

STATE OF NEW YORK

471--A

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT establishing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021"; in relation to eviction proceedings; and to provide for the expiration of certain provisions upon the expiration thereof (Part A); and in relation to foreclosure proceedings; and providing for the expiration of certain provisions upon the expiration thereof (Subpart A); in relation to tax sales; and providing for the expiration of certain provisions upon the expiration thereof (Subpart B); to establish hardship declarations for owners of commercial real property; and providing for the expiration of such provisions upon the expiration thereof (Subpart C) (Part B)

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

1 Section 1. This act enacts into law components of legislation relating
2 to commercial eviction and foreclosure protections. Each component is
3 wholly contained within a Part identified as Parts A through B. The
4 effective date for each particular provision contained within such Part
5 is set forth in the last section of such Part. Any provision in any
6 section contained within a Part, including the effective date of the
7 Part, which makes reference to a section "of this act", when used in
8 connection with that particular component, shall be deemed to mean and
9 refer to the corresponding section of the Part in which it is found.
10 Section four of this act sets forth the general effective date of this
11 act.

12 § 2. Short title. This act shall be known and may be cited as the
13 "COVID-19 Emergency Protect our Small Businesses Act of 2021".

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

LBD07084-04-1

§ 3. Legislative intent. The Legislature finds and declares all of the following:

On March 7, 2020, Governor Andrew Cuomo proclaimed a state of emergency in response to the Coronavirus disease (COVID-19) pandemic. Measures necessary to contain the spread of COVID-19 have brought about widespread economic and societal disruption, placing the state of New York in unprecedented circumstances.

COVID-19 presents a historic threat to small businesses. Thousands of small businesses are facing eviction or foreclosure due to necessary disease control measures that closed or restricted businesses across the state. The pandemic has further interrupted court operations, the availability of counsel, the ability for parties to pay for counsel, and the ability to safely commute and enter a courtroom, settlement conference and the like.

Ensuring small businesses can survive in this unprecedented time is to the mutual benefit of all New Yorkers and will help the state address the pandemic, protect public health, and set the stage for recovery. It is, therefore, the intent of this legislation to avoid as many evictions and foreclosures of small businesses as possible for businesses experiencing a financial hardship during the COVID-19 pandemic.

As such, it is necessary to temporarily allow small businesses impacted by COVID-19 to remain in their place of business. A limited, temporary stay is necessary to protect the public health, safety and morals of the people the Legislature represents from the dangers of the COVID-19 emergency pandemic.

PART A

Section 1. Definitions. For the purposes of this act: 1. "Eviction proceeding" means a summary proceeding to recover possession of real property under article seven of the real property actions and proceedings law relating to a commercial unit or any other judicial or administrative proceeding to recover possession of real property relating to a commercial unit.

2. "Landlord" includes a landlord, owner of a commercial property and any other person with a legal right to pursue eviction, possessory action or a money judgment for rent, including arrears, owed or that becomes due during the COVID-19 covered period, as defined in section 1 of chapter 127 of the laws of 2020.

3. "Tenant" includes a commercial tenant that is a resident of the state, independently owned and operated, not dominant in its field and employs fifty or fewer persons.

4. "Hardship declaration" means the following statement, or a substantially equivalent statement in the language in which the commercial lease or tenancy agreement was written or negotiated, in 14-point type, published by the office of court administration, whether in physical or electronic written form:

"NOTICE TO COMMERCIAL TENANT: If you have lost significant revenue or had significantly increased necessary costs during the COVID-19 pandemic, and you sign and deliver this hardship declaration form to your landlord, you cannot be evicted until at least May 1, 2021 for nonpayment of rent or for holding over after the expiration of your lease. You may still be evicted for violating your lease by persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

1 If your landlord has provided you with this form, your landlord must
2 also provide you with a mailing address and e-mail address to which you
3 can return this form. If your landlord has already started an eviction
4 proceeding against you, you can return this form to either your land-
5 lord, the court, or both at any time. You should keep a copy or picture
6 of the signed form for your records. You will still owe any unpaid rent
7 to your landlord. You should also keep careful track of what you have
8 paid and any amount you still owe.

