



Does the Foreclosure Abuse Prevention Act apply retroactively to foreclosure actions that were commenced before its effective date to bar lenders from questioning a prior acceleration of the mortgage loan? And if so, does that violate the lenders' procedural or substantive due process rights under the New York Constitution? The Court of Appeals recently took up those certified questions from the Second Circuit, and held that FAPA's plain language does evince an intent to apply retroactively, and such retroactive application does not violate due process. Let's take a look at those opinions and what else has been happening in New York's appellate courts over the past week.

COURT OF APPEALS

MORTGAGE FORECLOSURE, FORECLOSURE ABUSE PREVENTION ACT

Article 13 LLC v Ponce De Leon Fed. Bank, 2025 NY Slip Op 06536 (Ct App Nov. 25, 2025)

Van Dyke v U.S. Bank, Natl. Assn., 2025 NY Slip Op 06537 (Ct App Nov. 25, 2025)

Issue: Does Section 7 of the Foreclosure Abuse Prevention Act apply retroactively to foreclosure actions commenced before the statute's enactment and, if so, does that violate substantive or procedural due process under the New York Constitution?

Facts: In two similar actions relating to mortgage foreclosures, the Court of Appeals addressed the applicability of the Foreclosure Abuse Prevention Act. In *Article 13*, after Central Mortgage Company ("CMC"), the nominal holder of a consolidated mortgage loan on a property in Brooklyn (the "Senior Mortgage"), commenced a foreclosure action, thereby accelerating the debt in 2007, the action was voluntarily discontinued in 2017. The property owner had also obtained a second mortgage on the property (the "Junior Mortgage"), which was acquired by the plaintiff in 2020. The plaintiff then commenced this action to quiet title in federal court, alleging that the Senior Mortgage was barred by the statute of limitations and should be cancelled. "[I]n December 2022, the district court denied both cross-motions [for summary judgment] and held there was a disputed issue of material fact over whether CMC owned or held the consolidated note at the time it commenced the 2007 action."

A few days following the District Court's decision in *Article 13*, the Legislature passed FAPA, which provides that it "appl[ies] to all actions commenced on, as relevant here, a residential mortgage loan agreement, in which a final judgment of foreclosure and sale has not been enforced." The plaintiff moved "for reconsideration on the grounds that FAPA Section 7 applied and estopped U.S. Bank from attacking the validity of CMC's 2007 acceleration. The district court granted the motion, holding that FAPA controlled and applies retroactively. The district court likewise held that such retroactive application did not impair U.S. Bank's due process rights because it was supported by a legitimate legislative purpose." On appeal, the Second Circuit certified two questions to the Court of Appeals: (1) does FAPA apply retroactively and if so, (2) does it violate procedural or substantive due process?

In *Van Dyke*, the situation was similar. In 2007, the plaintiff property owners "took out a loan memorialized by a promissory note and secured by a mortgage on real property in the Bronx." She defaulted in 2009, and Bank of New York Mellon Trust Company ("Mellon") commenced a foreclosure action against her, purporting to accelerate the debt, notwithstanding that it did not actually come into possession of her loan until two months after it filed the foreclosure action. Following 13 years of litigation over Mellon's standing, the parties stipulated to discontinue the action without prejudice.

The plaintiff property owner then commenced this action against defendant, which had acquired the loan in 2016, seeking to quiet title and cancel the mortgage on the ground that the loan had been previously accelerated and the statute of limitations to enforce it had expired. "[D]efendant moved to dismiss the complaint, relevantly asserting that plaintiff's loan was never validly accelerated. In response, plaintiff cross-moved for summary judgment. FAPA then took effect while the parties' motions awaited decision, and the parties submitted supplemental briefing disputing whether and how FAPA applies.

Supreme Court issued two orders resolving the parties' motions in plaintiff's favor. The first order addressed FAPA § 7—the provision that estops a party in a successive foreclosure action from challenging the validity of certain prior loan accelerations, unless the court in the prior foreclosure action expressly determined that the prior acceleration was invalid and dismissed the prior action on that basis. The court held that this provision applies by its terms and estops defendant from challenging the validity of Mellon's 2009 acceleration of the loan. And because more than six years had passed since that acceleration, the court determined that the limitations period to sue under plaintiff's loan agreement had expired. The second order rejected defendant's challenges to FAPA's retroactive application and granted summary judgment to plaintiff. Supreme Court then entered judgment cancelling and discharging the mortgage. The Appellate Division unanimously affirmed."

