his liability on another obligation he owed the Hinrichsens. The Hinrichsens attached both the note and the personal guaranty for the $100,000 loan to the proof of claim. The proof of claim did not state that

the Hinrichsens were accelerating the debt, and it made no demand of Messersmith.

Through the bankruptcy proceedings, Messersmith's personal liability on the guaranty was discharged, and the Hinrichsens received no payment.

4. Parties Exchange Demands

In October 2022, after more than a decade of not paying under the note, RCTS demanded reconveyance of the deed of trust from the trustee. Counsel for RCTS claimed that the promissory note was no longer enforceable due to the expiration of the limitations period. The Hinrichsens declined to reconvey the deed of trust.

In December 2023, the Hinrichsens, for the first time, demanded payment from RCTS in the amount of $222,952.87. This amount included over a decade of default interest. The demand letter sent by the Hinrichsens' counsel declared that, should RCTS fail to cure the default, the Hinrichsens "have authorization to accelerate the loan and immediately commence foreclosure." The letter also stated that "[s]hould the loan be further accelerated," RCTS had the right to reinstate the loan after "further acceleration" by paying the total loan amount due. RCTS did not pay in response to the Hinrichsens' demand.

5. Foreclosure Proceedings

In February 2024, the Hinrichsens initiated an action for judicial foreclosure of the deed of trust. In response, RCTS raised the affirmative defense of the statute of limitations and asked the district court for a declaration that the deed of trust was no longer enforceable.

Shortly after the parties submitted their initial pleadings in the foreclosure proceedings, RCTS moved for a separate trial on the statute of limitations pursuant to Neb. Rev. Stat. § 25-221 (Reissue 2016). The district court granted the motion. At the separate trial, the district court received evidence of the facts recited above.

RCTS argued that based on the evidence introduced at trial, it was entitled to prevail on statute of limitations grounds. RCTS asserted that the Hinrichsens' act of filing a proof of claim in Messersmith's bankruptcy constituted an election to accelerate the debt under the optional acceleration clause in the note and commenced the running of the 10-year statute of limitations governing the foreclosure action. See Neb. Rev. Stat. § 25-202(1) (Reissue 2016).

In an order entered following the trial, the district court disagreed, finding that the submission of a proof of claim was not a clear and unequivocal act of acceleration as required by Nebraska law. Because RCTS had not proved that the Hinrichsens' claim was barred, the district court allowed the action to proceed.

Shortly thereafter, RCTS filed a motion for a new trial or, in the alternative, to alter or amend the district court's order. Because we understand the substance of RCTS' motion as a request that the district court modify its order related to the statute of limitations, we refer to it as a "motion to alter or amend." In support of its motion, RCTS argued that the mere filing of bankruptcy by Messersmith automatically accelerated the debt. The district court declined to modify its order finding that the statute of limitations had not yet run.

The Hinrichsens then moved for summary judgment. At the hearing on the summary judgment motion, counsel for RCTS made a new, narrower statute of limitations argument. RCTS claimed that even if the statute of limitations did not bar the Hinrichsens from bringing the foreclosure action, a different statute of limitations—the 5-year statute of limitations for actions on written contracts, see Neb. Rev. Stat. § 25-205(1) (Reissue 2016)—limited its indebtedness. RCTS asked the district court, in calculating its indebtedness, to exclude any installment payments that were due more than 5 years prior to the initiation of the foreclosure action in February 2024.

The district court granted partial summary judgment as to RCTS' liability and determined that the amount of the lien

was a remaining issue of fact. That issue proceeded to trial, and both parties presented testimony as to the date of default, the interest rate, and the total amount of the lien. Janice also testified at this trial. When asked what she was hoping to achieve in filing a proof of claim in Messersmith's 2012 bankruptcy, Janice stated that the goal was to "get our money that he owed us."

