

NY FORECLOSURE DEFENSES

Statute of Limitations & Standing
Under New York Law

CPLR 213(4) · Engel · Aurora · FAPA · Note Holder Proof

A Comprehensive Practice Guide for Defense Counsel

LAW MERCHANT SOLUTIONS

2026 Edition

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About This Guide

New York mortgage foreclosure litigation turns on two threshold defenses above all others: timeliness under the six-year statute of limitations, and the plaintiff's standing to sue. Mastering these defenses requires understanding a decade of shifting appellate doctrine—from the pre-FAPA era, through the landmark Engel decision, through the sweeping legislative response embodied in the Foreclosure Abuse Prevention Act of 2022.

This guide synthesizes that doctrine chapter by chapter: the statutory framework, how acceleration triggers and can be revoked, the standing requirement and how plaintiffs prove it, FAPA's structural changes, and the practical strategies defense counsel should deploy at each stage of litigation.

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CHAPTER 1

The Statutory Framework: CPLR 213(4) and the Six-Year Rule

1.1 The Six-Year Limitation Period

Under CPLR 213(4), a mortgage foreclosure action is governed by a six-year statute of limitations. This provision applies to actions to foreclose a mortgage on real property, which New York courts have uniformly characterized as an action upon a sealed instrument. The six-year period is not merely a filing deadline — it is a substantive defense that, when properly raised, can defeat an entire foreclosure action without any examination of the underlying default or amount due.

"A plaintiff has six years from the accrual of the cause of action to commence a foreclosure. Once that period expires, the action is time-barred — and under FAPA, no unilateral act can resurrect it."

1.2 Installment-Based vs. Accelerated Accrual

When a mortgage is payable in installments — as virtually all residential mortgages are — the limitations period does not run from the date of the first default. Instead, each missed installment payment creates a separate cause of action, and the six-year period runs independently from each payment's due date.

This installment rule means that a lender who fails to sue within six years of the first missed payment is not necessarily barred from all relief — only from recovering installments more than six years old. The critical change occurs upon acceleration: once the entire loan balance is accelerated and declared immediately due, a single six-year period runs from the acceleration date on the entire debt.

1.3 When the Clock Starts: Triggering Events

The limitations clock begins running from the earlier of: (1) the date the lender makes an "unequivocally overt act" electing to accelerate the full mortgage debt, or (2) the maturity date of the mortgage. Understanding exactly when acceleration occurs — and when it can be revoked — is therefore the central analytical task in any statute of limitations defense.

[!] PRACTICE ALERT

Defense counsel must identify every prior foreclosure action filed by the plaintiff or any predecessor. Each prior complaint that validly identified and accelerated the loan begins the six-year clock. Under FAPA, the plaintiff is now estopped from denying that a prior action constituted valid acceleration — unless a court expressly found otherwise on a timely-interposed defense.

CHAPTER 2

Acceleration: Triggering and Revoking the Limitations Clock

2.1 What Constitutes a Valid Acceleration

Not every lender communication constitutes a valid acceleration. New York courts require an "unequivocally overt act" that makes clear the lender is demanding immediate payment of the entire outstanding balance, not merely notifying the borrower of a default or warning that acceleration may occur. The two most common forms of valid acceleration are:

- * Filing a foreclosure complaint that expressly identifies the loan being accelerated and demands the entire outstanding balance.
- * Serving a pre-litigation acceleration notice that unequivocally demands immediate repayment of the entire debt — not one that merely states that acceleration 'will' occur if a cure period expires.

A default letter that references acceleration only as a future, contingent event does not constitute present acceleration. The lender must actually exercise its contractual right to accelerate — not just threaten to do so.

2.2 Freedom Mortgage Corp. v. Engel (2021): The Landmark Decision

On February 18, 2021, the New York Court of Appeals handed down its most consequential statute of limitations decision in a generation, consolidating four cases under the caption Freedom Mortgage Corp. v. Engel. The decision resolved a long-standing circuit split among the Appellate Division departments and established two foundational rules.