9 COMMERCIAL TENANT'S DECLARATION OF HARDSHIP DURING THE
10 COVID-19 PANDEMIC

11 I am the owner, chief executive officer, president, or similar officer
12 of (name of business), in which is a commercial tenant at (address of
13 commercial unit). My business is resident in New York state, independ-
14 ently owned and operated, not dominant in its field, and employs fifty
15 or fewer persons. My business is experiencing financial hardship, and
16 is unable to pay the rent or other financial obligations under the lease
17 in full or obtain an alternative suitable commercial property because of
18 one or more of the following:

- 19 1. Significant loss of revenue during the COVID-19 pandemic.
20 2. Significant increase in necessary expenses related to providing
21 personal protective equipment to employees or purchasing and installing
22 other protective equipment to prevent the transmission of COVID-19 with-
23 in the business.
24 3. Moving expenses and difficulty in securing an alternative commer-
25 cial property make it a hardship for the business to relocate to another
26 location during the COVID-19 pandemic.
27 To the extent the business has lost revenue or had increased expenses,
28 any public assistance the business has received since the start of the
29 COVID-19 pandemic does not fully make up for the business's loss of
30 revenue or increased expenses.

31 I understand that the business must comply with all other lawful terms
32 under its commercial tenancy, lease agreement or similar contract. I
33 further understand that lawful fees, penalties or interest for not
34 having paid rent in full or met other financial obligations as required
35 by the commercial tenancy, lease agreement or similar contract may still
36 be charged or collected and may result in a monetary judgment. I
37 further understand that the landlord may be able to seek eviction after
38 May 1, 2021, and that the law may provide certain protections at that
39 time that are separate from those available through this declaration.

40 Signed:
41 Printed name:
42 Date signed:

43 NOTICE: You are signing and submitting this form under penalty of law.
44 That means it is against the law to make a statement on this form that
45 you know is false."

46 § 2. No commercial tenant shall be removed from the possession prior
47 to May 1, 2021, except by an eviction proceeding.

48 § 3. Pending eviction proceedings. Any eviction proceeding pending on
49 the effective date of this act, including eviction proceedings filed on
50 or before March 7, 2020, or commenced within thirty days of the effec-
51 tive date of this act shall be stayed for at least sixty days, or to

1 such later date that the chief administrative judge shall determine is
2 necessary to ensure that courts are prepared to conduct proceedings in
3 compliance with this act and to give tenants an opportunity to submit
4 the hardship declaration pursuant to this act. The court in each case
5 shall promptly issue an order directing such stay and promptly mail the
6 respondent a copy of the hardship declaration in English, and, to the
7 extent practicable, the language in which the commercial lease or tenan-
8 cy agreement was written or negotiated, if other than English.

9 § 4. Pre-eviction notices. A landlord shall include a "Hardship Decla-
10 ration" with every written notice required by the commercial lease or
11 tenancy agreement, law or rule to be provided prior to the commencement
12 of an eviction proceeding, and with every notice of petition or summons
13 and complaint served on a tenant. If the translation of the hardship
14 declaration in the language in which the commercial lease or tenancy
15 agreement was written or negotiated is not available on the office of
16 court administration's public website, it shall be the landlord's
17 responsibility to obtain a suitable translation of the hardship declara-
18 tion. Such notice shall also include a mailing address, telephone number
19 and active email address the tenant can use to contact the landlord and
20 return the hardship declaration.

21 § 5. Prohibition on initiation of eviction proceeding. If there is no
22 pending eviction proceeding and a tenant provides a hardship declaration
23 to the landlord or an agent of the landlord, there shall be no initi-
24 ation of an eviction proceeding against the tenant until at least May 1,
25 2021, and in such event any specific time limit for the commencement of
26 an eviction proceeding shall be tolled until May 1, 2021.

27 § 6. Required affidavit. 1. No court shall accept for filing any peti-
28 tion or other filing to commence an eviction proceeding unless the peti-
29 tioner or plaintiff or an agent of the petitioner or plaintiff files an
30 affidavit of service, under penalty of perjury, demonstrating the manner
31 in which the petitioner or plaintiff or the petitioner's or plaintiff's
32 agent served a copy of the hardship declaration in English and the
33 language in which the commercial lease or tenancy agreement was written
34 or negotiated, if other than English, with any written notice required
35 by the commercial lease or tenancy agreement, law or rule to be provided
36 prior to the commencement of an eviction proceeding, and an affidavit
37 under penalty of perjury:

38 a. attesting that at the time of filing, neither the petitioner or
39 plaintiff nor any agent of the petitioner or plaintiff has received a
40 hardship declaration from the respondent, or

41 b. attesting that the respondent or defendant has returned a hardship
42 declaration, but the respondent or defendant is persistently and unrea-
43 sonably engaging in behavior that substantially infringes on the use and
44 enjoyment of other tenants or occupants or causes a substantial safety
45 hazard to others, with a specific description of the behavior alleged.