The district court ultimately found that the Hinrichsens were entitled to foreclosure of their mortgage in the amount of $247,068.43. This amount included all of RCTS' missed installment payments. The district court's decree stated that should RCTS fail to pay its indebtedness within 20 days from the entry of the decree, an order was to be issued for the sale of the real estate with proceeds from that sale applied to the amount due to the Hinrichsens.

RCTS filed this appeal, which we moved to our docket.

II. ASSIGNMENTS OF ERROR

RCTS assigns several errors on appeal, but we have condensed and paraphrased those assignments as follows: The district court erred (1) by finding that the statute of limitations on the foreclosure action did not start running in 2012 as a result of an acceleration of RCTS' debt due to either Messersmith's bankruptcy or the Hinrichsens' filing of a proof of claim therein and (2) by including all of RCTS' missed installment payments in calculating the amount of the lien.

III. STANDARD OF REVIEW

[1,2] An action to foreclose on real estate is an action in equity. *Beckner v. Urban*, 309 Neb. 677, 962 N.W.2d 497 (2021), *modified on denial of rehearing* 310 Neb. 746, 968 N.W.2d 855 (2022). On appeal from an equity action, an appellate court decides factual questions de novo on the record and, as to questions of both fact and law, is obligated to reach a conclusion independent of the trial court's determination. *Kortmeyer v. Hendrix, ante* p. 102, 38 N.W.3d 918 (2026).

[3,4] Which statute of limitations applies is a question of law. *Sebade v. Sebade*, 320 Neb. 398, 28 N.W.3d 19 (2025). The point at which a statute of limitations begins to run is a factual question to be determined from the facts of each case. See *id.*

IV. ANALYSIS

1. Statute of Limitations Not Triggered by 2012 Acceleration

RCTS' primary argument on appeal is that the Hinrichsens' foreclosure action was untimely because the statute of limitations on that action began to run in 2012. RCTS takes the position that either when Messersmith filed for bankruptcy or, alternatively, when the Hinrichsens filed their proof of claim in the bankruptcy proceedings, its debt was accelerated. This acceleration, RCTS argues, started the statute of limitations clock on the Hinrichsens' foreclosure action. And if the statute of limitations began to run in 2012, RCTS reasons, the Hinrichsens failed to commence the foreclosure proceedings within the 10-year time limit for doing so set forth in § 25-202(1).

RCTS' argument requires some understanding of the concept of acceleration. We begin our analysis there.

(a) Acceleration Background

An "acceleration clause" is a provision in a loan agreement that "requires the debtor to pay off the balance sooner than the due date if some specified event occurs, such as failure to [make] an installment [payment]." Black's Law Dictionary 14-15 (12th ed. 2024). Acceleration clauses can take one of two basic forms, optional or self-operative. Under an optional acceleration clause, whether the debt is accelerated after the specified event occurs is optional with the lender. In contrast, under a self-operative clause, acceleration is automatic upon occurrence of the specified event. See *Foundation Property Invest. v. CTP, LLC*, 286 Kan. 597, 603, 186 P.3d

766, 771 (2008) (contrasting "optional" and "automatic" acceleration clauses).

Even where the language of a note indicates that acceleration on default is self-operative, most courts still treat such clauses as optional. See, e.g., *Frenzel v. Frenzel*, 260 Iowa 1076, 152 N.W.2d 157 (1967); *Grozier v. Post Publishing Co.*, 342 Mass. 97, 172 N.E.2d 266 (1961); *Fogle v. King*, 132 W. Va. 224, 51 S.E.2d 776 (1948); Zechariah Chafee, Jr., *Acceleration Provisions in Time Paper*, 32 Harv. L. Rev. 747, 767 (1919) ("[t]he weight of authority and the better view construe the acceleration provision as giving the holder an option to declare the whole sum due . . ."). This court has previously adopted this majority view, holding that an acceleration provision, "although absolute in its terms, is not self-operative." *National Bank of Commerce v. Ham*, 256 Neb. 679, 683, 592 N.W.2d 477, 480 (1999).