Holding: The Court of Appeals—explaining that “the real issue presented to us is one of timing: how does FAPA apply to pending or future foreclosure actions when a previous foreclosure action was dismissed for some reason other than an expressed judicial determination, made upon a timely interposed defense, that the instrument was not validly accelerated?”—held that FAPA was intended to apply retroactively. The Court explained, “in FAPA Section 10, the legislature made a specific pronouncement not merely that FAPA would be effective immediately, but that it would apply to all actions commenced in which a final judgment of foreclosure and sale has not been enforced. Thus, for all foreclosure actions as to which a final foreclosure sale had not been enforced prior to its effective date, including actions pending at the time of its effective date, FAPA unequivocally applies.” The only remaining question, under FAPA’s text then, is “whether the prior action was dismissed based on an expressed judicial determination, made upon a timely interposed defense, that the instrument was not validly accelerated.” If so, then the lender may still use that determination as a defense to cancellation of the mortgage. If not, however, FAPA estops it from questioning the validity of the prior acceleration. Further, the Court noted, the Legislature passed FAPA to correct what it perceived to be the Court’s departure in recent caselaw from the proper interpretation of foreclosure statutes, and it expressly, in the legislative history, indicated that retroactive application was intended.

As to whether such retroactive application violates due process, the Court held that it does not. The interest the lenders have in this arena, the Court noted, is very limited: “The only relevant change effected by FAPA is that New York’s estoppel doctrine, as now clarified by FAPA Section 7, precludes U.S. Bank from seeking to evade the statute of limitations by arguing that CMC’s prior acceleration of the loan was invalid. Recognizing that FAPA did not alter the statute of limitations for foreclosure actions, U.S. Bank’s asserted right is more accurately characterized as its right to contest the validity of the original foreclosure action that accelerated the mortgage.” Thus, the Court explained, “[t]he alleged vested interest claimed by U.S. Bank is the right to wait long past the limitations period to challenge the validity of a foreclosure action that could have been challenged and refiled by the actual holder of the note and mortgage at any time during the six-year limitations period. Moreover, U.S. Bank has failed to identify any caselaw recognizing a vested right in one’s ability to collaterally challenge another’s prior conduct where the party in question (or its predecessor) chose to sit on its rights—subjecting the borrower and court system to burdensome serial litigation and needlessly clouding the underlying property’s title. U.S. Bank has also not pointed us to any caselaw recognizing a vested right in the way in which a doctrine like estoppel is applied.”

Furthermore, the Court held, even if lenders had a protectible due process interest, “the legislature may impair legally cognizable interests without running afoul of substantive due process.” “Here, the legislature stated several rational purposes for FAPA’s retroactive application. FAPA’s legislative history identifies certain abusive litigation practices engaged in by mortgage lenders and noteholders as the animating force behind FAPA’s enactment . . . In light of the legislature’s determination that these abuses should be curtailed, it is rational for FAPA to apply retroactively to shield as many borrowers as possible from those practices. Without FAPA, the legislature worried, a great number of foreclosure cases that would otherwise be time barred could proceed ad infinitum.” The Legislature also desired to relieve the burden that long pending mortgage foreclosure actions have had on the courts, and ensure that the statute of limitations applies equally to all litigants. All of these bases were rational, the Court held, and thus FAPA’s retroactive application did not violate substantive due process. “Straightforwardly, FAPA Section 7 constricts parties’ ability to challenge the validity of certain prior accelerations. Because holders of notes and mortgages often attempted to revive long-outdated claims, foreclosing such challenges is a rational means of achieving FAPA’s goals of putting lingering claims to rest and relieving our congested court system.”