46 2. Upon accepting a petition or complaint, the attorney, judge or
47 clerk of the court, as the case may be, shall determine whether a copy
48 of the hardship declaration in English and the language in which the
49 commercial lease or tenancy agreement was written or negotiated, if
50 other than English, is annexed to the served notice of petition or
51 summons and complaint and, if not, shall ensure that the hardship decla-
52 ration is attached to such notice or summons. At the earliest possible
53 opportunity, the court shall seek confirmation on the record or in writ-
54 ing from the respondent or defendant that the respondent or defendant
55 has received the hardship declaration and that the respondent or defend-
56 ant has not submitted a hardship declaration to the petitioner or plain-

1 tiff, an agent of the petitioner or plaintiff, or the court. If the
2 court determines a respondent or defendant has not received a hardship
3 declaration, then the court shall stay the proceeding for a reasonable
4 period of time, which shall be no less than ten business days or any
5 longer period provided by law, and provide the respondent or defendant
6 with a copy of the hardship declaration in English and, to the extent
7 practicable, the language in which the commercial lease or tenancy
8 agreement was written or negotiated, if other than English, to ensure
9 the respondent or defendant received and fully considered whether to
10 submit the hardship declaration.

11 § 7. Pending proceedings. In any eviction proceeding in which an
12 eviction warrant or judgment of possession or ejectment has not been
13 issued, including eviction proceedings filed on or before March 7, 2020,
14 if the tenant provides a hardship declaration to the petitioner or
15 plaintiff, the court, or an agent of the petitioner or plaintiff or the
16 court, the eviction proceeding shall be stayed until at least May 1,
17 2021. If such hardship declaration is provided to the petitioner or
18 plaintiff or agent, such petitioner or plaintiff or agent shall promptly
19 file it with the court, advising the court in writing the index number
20 of all relevant cases.

21 § 8. Post warrant of eviction. a. (i) In any eviction proceeding in
22 which an eviction warrant or judgment of possession or ejectment has
23 been issued prior to the effective date of this act, but has not yet
24 been executed as of the effective date of this act, including eviction
25 proceedings filed on or before March 7, 2020, the court shall stay the
26 execution of the warrant or judgment at least until the court has held a
27 status conference with the parties. (ii) In any eviction proceeding, if
28 the tenant provides a hardship declaration to the petitioner or plain-
29 tiff, the court, or an agent of the petitioner or plaintiff or the
30 court, prior to the execution of the warrant or judgment, the execution
31 shall be stayed until at least May 1, 2021. If such hardship declaration
32 is provided to the petitioner or plaintiff or agent of the petitioner or
33 plaintiff, such petitioner or plaintiff or agent shall promptly file it
34 with the court, advising the court in writing the index number of all
35 relevant cases.

36 b. In any eviction proceeding in which a warrant or execution has been
37 issued, including eviction proceedings filed on or before March 7, 2020,
38 any warrant or execution issued shall not be effective as against the
39 occupants, unless, in addition to other requirements under law, such
40 warrant or execution states:

41 (i) The tenant has not submitted the hardship declaration and the
42 tenant was properly served with a copy of the hardship declaration
43 pursuant to this section, listing dates the tenant was served with the
44 hardship declaration by the petitioner or plaintiff and the court; or

45 (ii) The tenant is ineligible for a stay under this act because the
46 court has found that the tenant is persistently and unreasonably engag-
47 ing in behavior that substantially infringes on the use and enjoyment of
48 other tenants or occupants or causes a substantial safety hazard to
49 others, with a specific description of the behavior.

50 c. No court shall issue a warrant or execution directed to the sheriff
51 of the county or to any constable or marshal of the city in which the
52 property, or a portion thereof, is situated, or, if it is not situated
53 in a city, to any constable of any town in the county, that does not
54 comply with the requirements of this section.

d. No officer to whom the warrant or execution is directed shall execute a warrant for eviction issued that does not comply with the requirements of this section.

e. Unless the warrant or execution contains the information contained in paragraph (ii) of subdivision b of this section, if any tenant delivers the hardship declaration to the officer to whom the warrant or execution is directed, the officer shall not execute the warrant or execution and shall return the hardship form to the court indicating the appropriate index/case number the form is associated with.