CASE SPOTLIGHT

Freedom Mortgage Corp. v. Engel

37 N.Y.3d 1, 2021 NY Slip Op 01090 (N.Y. Ct. App. Feb. 18, 2021)

Holding: The Court of Appeals held: (1) a pre-litigation default letter that references acceleration only as a future event does NOT constitute valid acceleration; (2) where acceleration occurred by virtue of filing a foreclosure complaint, the note holder's VOLUNTARY DISCONTINUANCE of that action constitutes an affirmative act revoking the acceleration — absent a contemporaneous statement to the contrary.

Defense Takeaway: After Engel, a voluntary discontinuance in the pre-FAPA era reset the six-year clock. FAPA reversed this rule prospectively. For cases pending as of December 30, 2022, Engel's de-acceleration holding is now superseded by CPLR 203(h) and CPLR 3217(e).

2.3 Pre-Litigation Default Notices

The Engel court established a clear rule regarding default notices: a letter stating that the lender "will accelerate" if the borrower fails to cure by a certain date does not constitute present acceleration. Acceleration requires an unequivocal, immediate demand for the full outstanding balance. This rule eliminates the prior ambiguity created by the Second Department's approach in *Royal Blue Realty Holdings, Inc. v. Bank of America*, which had treated cure-period letters as effective accelerations.

A complaint that fails to identify the correct loan — for example, one that fails to reference a loan modification containing new terms — likewise does not constitute valid acceleration. The identification of the loan being accelerated must be accurate and unambiguous.

2.4 De-acceleration After Engel — and FAPA's Override

The Engel court also addressed revocation of acceleration. It held that an affirmative act by the note holder, occurring within the six-year limitations period, could revoke an earlier acceleration and return the parties to the installment-payment posture. Under Engel, a voluntary discontinuance of a foreclosure action served as such an affirmative act, resetting the clock.

FAPA fundamentally changed this dynamic. Effective December 30, 2022, new CPLR 203(h) provides that once a cause of action to foreclose accrues, no party may unilaterally waive, postpone, cancel, toll, revive, or reset the statute of limitations. And CPLR 3217(e) provides that a voluntary discontinuance does not waive, postpone, cancel, toll, extend, revive, or reset the limitations period, unless expressly prescribed by statute.

[!] PRACTICE ALERT

POST-FAPA RULE: Engel's de-acceleration holding — that voluntary discontinuance resets the clock — is no longer operative for cases governed by FAPA. For any foreclosure action pending as of December 30, 2022, or filed thereafter, the voluntary discontinuance of a prior action does NOT reset the six-year limitations period.

CHAPTER 3

The FAPA Revolution: Foreclosure Abuse Prevention Act (2022)

3.1 Legislative Background and Enactment

Governor Kathy Hochul signed the Foreclosure Abuse Prevention Act (FAPA) into law on December 30, 2022 (L. 2022, ch. 821). The legislation was a direct legislative response to the Engel decision and the broader perception that lenders were exploiting procedural maneuvers to indefinitely extend their right to foreclose on properties where the statute of limitations had, for all practical purposes, already run.

FAPA's effective date was immediate. It applies to all foreclosure actions commenced under CPLR 213(4) in which a final Judgment of Foreclosure and Sale had not been enforced as of December 30, 2022. This means FAPA applies to cases already pending in 2022, not merely to actions filed after enactment — a retroactivity that generated immediate constitutional challenges.

3.2 CPLR 203(h): No Unilateral De-acceleration

New subdivision (h) of CPLR 203 provides that once a cause of action to foreclose a mortgage accrues, no party may unilaterally waive, postpone, cancel, toll, revive, or reset the statute of limitations, or otherwise unilaterally de-accelerate the debt. This directly overrules the Engel framework under which a note holder could restart the clock by sending a de-acceleration letter or voluntarily discontinuing its own foreclosure action.

