

A borrower, who is a citizen of State A, defaults on a loan secured by a mortgage on undeveloped land located in State B. The borrower executed the loan in State B and regularly transacts business there. The lender, who is a citizen of State B, sues the borrower in a state court in State A for the outstanding loan obligation before seeking to foreclose on the property. Under the laws of State A, a lender may sue the borrower directly on the debt before foreclosing on mortgaged property. Under the laws of State B, a lender must foreclose on the property before suing the borrower.

The court in State A determines that the conflict-of-laws rules of its own state should apply and that, under those rules, State B has the most significant relationship to the loan, the lender, and the borrower.

Should the court apply State A law or State B law regarding the lender's right to sue the borrower directly on the outstanding debt?

- A. State A law, because the borrower is a citizen of State A.
- B. State A law, because the court is located in State A.
- C. State B law, because State B has the most significant relationship to this matter.
- D. State B law, because the loan was originated in State B.

## Explanation:

### Conflict-of-laws rule for real property issues

<b>General rule</b>	In cases involving real property, law applied by forum court should be determined by conflict-of-laws rule that would be applied by state where property is located
<b>Exceptions</b>	Document specifies application of specific jurisdiction's laws Issues regarding effect of marriage on interest in land Collateral issues (eg, whether transferor perpetrated fraud) Issues regarding mortgage note (eg, validity of note) Foreclosure-related issues that do not affect interest in land (eg, mortgagee's right to sue mortgagor for underlying debt before foreclosure)

**Conflict-of-laws issues** arise when significant aspects of a legal action are divided between two or more states, creating a conflict as to which state's law applies (as seen here). If the conflict involves real property, the **general rule** is that the **law applied** by the forum court should be **determined by** the conflict-of-laws rule that would be applied by the courts of the situs state—ie, the **state where the property is located**. Usually, the conflict-of-laws rule of the situs state calls for the application of its own local law on that issue (ie, the law of the situs).

However, this general rule **does not apply** to issues that are related to foreclosure but **do not affect an interest in land**—eg, a lender's right to sue a borrower on the outstanding debt before foreclosure (as seen here). Instead, such issues are **determined by** the law that governs the debt for which the mortgage was given, which is the **law of the state** that has the **most significant relationship to the transaction and the parties** (here, State B).

**(Choice A)** The borrower is a [citizen](#) of State A, so the State A court has personal jurisdiction over the borrower. But this does not mean that the State A court should apply State A law regarding the lender's right to sue the borrower before foreclosing on the mortgaged property.

**(Choices B & D)** Although the court is located in State A and the loan was originated in State B, the dispositive factor is which state has the most significant relationship to the issue at hand.

### Educational objective:

Issues that relate to foreclosure but do not affect an interest in land—eg, a lender's right to sue the borrower before foreclosing on the mortgaged property—are determined by the law of the state with the most significant relationship to the transaction and the parties.

### References

Restatement (Second) of Conflict of Laws § 223, cmt. i (Am. Law Inst. 1971) (validity and effect of conveyance of interest in land).

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