§ 9. Sections three, four, five, seven and paragraph (ii) of subdivision a of section eight of this act shall not apply if the tenant is persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others, provided:

1. If an eviction proceeding is pending on the effective date of this act, but the petitioner or plaintiff has not previously alleged that the tenant persistently and unreasonably engaged in such behavior, the petitioner or plaintiff shall be required to submit a new petition or an amended complaint with such allegations and comply with all notice and service requirements under law.

2. If the court has awarded a judgment against a respondent or defendant prior to the effective date of this act on the basis of objectionable or nuisance behavior, the court shall hold a hearing to determine whether the tenant is continuing to persist in engaging in unreasonable behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

3. For the purposes of this act, a mere allegation of the behavior by the petitioner or plaintiff or an agent of the petitioner or plaintiff alleging such behavior shall not be sufficient evidence to establish that the tenant has engaged in such behavior.

4. If the petitioner or plaintiff fails to establish that the tenant persistently and unreasonably engaged in such behavior and the tenant provides or has provided a hardship declaration to the petitioner, petitioner's or plaintiff's agent or the court, the court shall stay or continue to stay any further proceedings until at least May 1, 2021.

5. If the petitioner or plaintiff establishes that the tenant persistently and unreasonably engaged in such behavior or the tenant fails to provide a hardship declaration to the petitioner or plaintiff, petitioner's or plaintiff's agent or the court, the proceeding may continue pursuant to law.

§ 10. Translation of hardship declaration. The office of court administration shall translate the hardship declaration, as defined in section one of this act, into Spanish and, to the extent practicable, the six most common languages in the city of New York, after Spanish, and shall post and maintain such translations and an English language copy of the hardship declaration on the website of such office beginning within fifteen days of the effective date of this act. To the extent practicable, the office of court administration shall post and maintain on its website translations into such additional languages as the chief administrative judge shall deem appropriate to ensure that tenants have an opportunity to understand and submit hardship declarations pursuant to this act.

§ 11. Rebuttable presumption. A hardship declaration shall create a rebuttable presumption that the tenant is experiencing financial hardship, in any judicial or administrative proceeding that may be brought, for the purposes of establishing a defense under an executive order of

1 the governor or any other local or state law, order or regulation
2 restricting the eviction of a tenant suffering from a financial hardship
3 during or due to COVID-19 provided that the absence of a hardship decla-
4 ration shall not create a presumption that a financial hardship is not
5 present.

6 § 12. If any clause, sentence, paragraph, section or part of this act
7 shall be adjudged by any court of competent jurisdiction to be invalid
8 and after exhaustion of all further judicial review, the judgment shall
9 not affect, impair or invalidate the remainder thereof, but shall be
10 confined in its operation to the clause, sentence, paragraph, section or
11 part of this act directly involved in the controversy in which the judg-
12 ment shall have been rendered.

13 § 13. This act shall take effect immediately and sections one, two,
14 three, four, five, six, seven, eight, nine, ten and twelve of this act
15 shall expire May 1, 2021.

16 PART B

17 Section 1. This Part enacts into law components of legislation relat-
18 ing to mortgage foreclosure, tax foreclosure, credit discrimination and
19 tax renewal exemption protections. Each component is wholly contained
20 within a Subpart identified as Subparts A through C. The effective date
21 for each particular provision contained within such Subpart is set forth
22 in the last section of such Subpart. Any provision in any section
23 contained within a Subpart, including the effective date of the Subpart,
24 which makes reference to a section "of this act", when used in
25 connection with that particular component, shall be deemed to mean and
26 refer to the corresponding section of the Subpart in which it is found.
27 Section three of this Part sets forth the general effective date of this
28 Part.

29 SUBPART A

30 Section 1. Application. This section shall apply to any action to
31 foreclose a mortgage relating to commercial real property, provided the
32 owner or mortgagor of such property owns ten or fewer commercial units
33 whether directly or indirectly and is a business that is resident in New
34 York State, independently owned and operated, not dominant in its field,
35 and employs fifty or fewer persons. The ten or fewer commercial units
36 may be in more than one property or building as long as the total aggre-
37 gate number of ten units are currently occupied by a tenant or are
38 available for rent.