3.3 CPLR 3217(e): Voluntary Discontinuance

New CPLR 3217(e) addresses voluntary discontinuances directly: a voluntary discontinuance of a foreclosure action — whether by motion, court order, stipulation, or notice — shall NOT waive, postpone, cancel, toll, extend, revive, or reset the statute of limitations, unless prescribed by statute. This eliminates the core Engel de-acceleration mechanism for all FAPA-governed actions.

3.4 CPLR 205-a: Savings Statute Curtailed

One of FAPA's most significant changes is to the savings statute. Prior CPLR 205 allowed a plaintiff whose action was dismissed on procedural grounds to recommence within six months. FAPA replaced this with a more restrictive new CPLR 205-a:

* The original named plaintiff only may recommence within six months of a non-voluntary dismissal — a successor or assignee may NOT recommence unless it

affirmatively pleads and proves it acts on behalf of the original plaintiff.

* The savings statute does not apply to cases terminated by voluntary discontinuance, failure to obtain personal jurisdiction, or dismissal for neglect to prosecute.

* No more than one six-month extension is permitted under CPLR 205-a.

* Where a defendant has served an answer and the action is terminated in any manner, any cause of action or defense timely asserted in the prior action shall be deemed timely in the new action — a rule that protects defendants who raised statute of limitations in prior proceedings.

3.5 RPAPL 1301(4): Election of Remedies Restriction

FAPA added RPAPL 1301(4), which restricts a lender's ability to pursue multiple actions simultaneously. While a foreclosure action is pending, or after a final judgment, no other action may be commenced — including a new foreclosure action — without leave of court. Failure to obtain leave is a defense in the new action and may trigger discontinuance of the earlier action.

Critically, once a foreclosure action has been adjudicated as time-barred, FAPA prohibits the lender from bringing any other action to recover the same debt — including an action on the promissory note. The lender's remedies are extinguished along with the limitations period.

3.6 GOL 17-105: SOL Waiver Limits

FAPA amended General Obligations Law 17-105, which governs waivers of the statute of limitations for mortgage foreclosures. Subdivisions (4) and (5) now provide that an acknowledgment, promise, or agreement — express or implied — shall NOT postpone, cancel, reset, toll, revive, or otherwise extend the limitations period, unless made in strict compliance with the statutory requirements (i.e., express written agreement signed by the party to be charged).

3.7 Retroactivity and Constitutional Validity (2025)

FAPA's retroactive application was immediately challenged on due process grounds. On November 25, 2025, the New York Court of Appeals resolved the constitutional question in Article 13, LLC v. LaSalle National Bank Assoc.

CASE SPOTLIGHT

Article 13, LLC v. LaSalle National Bank Assoc.

No. 96, 2025 WL 3272351 (N.Y. Ct. App. Nov. 25, 2025)

Holding: The Court of Appeals held that FAPA's retroactive application does NOT violate substantive or procedural due process under Article I, Section 6 of the New York Constitution. The Court reasoned: (1) the six-year limitations period itself was unchanged; (2) FAPA merely 'clarified' New York's estoppel doctrine; (3) lenders had no 'vested interest' because they merely claimed the right to wait past the limitations period to challenge a prior foreclosure action that could have been challenged and refiled by the note holder at any time during the six-year period.

Defense Takeaway: FAPA is now constitutionally settled. Defense counsel can rely on all FAPA amendments — including retroactive application to pre-2022 pending actions — without constitutional infirmity.

CHAPTER 4

Standing: The Note Holder / Assignee Proof Requirement

4.1 The Foundational Rule

A plaintiff in a New York mortgage foreclosure action establishes standing by demonstrating that it was either the holder or assignee of the underlying promissory note at the time the action was commenced. This is the bedrock rule, articulated in *Aurora Loan Services, LLC v. Taylor* and confirmed across every department of the Appellate Division.

"The note — not the mortgage — is the dispositive instrument for standing to foreclose. Whoever holds the note at commencement holds the right to sue."

The mortgage is not the operative instrument for standing purposes. Any disparity between the holder of the note and the mortgagee of record does not bar the foreclosure action. The holder of the note is deemed the owner of the underlying mortgage loan, and the mortgage passes with the note as an inseparable incident under New York law.

