

Fernando Rivera-Maissonet Analyzes the Significance for the Mortgage Industry of New York's Highest Court Deciding to Review Whether the Retroactive Application of FAPA is Unconstitutional

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Hinshaw partner Fernando Rivera-Maissonet recently authored a *Law360* "Expert Analysis" examining the significance of the New York Court of Appeals' agreement to consider whether the retroactive application of the Foreclosure Abuse Prevention Act (FAPA) violates the U.S. Constitution or New York's Constitution.

This pivotal issue has divided New York state and federal courts over the last two years, with three of the four Appellate Divisions supporting retroactivity. However, the state's highest court has declined several invitations to weigh in on the issue until now.

Fernando's article discusses the Court of Appeals' decision to consider two certified questions from the Second Circuit in *Article 13 LLC v. Ponce De Leon Federal Bank* and *Van Dyke v. U.S. Bank NA*. Both cases raise the issue of whether FAPA's amendments to the statute of limitations for mortgage foreclosures can be applied retroactively to actions predating the law's enactment.

Fernando highlights the significant implications of the upcoming decisions for lenders, mortgage holders, servicers, and borrowers across New York:

- **A ruling in favor of retroactivity** could introduce a wave of litigation and require industry professionals to reassess their positions on time-barred mortgages.
- **A ruling against retroactivity** would provide immediate clarity to the mortgage industry.
- **A lack of a decision on the U.S. Constitution claims** in the *Van Dyke* argument would not resolve the uncertainty, and such litigation would likely continue.

Read the full article (subscription may be required).

- *Law360*: “[2 NY Cases May Clarify Foreclosure Law Retroactivity](#)” (July 16, 2025)

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