



# NY bill would change statute of limitations on foreclosures

The bill would overrule recent Engel decision and apply retroactively

A rule making its way through the New York Senate could significantly shorten the time allotted for a lender to initiate a foreclosure action. This may have ramifications on all lenders operating in the state of New York.

A bill, dubbed the Foreclosure Abuse Prevention Act, sponsored by James Sanders Jr. (D) from the 10th Senate District, stipulates that once a lender has initiated a foreclosure action and accelerated the loan, they only have six years to complete a foreclosure.

Currently, a lender operating in New York has six years to initiate a foreclosure action, but if the action is dismissed for any reason, a lender can de-accelerate a loan and then reinitiate a foreclosure action. This may no longer be an option.

A vote on this legislation is expected next week and could result in a pool of properties that cannot be foreclosed on because the statute of limitations has expired, said Brian McGrath, partner at law firm **Hinshaw & Culbertson**.

McGrath noted that there is a likelihood that it will be pushed through the Senate and once it is, it will apply equally to every lender and mortgage servicer that is trying to foreclose on a property in New York.

“It is rare to find a lender or mortgage servicer with a nationwide portfolio that doesn’t touch the state of New York,” he said. “New York is just traditionally one of the most frequent places lenders and servicers find themselves in based on just how portfolios are spread, population, etc.”

The legislation states that it aims to “thwart and eliminate abusive and unlawful litigation tactics employed by foreclosure plaintiffs to the prejudice of homeowners throughout New York.”

Specifically, the bill will overrule the Court of Appeals’ recent decision in *Freedom Mortgage Corporation vs. Engel*, where “the ability to unilaterally manipulate, arrest, stop and restart the limitations period at will, [was put] directly in the hands of mortgage foreclosure plaintiffs and their servicers,” the pending rule argues.

“No other civil plaintiff in this state is extended such unilateral and unfettered powers,” the bill reads. “As a direct result of Engel, trial and appellate courts throughout the State have been bombarded with a flurry of motions made by mortgage lenders and servicers to re-open cases.”

Another important piece to this legislation, notes McGrath, is that it will be retroactively applied to all mortgage foreclosures in which a final judgement of foreclosure and sale has not been enforced.

“If a court previously ruled on an issue where a lender properly de-accelerated the loan before initiating their new action, a borrower could file a motion to reconsider that,” said McGrath. “When this bill happens, lenders are suddenly going to have some pool of their portfolios where lien loss risk exists where it didn’t prior to this legislation.”

McGrath noted that there may also be some unintended consequences for borrowers if this rule goes into effect.

If the bill passes, some institutions may decide that it is too risky to lend in New York, thereby limiting consumer choice. “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,” said McGrath.

Another consequence, said McGrath, is that lenders will tighten their underwriting requirements. “The more you move the needle on underwriting to basically rule out any chance of default whatsoever, the more people you close out of the lending market.”