

New York Court of Appeals Accepts Certified Questions on Whether FAPA Should be Retroactively Applied

2 min read

May 27, 2025

By: Fernando C. Rivera-Maissonet

The New York Court of Appeals has finally agreed to consider whether retroactive application of the Foreclosure Abuse Prevention Act (“FAPA”) (or sections of it) violates the New York Constitution. Over the last two years, New York and federal trial and appellate courts have grappled with this question. Indeed, three of the four Appellate Divisions have ruled – with minimal analysis – that retroactive application does not violate the New York (or United States) Constitution. Until now, the Court of Appeals has avoided taking up the matter.

FAPA was enacted on December 30, 2022, and it amended several provisions specific to the statute of limitations period for enforcing notes and mortgages in default in New York, including the General Obligations Law, Civil Practice Law and Rules (“CPLR”) § 213, and the creation of CPLR § 205-a, among others. FAPA’s substantial impact on the statute of limitations period for enforcing a mortgage debt has resulted in significant litigation.

For over two years, trial court decisions have reached diametrically opposite conclusions. Previously, in *East Fork Funding LLC v. U.S. Bank, N.A.*, the Second Circuit Court of Appeals sought guidance from New York’s highest court through certified questions. However, that request was unceremoniously rejected.

Now, this past week, in *Article 13 LLC v. Ponce De Leon Fed. Bank*, the [New York Court of Appeals](#) accepted the following two certified questions from the Second Circuit Court of Appeals:

- Whether or to what extent does Section 7 of the Foreclosure Abuse Prevention Act, codified at CPLR § 213(4)(b), apply to foreclosure actions commenced before the statute’s enactment?
- Whether FAPA’s retroactive application violates the right to substantive and procedural due process under the New York Constitution, N.Y. Const., art. I, § 6?

Relatedly, on the same day, in *Van Dyke v. U.S. Bank, N.A.*, the Court of Appeals also granted leave to appeal a New York State Court decision involving FAPA’s application. Both appeals will likely be heard and decided together as they involve the same issues of law.

These cases will hopefully provide the long-awaited resolution to the question that will affect thousands of pending (and, potentially, recently dismissed) matters, likely by the end of 2025. Notably, the U.S. Supreme Court may also involve itself by accepting the petition for certiorari filed in [U.S. Bank, N.A. v. Fox](#), which remains pending.

Stay tuned for more FAPA updates.

Authors



Fernando C. Rivera-Maissonet

Partner

📞 212-471-6200

Related Capabilities

Consumer Financial Services

Financial Services

Financial Services Litigation

Financial Services Regulatory & Compliance

Mortgage Lending & Servicing Litigation

Related Locations

New York

Subscribe to receive timely legal insights directly in your inbox.