4.2 *Aurora Loan Services v. Taylor* (2015): The Controlling Authority

CASE SPOTLIGHT

Aurora Loan Services, LLC v. Taylor

25 N.Y.3d 355 (2015)

Holding: The Court of Appeals held that Aurora had standing to commence a mortgage foreclosure action because it had physical possession of the original promissory note (endorsed in blank via allonge from a securitization chain) prior to the commencement of the action. The Court expressly held that possession of the mortgage is NOT required — only the note controls. An affidavit from Aurora's vice president attesting to physical custody of the original note on a date before filing, supported by a copy of the note and allonge, was legally sufficient to establish standing.

Defense Takeaway: Force the plaintiff to precisely identify the date on which it first took physical possession of the original note, the custodian responsible for that note, and the chain of endorsements from the originating lender forward. Any gap in the endorsement chain or uncertainty about possession date is a standing vulnerability.

4.3 Two Paths to Standing: Physical Delivery vs. Written Assignment

New York recognizes two legally equivalent paths to transfer a promissory note and establish standing:

- * **Physical Delivery:** Physical delivery of the original note to the foreclosing plaintiff prior to commencement, without any written assignment. Under the UCC, delivery of a bearer instrument (endorsed in blank) transfers the obligation automatically. The mortgage follows as an incident of the note. (See *U.S. Bank, N.A. v. Collymore*, 68 A.D.3d 752 (2d Dep't 2009).)

- * **Written Assignment of the Note:** A formal, written assignment agreement identifying the note and transferring the obligation. Crucially, it is the assignment of the note — not the mortgage — that controls standing. An assignment of the mortgage alone, without the note, does not confer standing.

Both methods must occur before commencement of the foreclosure action. Post-commencement assignments or deliveries do not cure a standing defect existing at the time the action was filed.

4.4 Blank Endorsements, Allonges, and UCC Article 3

Under UCC Article 3, an instrument endorsed in blank becomes payable to the bearer — whoever possesses it is the holder and may enforce it. This is the most common mechanism for note transfers in securitized loan portfolios, where the originating lender endorses the note in blank and physical custody passes through servicers and trustees.

An allonge is a separate paper firmly affixed to the note containing an endorsement. Under UCC 3-202(2), an allonge must be so firmly affixed to the note as to become part of it. Courts have rejected allonges where the affixation is disputed or not documented — and have rejected endorsements on separate pages that are not referred to in the servicer affidavit or otherwise authenticated.

[!] PRACTICE ALERT

UCC TRAP: A purported allonge that is not affixed to the note, or that is not authenticated by a servicer affidavit or business records, does not satisfy UCC 3-202(2). Defense counsel should demand inspection of the original note and allonge, and challenge any allonge that appears to have been printed separately without physical attachment.

4.5 MERS Assignments: Bank of New York v. Silverberg (2011)

Many securitized mortgages designate Mortgage Electronic Registration Systems, Inc. (MERS) as a nominee on the mortgage. MERS typically does not hold or own the underlying

promissory note.

CASE SPOTLIGHT

Bank of New York v. Silverberg

86 A.D.3d 274 (2d Dep't 2011)

Holding: The Second Department held that a MERS assignment of the mortgage to the foreclosing plaintiff did NOT confer standing where MERS lacked the right to, or possession of, the actual underlying promissory note. An assignment from an entity that was only a nominee on the mortgage — and never held the note — cannot transfer note ownership or standing.

Defense Takeaway: When the assignment chain runs through MERS, challenge whether MERS ever held the note. If MERS was merely a nominee with no note interest, the assignment is insufficient to establish standing. The plaintiff must establish a separate, valid transfer of the note.

