



News

Brian McGrath Discusses Effects of New York Foreclosure Abuse Prevention Act on Lenders and Borrowers

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New York-based Hinshaw partner, Brian McGrath, discussed the impacts of the New York Foreclosure Abuse Prevention Act in recent articles for both the *National Mortgage Professional* and *HousingWire*. The bill, which passed the state assembly and is expected to pass in the state senate and be signed into law by Gov. Kathy Hochul, would significantly narrow the circumstances where the statute of limitations for mortgage foreclosure actions can be re-set or extended. The legislation is a direct response to the *Freedom Mortgage Corp. v. Engel* decision from New York's Court of Appeals (the state's highest court) last February. The *Engel* decision had finally brought uniform clarity to the right of mortgagees to exercise their contractual rights and unilaterally de-accelerate a mortgage loan through the discontinuance of a foreclosure action and thereby re-set the six-year statute of limitations. The legislation, however, would retroactively override the *Engel* decision and further narrow the circumstances where New York's Savings Clause could be used to bring a new action following the dismissal of a prior action that was timely filed.

McGrath expects substantial litigation over the retroactive application of the bill, including whether the retroactivity clause itself is Constitutionally permissible. "You can't just pull the rug out in midstream or mid-litigation. There's going to be a fight," McGrath states.

McGrath also predicts that the bill could have several negative outcomes for both lenders and consumers, including low-income borrowers and first-time homeowners. Specifically, he notes that "the greater the risk you inject into the recoverability on a mortgage, should it go into default, the more difficult it is to lend in that state." According to McGrath, this could make some lending institutions feel that it is too risky to lend in New York and consider exiting the market or tightening their underwriting process for loans in New York.

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

"New York Bill Could Chill Lending" was posted by *National Mortgage Professional* on March 28, 2022.

[Read the full *HousingWire* article](#)

"NY bill would change statute of limitations on foreclosures" was posted by *HousingWire* on March 25, 2022.

Attorneys

Brian S. McGrath

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