39 Notwithstanding anything to the contrary, this act shall not apply to,
40 and does not affect any mortgage loans made, insured, purchased or secu-
41 ritized by a corporate governmental agency of the state constituted as a
42 political subdivision and public benefit corporation, or the rights and
43 obligations of any lender, issuer, servicer or trustee of such obli-
44 gations.

45 § 2. Definitions. For the purposes of this act, "Hardship Declaration"
46 means the following statement in 14-point type, published by the office
47 of court administration, whether in physical or electronic written form:

48 "NOTICE TO COMMERCIAL MORTGAGOR: If you have lost significant revenue
49 or had significantly increased necessary costs during the COVID-19
50 pandemic, and you sign and deliver this hardship declaration form to
51 your mortgage lender or other foreclosing party, you cannot be fore-
52 closed on until at least May 1, 2021.

1 If your mortgage lender or other foreclosing party provided you with
2 this form, the mortgage lender or other foreclosing party must also
3 provide you with a mailing address and e-mail address to which you can
4 return this form. If you are already in foreclosure proceedings, you may
5 return this form to the court. You should keep a copy or picture of the
6 signed form for your records. You will still owe any unpaid mortgage
7 payments and lawful fees to your lender. You should also keep careful
8 track of what you have paid and any amount you still owe.

9 COMMERCIAL MORTGAGOR'S DECLARATION OF COVID-19-RELATED HARDSHIP

10 I am the owner, chief executive officer, president, or similar officer
11 of (name of the business), which is the mortgagor of the property at
12 (address of commercial unit). My business owns, whether directly or
13 indirectly, ten or fewer commercial units. My business is resident in
14 New York State, independently owned and operated, not dominant in its
15 field, and employs fifty or fewer persons. My business is experiencing
16 financial hardship and is unable to pay the mortgage in full because of
17 one or more of the following:

18 1. Significant loss of revenue during the COVID-19 pandemic.
19 2. Significant increase in necessary expenses related to providing
20 personal protective equipment to employees or purchasing and installing
21 other protective equipment to prevent the transmission of COVID-19 with-
22 in the business.

23 3. Moving expenses and difficulty in securing an alternative commer-
24 cial property make it a hardship for the business to relocate to another
25 property during the COVID-19 pandemic.

26 4. One or more of the business's tenants has defaulted on a signif-
27 icant amount of their rent payments since March 1, 2020.

28 To the extent that the business has lost revenue or had increased
29 expenses, any public assistance the business has received since the
30 start of the COVID-19 pandemic does not fully make up for the business's
31 loss of revenue or increased expenses.

32 I understand that the business must comply with all other lawful terms
33 under my commercial mortgage agreement. I further understand that lawful
34 fees, penalties or interest for not having paid the mortgage in full as
35 required by the commercial mortgage agreement may still be charged or
36 collected and may result in a monetary judgment. I also understand that
37 the mortgage lender or other foreclosing party may pursue a foreclosure
38 action against the business on or after May 1, 2021, if I do not fully
39 repay any missed or partial payments and lawful fees.

40 Signed:

41 Printed Name:

42 Date Signed:

43 NOTICE: You are signing and submitting this form under penalty of law.
44 That means it is against the law to make a statement on this form that
45 you know is false."

46 § 3. Any action to foreclose a mortgage pending on the effective date
47 of this act, including actions filed on or before March 7, 2020, or
48 commenced within thirty days of the effective date of this act shall be
49 stayed for at least sixty days, or to such later date that the chief
50 administrative judge shall determine is necessary to ensure that courts
51 are prepared to conduct proceedings in compliance with this act and to
52 give mortgagors an opportunity to submit the hardship declaration pursu-
53 ant to this act. The court in each case shall promptly issue an order
54 directing such stay and promptly mail the mortgagor a copy of the hard-
55 ship declaration.

1 § 4. The foreclosing party shall include a "Hardship Declaration" with
2 every notice required provided to a mortgagor prior to filing an action
3 for foreclosure. Such notice shall also include a mailing address, tele-
4 phone number and active email address the mortgagor can use to contact
5 the foreclosing party and return the hardship declaration.

6 § 5. If a mortgagor provides a hardship declaration to the foreclosing
7 party or an agent of the foreclosing party, there shall be no initiation
8 of an action to foreclose a mortgage against the mortgagor until at
9 least May 1, 2021, and in such event any specific time limit for the
10 commencement of an action to foreclose a mortgage shall be tolled until
11 May 1, 2021.