Generally, acceleration clauses are included in loan agreements for the benefit of the creditor. See *U.S. v. Feterl*, 849 F.2d 354 (8th Cir. 1988). For that reason, courts usually find that acceleration occurs under an optional acceleration clause only if the creditor clearly and unequivocally expresses its intention to accelerate the debt. See, *id.*; *U.S. v. Sather*, 131 F. Supp. 2d 1146 (D.S.D. 2001); *American State Bank v. Sorenson*, 539 N.W.2d 59 (N.D. 1995); *Clayton v. Gardner*, 107 Nev. 468, 813 P.2d 997 (1991).

[5] Like other courts, this court has held that where acceleration of the maturity of a security agreement and note is made optional with the holder of the security agreement, some affirmative action must be taken by the holder evidencing the holder's election to take advantage of the acceleration provision, and until such action, the provision has no operation. See *State Security Savings Co. v. Pelster*, 207 Neb. 158, 296 N.W.2d 702 (1980). The creditor must act in a clear and unequivocal manner so as to inform the debtor and leave no doubt as to its intention to accelerate the debt. See *United*

Benefit Life Ins. Co. v. Holman, 177 Neb. 682, 130 N.W.2d 593 (1964). See, also, *Pelster, supra*.

The parties agree that when an acceleration clause is affirmatively invoked, the statute of limitations begins to run from the time of that invocation. See, *City of Lincoln v. Hershberger*, 272 Neb. 839, 725 N.W.2d 787 (2007); *Ham, supra*. On that basis, RCTS contends that a 2012 acceleration commenced the statute of limitations, making the Hinrichsens' 2024 foreclosure action untimely. See § 25-202 (imposing 10-year statute of limitations for judicial foreclosure actions).

With this background in mind, we now discuss whether any acceleration occurred in 2012 and triggered the running of the statute of limitations. As we will explain, we find that no such acceleration occurred.

(b) First Purported Acceleration: Messersmith's Bankruptcy

RCTS first argues that Messersmith's 2012 bankruptcy filing accelerated its debt. But this argument for acceleration encounters an immediate obstacle. As we just discussed, under Nebraska law, acceleration occurs only if *the creditor* takes clear and unequivocal action that leaves no doubt as to its intention to accelerate a debt. For the debt to be accelerated then, the Hinrichsens had to take action that left no doubt that they were accelerating RCTS' debt. RCTS does not even attempt to explain how a bankruptcy petition filed by Messersmith involved any action on the part of the Hinrichsens.

Rather than attempting to show action on the part of the Hinrichsens to accelerate the debt, RCTS cites language from various opinions stating that a loan is automatically accelerated upon a borrower's filing of bankruptcy. See, e.g., *Petroleum & Franchise Funding, LLC v. Dhaliwal*, 688 F. Supp. 2d 844 (E.D. Wis. 2010); *In re Skyler Ridge*, 80 B.R. 500 (C.D. Cal. 1987); *In re Manville Forest Products Corp.*, 43 B.R. 293 (S.D.N.Y. 1984), *affirmed in part and in part reversed on*

other grounds 60 B.R. 403 (S.D.N.Y. 1986); *In re Princess Baking Corp.*, 5 B.R. 587 (S.D. Cal. 1980). Further examination of those cases, however, reveals that while those opinions refer to acceleration of debt, they use those words to refer to a different concept.

A borrower's filing of bankruptcy automatically results in certain consequences for those proceedings under the federal bankruptcy code. The triggering of those bankruptcy-related consequences is sometimes referred to as "acceleration" of the debt. See, *In re Premier Entertainment Biloxi LLC*, 445 B.R. 582, 630 (S.D. Miss. 2010) ("automatic acceleration of a debt under the Bankruptcy Code allows a lender to file a proof of claim for the unmatured principal amount of the debt"); *In re Auto Intern. Refrigeration*, 275 B.R. 789, 813 (N.D. Tex. 2002) ("bankruptcy may accelerate the [l]oan, however, this acceleration is only for the limited purpose of calculating [d]efendants' claim in the bankruptcy"), *affirmed in part and in part reversed and remanded on other grounds sub nom. Mims v. Fidelity Funding, Inc.*, 307 B.R. 849. The details of those consequences are deep in the weeds of bankruptcy law and not directly relevant here. But importantly for our purposes, "such acceleration is relatively limited and does not change the maturity date of the debt." *In re Premier Entertainment Biloxi LLC*, 445 B.R. at 630. See, also, Scott K. Charles & Emil A. Kleinhaus, *Prepayment Clauses in Bankruptcy*, 15 Am. Bankr. Inst. L. Rev. 537, 554 (2007) (explaining that "legal acceleration resulting from a bankruptcy filing" is limited because it accelerates debts only in sense that lenders can file proof of claim for unmatured amounts).

