

Brian McGrath Praises New York Court of Appeals Decision in Fannie Mae Foreclosure Case

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In a *National Mortgage Professional* article, Hinshaw partner Brian McGrath reacted to news that the New York Court of Appeals recently ruled in favor of the Federal National Mortgage Association (Fannie Mae) in a foreclosure case that could have an impact on legislation awaiting New York Gov. Kathy Hochul's signature. The New York Foreclosure Abuse Prevention Act would significantly narrow the circumstances where the statute of limitations for mortgage foreclosure actions can be re-set or extended.

In the case, the court ruled that the six-year statute of limitations period for the foreclosure refiling was reset as a result of payments made by the borrower under a Home Affordable Modification Trial Payment plan, after foreclosure had originally been filed.

McGrath said the decision reaffirmed well-settled law under New York's General Obligations, and added that it further demonstrates that mortgage loans are dynamic contracts between borrowers and lenders.

"The dynamic nature is key to working to keep struggling borrowers in their homes, something the court of appeals recognized in the *Engel* decision," McGrath said. "Thus, the [New York Foreclosure Abuse Prevention Act] legislation aimed at abrogating the *Engel* decision, which allows for borrowers to work in a dynamic manner with their lenders, is a peculiar way to help consumers."

He added that the New York Foreclosure Abuse Prevention Act awaiting Hochul's signature will in reality benefit defaulted borrowers who game the system to delay their foreclosure proceedings, and will hurt the vast majority of homeowners who work with their lenders to get back on a performing path.

[Read the full *National Mortgage Professional* article](#)

"New York Appeals Court Sides With Fannie Mae" was posted by *National Mortgage Professional* on December 15, 2022.

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Brian S. McGrath

Partner

📞 212-471-6226

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