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Industry Press Cites Brian McGrath About Review by New York's Highest Court of FAPA Retroactivity

Analysis Featured in *National Mortgage News*

In The News | 2 min read
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Hinshaw partner Brian McGrath was extensively quoted in a recent National Mortgage News story analyzing oral argument in a review by New York's highest court about whether the retroactive application of the Foreclosure Abuse Prevention Act (FAPA) to legacy loans is constitutional.

Brian, who filed an amicus brief in the case on behalf of national and regional mortgage and banking associations, noted that the judges' questioning suggested an openness to taking a narrower view of FAPA's retroactivity while showing limited interest in considering broader constitutional challenges. He said:

> "It appeared as though that was a challenging bench for the bank's counsel to deal with out of the gate in trying to help the court understand why expansive application of FAPA was improper under state constitutional provisions."

The court's focus on case-specific issues—including the role of "estoppel" in quiet title disputes and questions about parties' foreclosure rights—could signal a path toward a tailored ruling in Article 13 v. Ponce de Leon. Brian explained:

> "Estoppel is applied to a party that has been charged with having taken a different position or having done something previously that now prevents them from taking a different position, and I think that was the most interesting thing about the argument that I took away."

Brian also observed that the bench appeared inclined to defer to the legislature's policy choices underlying FAPA, and that the Second Circuit's certification may accelerate the Court of Appeals' timeline:

> "The Ponce de Leon case is a case that they agreed to hear after the Second Circuit certified it, so they know the Second Circuit is waiting on their ruling to continue that case in federal court. So they tend to move a little quicker."

Lastly, Brian emphasized the practical stakes for both the foreclosure bar and mortgage market, highlighting the tension between legislative deference and the policy imperative of avoiding expansive retroactive consequences that could unsettle older loans and related enforcement rights.

National Mortgage News Media Coverage

- "Judges' questions may hint at limits to FAPA's retroactivity" (October 20, 2025)
- "Supreme Court rejects petition on New York foreclosure law" (October 15, 2025)

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