There is thus a well-recognized distinction between the type of acceleration discussed in the cases RCTS relies on and an acceleration that hastens when a debt must be paid. See, *In re Auto Intern. Refrigeration*, 275 B.R. at 813 ("[w]hile the *Manville* court did state that '[b]ankruptcy operates as [an] acceleration of . . . principal[]' . . . this is clearly not the same as an 'acceleration for enforcement of a debt'")

(citations omitted); *In re Payless Cashways, Inc.*, 287 B.R. 482, 487 (W.D. Mo. 2002) (recognizing "difference between acceleration of debt for the purpose of filing a proof of claim in a bankruptcy case, and acceleration of debt for the purpose of enforcement"). The former type of acceleration has no bearing here. The type of acceleration RCTS must show—the latter type—requires clear and unequivocal action on the part of the Hinrichsens. Because Messersmith's filing for bankruptcy involves no such action, RCTS' argument that the filing of bankruptcy accelerated the loan and started the statute of limitations clock lacks merit.

(c) Second Purported Acceleration: Proof of Claim

In addition to its contention that Messersmith's bankruptcy filing accelerated its debt, RCTS offers an alternative acceleration argument: The Hinrichsens' filing of a proof of claim in Messersmith's bankruptcy proceedings accelerated its debt. Here, RCTS can at least point to some action taken by the Hinrichsens. That said, for reasons we will explain, we find that the Hinrichsens' filing of a proof of claim was not the kind of clear and unequivocal action necessary to accelerate the debt.

Evaluation of this argument requires some background on what a proof of claim is. A "proof of claim" is a "creditor's written statement that is submitted [in a debtor's bankruptcy proceeding] to show the basis and amount of the creditor's claim." Black's Law Dictionary 1471 (12th ed. 2024). As defined by the Bankruptcy Code, claims include any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, *matured*, *unmatured*, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. § 101(5) (2024) (emphasis supplied). As one court put it, "Congress deliberately defined 'claim' with broad strokes in order to ensure that 'all legal obligations of the debtor, no matter how remote or contingent, will be able

to be dealt with in the bankruptcy case.'" *In re Montgomery Ward, LLC*, 292 B.R. 49, 53 (D. Del. 2003) (superseded by statute on other grounds as stated in *In re Mu'min*, 374 B.R. 149 (E.D. Pa. 2007), *disagreed with on other grounds, In re Aleckna*, 13 F.4th 337 (3d Cir. 2021)). See, also, 31 Richard A. Lord, A Treatise on the Law of Contracts by Samuel Williston § 78:83 at 181 (4th ed. 2022) ("[i]t has been held that the Bankruptcy Code's definition of a claim could not be any broader, and that all legal obligations of the debtor, no matter how remote or contingent, will be dealt with in the bankruptcy case").

The fact that a party can make a proof of claim for unmatured payment obligations leads us to conclude that the filing of a proof of claim alone does not accelerate a debt. A creditor that makes a proof of claim is asserting that a right to payment exists; it is not necessarily demanding that payment be made now. The filing of a proof of claim alone is thus not a clear and unequivocal action that leaves no doubt as to the creditor's intention to accelerate a debt. See *United Benefit Life Ins Co. v. Holman*, 177 Neb. 682, 130 N.W.2d 593 (1964).