Finally, the Court rejected the lenders’ procedure due process claims as well. Rejecting the lenders’ argument that the courts must provide a reasonable grace period in which to bring claims before shortening statutes of limitations, the Court held that FAPA does not alter the six-year statute of limitations, and thus that doctrine simply does not apply. Indeed, the Court explained, “FAPA did not alter the six-year statute of limitations whatsoever; the successive holders of the note and mortgage have had the full six-year limitations period in which to discontinue an improperly commenced foreclosure action and commence a new one lacking the prior infirmity. FAPA does not deny such persons what the litigants envisaged by *Brothers* lacked: a ‘reasonable opportunity to interpose the type of claim affected.’” And thus, it did not violate procedure due process.

CRIMINAL LAW, REMEDY FOR INACCURATE CPL § 30.30 (5-A) CERTIFICATION

People v Williams, 2025 NY Slip Op 06535 (Ct App Nov. 25, 2025)

Issue: What remedy is available when the People provide the required certification or trial readiness under CPL § 30.30(5-a) that all counts in the accusatory instrument meet the statutory requirements of facial sufficiency and that any noncompliant counts have been dismissed, but the representations made as to at least one count of the instrument are inaccurate or incorrect?

Facts: After “defendant struck a pedestrian with his vehicle in a Brooklyn intersection,” he was charged with a number of misdemeanor counts, including failure to obey a traffic control device. “The misdemeanor complaint contained numerous factual allegations in support of the unlicensed operation counts, but none supporting the failure to obey a traffic control signal count. The People later filed an information which, once again, did not include factual allegations concerning the failure to obey a traffic signal count. The People also filed a statement of readiness and certification pursuant to CPL 30.30 (5-a) stating that ‘all counts in the accusatory instrument . . . [met] the requirements of CPL §§ 100.15 and 100.40,’ and that any counts not meeting those requirements had been dismissed. It is undisputed that the count for failure to obey a traffic signal was facially insufficient and therefore did not comply with the requirements of CPL 100.40.”

After the People's time to declare readiness for trial expired, defendant moved to dismiss the "information for facial insufficiency and on statutory speedy trial grounds. Defendant contended that the inaccuracies in the People's CPL 30.30 (5-a) certification, specifically those concerning the count for failure to obey a traffic control signal, rendered the statement of readiness invalid." The People conceded that the failure to obey a traffic signal count was deficient and should be dismissed, but argued that that defect did not invalidate the remainder of the facially sufficient information.

"Criminal Court dismissed that count but otherwise denied the motion, determining that the People met CPL 30.30 (5-a)'s requirement of filing a certification, and that inaccuracies contained within the certification, with respect to the dismissed count did not warrant dismissal of the entire instrument. The Appellate Term affirmed, holding that the statute requires only that a certification be made in order for a statement of readiness to be valid and does not provide for sanctions in the event that the certification is ultimately deemed to contain inaccuracies."

Holding: The Court of Appeals held that "the clear language of CPL 30.30 (5-a) requires that the People, in conjunction with filing their statement of readiness, certify that each count of the accusatory instrument is supported by facially sufficient, nonhearsay allegations, and that any counts that are not so supported have been dismissed. However, the statute does not provide for any readiness-related consequence for a mistaken or incorrect certification. Such a requirement would make little sense because facial sufficiency is a legal question—sometimes a close legal question—and the People cannot reasonably be expected to attest accurately to the outcome of a defendant's challenge to the facial sufficiency of the instrument."

Based on the text of the statute, and its legislative history, the Court concluded that the Legislature did not "want to require the severe sanction of dismissal of the entire accusatory instrument as a consequence of the insufficiency of a single count." Rather, the Court held, the proper consequence is dismissal of the insufficient count. Indeed, the Court explained, this rule was consistent with the statute's elimination of piecemeal count-by-count trial readiness statements. "By tying readiness to a certification that *all* counts are facially sufficient and properly converted, CPL 30.30 (5-a) makes trial readiness a singular event for the entire accusatory instrument. Under this rule, the People are required to make a choice: either indicate their readiness to proceed to trial on all remaining counts, subjecting the entire accusatory instrument to the stricter facial requirements for a misdemeanor information, or elect not to declare trial readiness on any count. This rule effectively serves to streamline pretrial motion practice, opening a window during which a defendant can move to dismiss any count which does not meet the facial sufficiency requirements for a misdemeanor information."

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