4.6 Business Records Evidence: Servicer Affidavits

In securitized loan cases, physical possession of the original note on the date of commencement is typically proven through a servicer or trust custodian affidavit grounded in business records. New York courts accept such affidavits when they:

- * Identify the affiant's familiarity with the servicer's record-keeping practices;
- * Explain how prior servicers' records were incorporated into the current servicer's system (particularly important in multi-servicer chains);
- * Assert the date on which the plaintiff or its custodian took physical possession of the original 'wet ink' note;
- * Attach a business record documenting that delivery; and
- * Provide a copy of the note showing its endorsement or blank endorsement status.

Defense counsel should challenge affidavits that are conclusory, that fail to explain the foundation for the affiant's knowledge of predecessor servicers' records, or that do not attach the underlying business record documenting delivery — not merely a copy of the note.

4.7 Deutsche Bank v. Gambino (2026): Latest Doctrine

CASE SPOTLIGHT

Deutsche Bank National Trust Co. v. Gambino**2026 NY Slip Op 01337 (App. Div. 2d Dep't Mar. 11, 2026)**

Holding: The Second Department held: (1) judicial estoppel cannot bar a plaintiff's standing argument unless the plaintiff previously secured a favorable judgment on the earlier position — mere inconsistency across actions is insufficient; (2) standing is established by proof of physical possession of the original 'wet ink' note endorsed in blank at commencement, proven through a servicer's affidavit grounded in integrated business records documenting delivery and custody.

Defense Takeaway: The 2026 Gambino case narrows judicial estoppel as a standing defense — defendants must show the plaintiff actually WON on the earlier inconsistent position, not merely that the positions were inconsistent. Focus instead on the chain of custody proof and note endorsement authenticity.

CHAPTER 5

Pleading and Waiver: Preserving Standing as a Defense

5.1 U.S. Bank v. Nelson: Standing Must Be Affirmatively Pleaded

Lack of standing is not an element of the plaintiff's cause of action — it is an affirmative defense that the defendant must raise. Under CPLR 3211(e), the defense is waived unless raised in the answer or in a pre-answer motion to dismiss.

CASE SPOTLIGHT

U.S. Bank N.A. v. Nelson

86 A.D.3d (2d Dep't Jan. 24, 2019), Docket No. 2016-01722; aff'd 36 N.Y.3d 998 (N.Y. Ct. App. Dec. 17, 2020)

Holding: The Court held that standing is waived absent an affirmative statement in the answer or pre-answer motion that clearly, unequivocally, and expressly places the defense of lack of standing in issue. A general denial of the complaint's standing allegations — without a separately identified affirmative defense — was held insufficient to preserve the issue.

Defense Takeaway: Every answer filed in a foreclosure case must include a separate, enumerated affirmative defense specifically asserting lack of standing. A general denial or DKI response to standing allegations is insufficient. Where the complaint alleges plaintiff is the 'owner and holder' of the note, the answer should specifically deny that allegation AND plead standing as an affirmative defense.

However, the Second Department has also recognized that where a complaint expressly alleges that the plaintiff is the "owner and holder of the note and mortgage" or the "holder of both the note and mortgage with proper endorsement," a specific denial of those factual allegations — even without using the magic words "standing" — may suffice to put the plaintiff on notice that standing is in controversy. The prudent approach remains to plead standing expressly.

5.2 JPMorgan Chase v. Caliguri: Blank-Endorsed Copy Suffices

In the companion case to Nelson, the Court of Appeals addressed how a plaintiff establishes standing once the defense is properly raised. The Court held that producing a copy of the note endorsed in blank — even without the original — along with supporting servicer affidavit and other documentation, can be sufficient on summary judgment.

There is no bright-line rule requiring production of the original note on summary judgment. Whether the plaintiff's proof is sufficient depends on the totality of the evidence. However, where the defendant specifically challenges custody of the original, demanding inspection of the original 'wet ink' note in discovery can be a critical tactical move.

5.3 Judicial Estoppel as a Standing Defense

Judicial estoppel bars a party from asserting a position in litigation that is inconsistent with a position it previously successfully asserted in the same or prior litigation. In the foreclosure context, defendants have argued that where a plaintiff previously denied standing (or maintained a position inconsistent with current ownership of the note), it should be estopped from claiming standing now.