On this point, we are not treading new ground. In a recent opinion, the bankruptcy appellate panel of the U.S. Court of Appeals for the Ninth Circuit concluded that the filing of a proof of claim did not accelerate a debt and cause the applicable statute of limitations period to run. See *In re Ramirez*, 677 B.R. 456 (B.A.P. 9th Cir. 2026). The court quoted the Bankruptcy Code's definition of "claim" and reasoned that when a lender files a proof of claim, it is "stating the full amount of the liability whether matured or not," but it is "not necessarily demanding immediate payment of [the] full balance." *Id.* at 466. Because the filing of a proof of claim did not make clear to the debtor that the lender was accelerating the debt, the court found no acceleration occurred. Decades before *In re Ramirez*, the U.S. Court of Appeals for the Fifth Circuit likewise relied on the broad definition of "claim" to

conclude that the filing of a proof of claim does not cause acceleration. See *Greenhouse Patio Apartments v. Aetna Life Ins. Co.*, 868 F.2d 153 (5th Cir. 1989). Other courts have reached the same conclusion. See, *U.S. v. Sather*, 131 F. Supp. 2d 1146 (D.S.D. 2001) (rejecting argument that proof of claim was equivalent of notice of intent to accelerate); *Mundaca Inv. Corp. v. Dickerson*, No. 03A01-9105CH00162, 1991 WL 175701 (Tenn. App. Sept. 12, 1991) (holding that filing of proof of claim did not accelerate debt and commence statute of limitations).

We acknowledge that there is some authority to the contrary. In *Sport Mart, Inc. v. Knell*, No. 11-0048, 2011 WL 8199988 (W. Va. Nov. 28, 2011) (unpublished opinion), the Supreme Court of Appeals of West Virginia concluded in an unpublished opinion that a creditor's filing of a proof of claim accelerated a debt. It reasoned that the filing of a proof of claim is a way for a creditor to inform the debtor that the debtor "owed the creditor money and that the creditor wants to be paid." *Id.* at *5. The court cited an Arizona Supreme Court opinion that found, with little to no analysis, that the filing of a proof of claim accelerated a debt. *Barnett v. Hitching Post Lodge, Inc.*, 101 Ariz. 488, 492, 421 P.2d 507, 511 (1966) ("[w]e believe [filing of proof of claim] was sufficient affirmative action to activate the acceleration clause . . ."). While RCTS asks us to follow these opinions, we are not persuaded by their reasoning. Neither reckons with the fact that while acceleration requires a clear, unequivocal action of the creditor that leaves no doubt as to its intention to make the debt immediately due, a proof of claim is "not necessarily [a] demand[] [for] immediate payment of [the] full balance." *In re Ramirez*, 677 B.R. at 466.

In addition to relying on the Hinrichsens' proof of claim itself, RCTS argues that other evidence shows that the Hinrichsens accelerated the debt during Messersmith's bankruptcy. RCTS points to Janice's testimony that the Hinrichsens filed the proof of claim to "get our money that [Messersmith] owed us," as

well as the 2023 letter from the Hinrichsens' counsel, which mentioned the possibility that the Hinrichsens might "further accelerate[]" the loan.

We disagree that these actions show that the Hinrichsens accelerated RCTS' debt in 2012. Janice's trial testimony about the Hinrichsens' reasons for filing the proof of claim does not demonstrate acceleration. As we have explained, acceleration occurs because of the creditor's affirmative acts demonstrating an intent to accelerate. An explanation of why the Hinrichsens filed the proof of claim expressed more than a decade later is not evidence of an affirmative act demonstrating an intent to accelerate in 2012.

We are likewise not persuaded by RCTS' reliance on the 2023 correspondence from the Hinrichsens' counsel. We note that while the 2023 letter did mention "further acceleration," it also stated that "we have authorization to accelerate the loan and immediately commence foreclosure against the property" and "if the loan were accelerated, the total amount due as of the date of this letter is $270,626.44." (Emphasis omitted.) Both statements refer to acceleration as a possibility of future action as opposed to historical fact. At best for RCTS, the 2023 letter is ambiguous. In any event, the 2023 letter cannot overcome the fact that RCTS cannot identify clear and unequivocal action on the part of the Hinrichsens that left no doubt as to their intention to accelerate RCTS' loan in 2012.

