

STATE OF NEW YORK

3275--A

2019-2020 Regular Sessions

IN ASSEMBLY

January 29, 2019

Introduced by M. of A. EPSTEIN, SIMON, REYES, TAYLOR, GOTTFRIED, MOSLEY, D'URSO, CRUZ, BLAKE, M. G. MILLER, COOK -- Multi-Sponsored by -- M. of A. NOLAN -- read once and referred to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to direct the department of financial services to study, evaluate and make recommendations concerning lending practices by financial institutions to landlords acquiring property that includes small business tenants and/or rent-regulated tenants

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

- 1 Section 1. 1. For the purposes of this act:
- 2 (a) "financial institution" shall include, but not be limited to, a
- 3 commercial bank, trust company, savings institution, credit union, or
- 4 any other entity authorized to originate and service loans;
- 5 (b) "small business" shall mean a business that meets the definition
- 6 of a small business as defined by the United States Small Business
- 7 Administration; and
- 8 (c) "mezzanine debt" shall mean debt carried by a borrower that may be
- 9 subordinate to the primary lien and/or common shares and reported as
- 10 assets for the purposes of financing such primary lien.
- 11 2. The department of financial services is hereby authorized and
- 12 directed to prepare or have prepared a study to review the process in
- 13 which financial institutions provide loans to landlords acquiring or
- 14 refinancing property that includes rent-regulated and/or small business
- 15 tenants. Such study shall examine and report by type of lender, range of
- 16 building sizes, and any other criteria that would show trends in preda-
- 17 tory equity and shall include, but not be limited to:
- 18 (a) whether and how financial institutions are considering the follow-
- 19 ing factors when reviewing a landlord's loan application:
- 20 (i) debt service coverage ratio;

EXPLANATION--Matter in italics (underscored) is new; matter in brackets [-] is old law to be omitted.

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1 (ii) capitalization rate;
2 (iii) gross rent multiplier;
3 (iv) loan to value; and
4 (v) net operating income, including income and expenses;
5 (b) whether and how financial institutions are including the following
6 factors in their underwriting calculations of debt:
7 (i) sources of income, including residential rent, commercial rent and
8 maintenance from cooperative apartment owners, and how financial insti-
9 tutions verify the accuracy of such information;
10 (ii) current rent charged and projected rent increases to be charged
11 in the future;
12 (iii) the number and size of units in a building and whether such
13 units are used for residential, commercial or another use;
14 (iv) whether any preferential rent is charged and any projections to
15 terminate such preferential rent in the future;
16 (v) the number of vacant units in a property, including whether such
17 units are classified as market rate, deregulated or rent-regulated and
18 how many vacant units are used for commercial or another non-residential
19 use;
20 (vi) whether individual apartment improvements will be performed on
21 any vacant units;
22 (vii) the number of rent-regulated units at the time of loan origi-
23 nation and how the financial institution verifies those numbers with the
24 division of housing and community renewal;
25 (viii) any projected construction or major capital improvements
26 planned for the property;
27 (ix) projections of any turnover in rent-regulated apartments;
28 (x) number of buildings financed in the loans; and
29 (xi) whether the property has received any government operating or
30 capital subsidies and explanation of any such subsidies;
31 (c) whether financial institutions are considering only currently
32 established rents and reasonable maintenance costs when determining the
33 net operating costs for the property such that they are acting in the
34 best interest of the long-term affordability and stability of the local
35 community;
36 (d) whether financial institutions are adequately examining the types
37 of capital improvements included in the landlord's plans for the proper-
38 ty;
39 (e) whether financial institutions are using accurate appraisal values
40 and appropriately doing so;
41 (f) whether financial institutions are ascertaining whether the land-
42 lord is taking on more debt than the property can support, including any
43 mezzanine debt on such property;
44 (g) whether financial institutions are considering a landlord's addi-
45 tional private equity including the source of such equity;
46 (h) whether financial institutions are considering a landlord's addi-
47 tional debt on the building or buildings including debt from other lend-
48 ers and whether financial institutions are considering any other
49 outstanding debt a landlord has outside of the loan applied for;
50 (i) how financial institutions are evaluating public records of land-
51 lords and property managers including, but not limited to liens and
52 violations against them;
53 (j) whether and how financial institutions monitor the number of rent-
54 regulated units in a building prior to and after a loan disbursement;

1 (k) whether mortgages include clauses that require a certain debt
2 service coverage ratio or debt yield which are predicated on rent
3 increases or tenant turnover;

4 (l) whether financial institutions consider the use of additional
5 financing, including mezzanine debt, and how this financing is factored
6 into the underwriting of the loan, including examining the risks associ-
7 ated with transactions in which mezzanine debt is used;

8 (m) whether the use of mezzanine debt to finance projects involving
9 rent-regulated and/or small business tenants is advisable, and if there
10 is increased risk of foreclosure as short-term interest rates rise and
11 the cost of mezzanine financing increases; and what can happen to such
12 tenants and small businesses if there is more debt on a property than
13 the property can support; and

14 (n) any other criteria the department of financial services deems
15 necessary to understand the nature and frequency of predatory equity.

16 § 2. No later than eighteen months after the effective date of this
17 act, the department of financial services shall report to the legisla-
18 ture and the governor on the findings of the study conducted pursuant to
19 section two of this act including on the scope, nature and frequency of
20 involvement in predatory equity throughout the financial industry and
21 any legislative recommendations deemed to be necessary.

22 § 3. This act shall take effect immediately.