The 2026 Gambino decision significantly narrowed this doctrine: judicial estoppel requires that the plaintiff previously secured a favorable judgment on the earlier position. Mere inconsistency across actions, without a prior favorable judgment, is insufficient to trigger estoppel. Defense counsel must identify not merely that the plaintiff took a different position, but that it won on that prior position.

CHAPTER 6

Defense Strategies and Checklist

6.1 Statute of Limitations Checklist

Defense counsel should systematically evaluate each of the following before any answer or motion is filed:

Prior Foreclosure Actions

Search NYSCEF, PACER, and county records for all prior foreclosure actions filed by the plaintiff or any predecessor in interest. Note the date each complaint was filed and whether it identified the correct loan.

Date of Acceleration

Identify the earliest date on which a valid acceleration occurred. Examine each prior complaint carefully — did it identify the correct loan? Was the entire outstanding balance demanded?

Six-Year Calculation

Calculate whether more than six years elapsed between the earliest valid acceleration and the commencement of the present action. If so, the claim may be time-barred under CPLR 213(4).

Post-FAPA Analysis

For any action pending as of December 30, 2022: apply FAPA. The voluntary discontinuance of any prior action does NOT reset the clock. The plaintiff is estopped from denying that a prior complaint constituted valid acceleration unless a court expressly found otherwise on a timely defense.

De-acceleration Claims

If the plaintiff argues the clock was reset by a de-acceleration letter or loan modification, analyze whether this occurred before December 30, 2022 (pre-FAPA, Engel rules apply) or after (FAPA bars unilateral de-acceleration).

CPLR 205-a Savings Statute

If the plaintiff claims the savings statute, determine: (1) Was the prior action dismissed voluntarily or for failure to prosecute? If so, 205-a does not apply. (2) Is the plaintiff the original plaintiff or a successor/assignee? Successors must plead and prove they act on behalf of the original plaintiff.

6.2 Standing Defense Checklist

Plead Standing in the Answer

Every answer must include a separately numbered affirmative defense expressly asserting lack of standing. Do not rely on general denials.

[] Identify the Chain of Title

Demand documentation tracing ownership of the note from the originating lender to the plaintiff: every assignment, endorsement, allonge, and custodial transfer.

[] Challenge the Commencement Date

Force the plaintiff to pin down the exact date it first took physical possession of the original note. Challenge any affidavit that relies on belief rather than personal knowledge of documented delivery.

[] Inspect the Original Note

Demand production of the original 'wet ink' note and allonge in discovery. Examine whether the allonge was affixed to the note as required by UCC 3-202(2). Challenge any blank endorsement where chain of custody is incomplete.

[] Challenge MERS Assignments

If the chain runs through MERS, determine whether MERS ever held the note. If MERS was only a nominee on the mortgage, its assignment cannot transfer note ownership or confer standing under Silverberg.

[] Scrutinize Servicer Affidavits

Challenge affidavits that do not explain the affiant's basis for knowledge of predecessor servicers' records, that do not attach the underlying delivery documentation, or that are conclusory regarding custody date.

[] Judicial Estoppel — Prior Favorable Judgment

If the plaintiff took an inconsistent position in prior litigation, determine whether it secured a favorable judgment on that position. Only then can estoppel be argued under the 2026 Gambino standard.

6.3 Motion Practice Guidance

Statute of limitations and standing defenses can be raised at multiple procedural junctures:

- * Pre-Answer Motion to Dismiss (CPLR 3211(a)(5)): Where the limitations bar is apparent on the face of the complaint — i.e., the complaint identifies a prior foreclosure action filed more than six years before the current filing — move to dismiss on the pleadings.
- * Answer with Affirmative Defenses: Always plead both statute of limitations (CPLR 213(4)) and lack of standing as separate, enumerated affirmative defenses. Failure to plead standing waives it entirely.
- * Summary Judgment Motion: Once discovery is complete, move for summary judgment on SOL grounds with supporting chronology, or oppose the plaintiff's summary judgment by raising triable issues on standing through expert or factual affidavits challenging custody date and endorsement authenticity.
- * CPLR 3215(f) Opposition: Where a defendant has defaulted, oppose any motion for default judgment by raising lack of standing in an order to show cause, demonstrating

reasonable excuse and meritorious defense.