(d) Conclusion: No Acceleration in Messersmith's Bankruptcy

For the reasons we have discussed, we find that no acceleration of the loan occurred as a result of Messersmith's 2012 bankruptcy proceedings. Accordingly, we find that the district court did not err when it initially concluded that the statute of limitations did not start running in 2012, nor did it err when it declined to modify its order in response to RCTS' motion to alter or amend.

2. Breach-of-Contract Statute of Limitations Does Not Apply

In addition to its primary argument based on acceleration, RCTS argues that the district court erred by including "time-barred installments" in its calculation of RCTS' indebtedness. RCTS argues that the district court should have calculated its debt as it would in an action for breach of an installment contract and barred installments that came due more than 5 years prior to the filing of the Hinrichsens' foreclosure complaint. See, § 25-205; *Becker v. Lammers*, 193 Neb. 839, 229 N.W.2d 557 (1975).

The 5-year statute of limitations for breach of a written contract had no application in the Hinrichsens' foreclosure action. The Hinrichsens elected to initiate an action for judicial foreclosure. See *PSB Credit Servs. v. Rich*, 251 Neb. 474, 558 N.W.2d 295 (1997) (trust deed beneficiary may foreclose trust deed either by having trustee exercise power of sale provided for in trust deed or by foreclosing in same manner as provided by law for foreclosure of mortgages). Under Nebraska law, such an action can be brought "within ten years after the cause of action accrues." § 25-202. See *Rich, supra*.

[6] In resisting the straightforward application of § 25-202, RCTS appears to conflate the statute of limitations that governs an action for breach of a written contract with the statute of limitations that governs a foreclosure action. We acknowledge that the 5-year period under § 25-205 would govern an action on the note. See *National Bank of Commerce v. Ham*, 256 Neb. 679, 682, 592 N.W.2d 477, 479 (1999) ("[t]he statute of limitations for an action on a written contract is 5 years"). But this is not an action on the note, and our precedent, for well over a century, has recognized that an action to foreclose a real estate mortgage may be brought within the statutory 10-year limitations period for foreclosing mortgages, even though an action on the debt is time barred. See, *J. I. Case Credit Corp. v. Thompson*, 187 Neb. 626, 193 N.W.2d 283 (1971); *Campbell v. Upton*, 56 Neb. 385, 76 N.W. 910

(1898); *Cheney v. Campbell*, 28 Neb. 376, 44 N.W. 451 (1889); *Cheney v. Woodruff*, 20 Neb. 124, 29 N.W. 275 (1886). See, also, 31 Richard A. Lord, A Treatise on the Law of Contracts by Samuel Williston § 79:3 (4th ed. 2022) (explaining that creditor remains entitled, after statute has run, to use any means of collecting debt other than direct right of action, and any security by way of lien or mortgage may be utilized to collect or recover on claim). Accordingly, we conclude that the 10-year limitations period governed the Hinrichsens' foreclosure action, regardless of whether an action on the note would be untimely. The district court did not err by declining to apply § 25-205.

Having decided that § 25-205 does not apply, there is nothing left for us to decide. Counsel for RCTS conceded at oral argument that the only argument RCTS was presenting to bar missed installment payments was based on § 25-205. Given this concession, we do not understand RCTS to make an argument that the district court should not have included installments due more than 10 years prior to the filing of this action when calculating RCTS' indebtedness, and we do not consider that issue.

In sum, we disagree with RCTS that a 5-year statute of limitations governs this case. The district court correctly applied the 10-year statute of limitations, and we find no merit in RCTS' assignment regarding the district court's calculation of the amount of the lien.

V. CONCLUSION

Because we find that RCTS' assigned errors lack merit, we affirm.

AFFIRMED.