

STATE OF NEW YORK

2195

2021-2022 Regular Sessions

IN SENATE

January 20, 2021

Introduced by Sens. KAVANAGH, KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to authorizing commercial mortgage forbearance during the COVID-19 pandemic

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

1 Section 1. The banking law is amended by adding a new section 9-y to
2 read as follows:

3 § 9-y. Mortgage forbearance. 1. As used in this section, the following
4 terms shall have the following meanings:

5 (a) "covered period" means March seventh, two thousand twenty until
6 the date on which none of the provisions that closed or otherwise
7 restricted public or private businesses or places of public accommo-
8 dation, or required postponement or cancellation of all non-essential
9 gatherings of individuals of any size for any reason in executive order
10 numbers 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13
11 or 202.14 of two thousand twenty, as extended by executive order numbers
12 202.28 and 202.31 and as further extended by any future executive order,
13 issued in response to the COVID-19 pandemic continue to apply in the
14 county in which the property encumbered by the mortgage in question is
15 located; and

16 (b) "regulated institution" means any New York regulated banking
17 organization as defined under this chapter and any New York regulated
18 mortgage servicer entity subject to the authority of the department.

19 2. Notwithstanding any other provision of law, New York regulated
20 institutions shall:

21 (a) make applications for forbearance of any payment due on a commer-
22 cial mortgage of a property located in New York widely available to any
23 qualified commercial mortgagor including those who are already in
24 arrears or on a trial period plan or who have applied for loss miti-

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

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1 gation and who demonstrate financial hardship during the covered period;
2 and

3 (b) grant such forbearance for a period of one hundred twenty days to
4 any such qualified commercial mortgagor, subject to the safety and
5 soundness requirements of the regulated institution.

6 (c) such forbearance may be backdated to March seventh, two thousand
7 twenty.

8 3. Notwithstanding any other provision of law, any mortgage forbear-
9 ance granted by a regulated institution pursuant to this section, or any
10 other law, rule or regulation, to the qualified commercial mortgagor as
11 a result of financial hardship during the covered period shall be
12 subject to the following provisions:

13 (a) the regulated institution shall defer arrears accumulated during
14 the forbearance period as a non-interest bearing balloon payment payable
15 twelve months after the end of the forbearance period and shall waive
16 any late fees accumulated as a result of the forbearance; and

17 (b) the total value of the deferred mortgage payment shall be appor-
18 tioned each month to each tenant according to the percentage of the
19 total rents due that their rental obligation represents on the mortgaged
20 property in receipt of the forbearance. Each commercial tenant shall
21 have their pro rata share of the forborne mortgage payment be deferred
22 each month for the duration of the forbearance period. Such deferred
23 rent shall be due within twelve months after the end of the forbearance
24 period, and shall not accumulate interest or be subject to late fees;
25 and

26 (c) no eviction proceedings may be commenced or continued against any
27 residential or commercial tenant for nonpayment of rents that came due
28 during the forbearance period.

29 4. Notwithstanding any other provision of law, adherence with this
30 section shall be a condition precedent to commencing a foreclosure
31 action stemming from missed payments which would have otherwise been
32 subject to this section. A defendant may raise the violation of this
33 section as a defense to a foreclosure action commenced on the defend-
34 ant's property when such action is based on missed payments that would
35 have otherwise been subject to this section.

36 5. Notwithstanding anything to the contrary in this section, this
37 section shall not apply to, and does not affect any mortgage loans made,
38 insured, or securitized by any agency or instrumentality of the United
39 States, any government sponsored enterprise, or a federal home loan
40 bank, or the rights and obligations of any lender, issuer, servicer or
41 trustee of such obligations, including servicers for the Government
42 National Mortgage Association.

43 § 2. This act shall take effect immediately.