* Quiet Title Actions: Under FAPA, once a foreclosure is time-barred, RPAPL 1501 permits a party with an interest in the property to bring a quiet title action to cancel or discharge the time-barred mortgage. FAPA estops the lender from arguing the mortgage is not time-barred in such a proceeding.

CHAPTER 7

Key Statutes and Case Reference Table

Statutory Framework at a Glance

Statute	Provision	Key Effect
CPLR 213(4)	Six-year SOL for mortgage foreclosure	Applies to all foreclosure actions; clock starts on acceleration or maturity
CPLR 203(h) (FAPA)	No unilateral de-acceleration post-accrual	Overrides Engel; lender cannot unilaterally reset clock after accrual
CPLR 205-a (FAPA)	Savings statute — restricted	Original plaintiff only; no voluntary dismissals; no successor relief; one extension max
CPLR 3217(e) (FAPA)	Voluntary discontinuance	Does NOT toll, reset, or extend the SOL — eliminating Engel's core holding
RPAPL 1301(4) (FAPA)	Election of remedies	No second action while first pending; time-barred claim extinguishes all debt remedies
GOL 17-105 (FAPA)	SOL waiver	No implied extension; only express written agreement can extend limitations period
RPAPL 1501	Quiet title	Permits cancellation/discharge of a time-barred mortgage; FAPA estops lender challenge
UCC 3-202(2)	Allonge requirements	Allonge must be firmly affixed to note; unauthenticated separate pages rejected
CPLR 3018(b)	Affirmative defenses	Standing must be pleaded as affirmative defense or it is waived under Nelson

Key Case Law Summary

Case	Court / Year	Core Holding
Freedom Mortgage Corp. v. Engel	N.Y. Ct. App. 2021	Default letter stating acceleration 'will' occur is NOT valid acceleration; voluntary dismissal of complaint revokes acceleration (pre-FAPA rule now superseded for FAPA-governed cases)

Aurora Loan Services v. Taylor	N.Y. Ct. App. 2015	Plaintiff establishes standing as note holder or assignee at commencement; note (not mortgage) controls; physical possession of blank-endorsed note pre-commencement confers standing
Article 13, LLC v. LaSalle Natl. Bank	N.Y. Ct. App. 2025	FAPA retroactive application is constitutionally valid under NY due process; FAPA Section 7 (CPLR 213(4) estoppel) applies to pending pre-2022 actions
Deutsche Bank v. Gambino	App. Div. 2d Dep't 2026	Judicial estoppel requires prior favorable judgment; servicer affidavit with business records documenting delivery of blank-endorsed 'wet ink' note establishes standing on summary judgment
Bank of New York v. Silverberg	App. Div. 2d Dep't 2011	MERS assignment of mortgage does NOT confer standing where MERS lacked any interest in the underlying promissory note; nominee status insufficient
U.S. Bank v. Nelson	N.Y. Ct. App. 2019	Lack of standing is waived unless clearly, unequivocally, and expressly raised as an affirmative defense in the answer or pre-answer motion
JPMorgan Chase v. Caliguri	N.Y. Ct. App. 2019	Copy of note endorsed in blank, with servicer affidavit, may establish standing on summary judgment; no bright-line rule requiring original note
U.S. Bank v. Collymore	App. Div. 2d Dep't 2009	Written assignment of note OR physical delivery prior to commencement transfers the obligation; mortgage follows as inseparable incident of note
Wells Fargo Bank v. Ho-Shing	App. Div. 1st Dep't 2019	Consolidated note supersedes prior notes; holder of consolidated note has standing under Aurora; allonge and CEMA chain sufficient per Aurora

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