12 § 6. No court shall accept for filing any action to foreclose a mort-
13 gage unless the foreclosing party or an agent of the foreclosing party
14 files an affidavit, under penalty of perjury:

15 (i) of service demonstrating the manner in which the foreclosing
16 party's agent served a copy of the hardship declaration with required
17 notices, if any, provided to the mortgagor, and

18 (ii) attesting that at the time of filing, neither the foreclosing
19 party nor any agent of the foreclosing party has received a hardship
20 declaration from the mortgagor.

21 At the earliest possible opportunity, the court shall seek confirma-
22 tion on the record or in writing that the mortgagor has received a copy
23 of the hardship declaration and that the mortgagor has not returned the
24 hardship declaration to the foreclosing party or an agent of the fore-
25 closing party. If the court determines a mortgagor has not received a
26 hardship declaration, then the court shall stay the proceeding for a
27 reasonable period of time, which shall be no less than ten business days
28 or any longer period provided by law, to ensure the mortgagor received
29 and fully considered whether to submit the hardship declaration.

30 § 7. In any action to foreclose a mortgage in which a judgment of sale
31 has not been issued, including actions filed on or before March 7, 2020,
32 if the mortgagor provides a hardship declaration to the foreclosing
33 party, the court, or an agent of the foreclosing party or the court, the
34 proceeding shall be stayed until at least May 1, 2021. If such hardship
35 declaration is provided to the foreclosing party or agent of the fore-
36 closing party, such foreclosing party or agent shall promptly file it
37 with the court, advising the court in writing the index number of all
38 relevant cases.

39 § 8. In any action to foreclose a mortgage in which a judgment of sale
40 has been issued prior to the effective date of this act but has not yet
41 been executed as of the effective date of this act, including actions
42 filed on or before March 7, 2020, the court shall stay the execution of
43 the judgment at least until the court has held a status conference with
44 the parties. In any action to foreclose a mortgage, if the mortgagor
45 provides a hardship declaration to the foreclosing party, the court, or
46 an agent of the foreclosing party or the court, prior to the execution
47 of the judgment, the execution shall be stayed until at least May 1,
48 2021. If such hardship declaration is provided to the foreclosing party
49 or agent of the foreclosing party, such foreclosing party or agent shall
50 promptly file it with the court, advising the court in writing the index
51 number of all relevant cases.

52 § 9. The office of court administration shall post and maintain a copy
53 of the hardship declaration on the website of such office beginning
54 within fifteen days of the effective date of this act.

55 § 10. A hardship declaration shall create a rebuttable presumption
56 that the mortgagor is suffering financial hardship, in any judicial or

1 administrative proceeding that may be brought, for the purposes of
2 establishing a defense under an executive order of the governor or any
3 other local or state law, order or regulation restricting actions to
4 foreclose a mortgage against a mortgagor suffering from a financial
5 hardship during or due to the COVID-19 pandemic provided that the
6 absence of a hardship declaration shall not create a presumption that a
7 financial hardship is not present.

8 § 11. If any clause, sentence, paragraph, section or part of this act
9 shall be adjudged by any court of competent jurisdiction to be invalid
10 and after exhaustion of all further judicial review, the judgment shall
11 not affect, impair or invalidate the remainder thereof, but shall be
12 confined in its operation to the clause, sentence, paragraph, section or
13 part of this act directly involved in the controversy in which the judg-
14 ment shall have been rendered.

15 § 12. This act shall take effect immediately and sections one, two,
16 three, four, five, six, seven, eight, nine and eleven of this act shall
17 expire May 1, 2021.

18 SUBPART B

19 Section 1. Application. This act shall apply to any action to fore-
20 close on delinquent taxes or sell a tax lien relating to commercial real
21 property, provided the owner or mortgagor of such property owns ten or
22 fewer commercial units whether directly or indirectly and is a business
23 that is resident in New York State, independently owned and operated,
24 not dominant in its field, and employs fifty or fewer persons. The ten
25 or fewer commercial units may be in more than one property or building
26 as long as the units are currently occupied by a tenant or are available
27 for rent.

28 § 2. Definitions. For purposes of this act: 1. "Tax lien" means an
29 unpaid tax, special ad valorem levy, special assessment or other charge
30 imposed upon real property by or on behalf of a municipal corporation or
31 special district or other public or private entity which is an encum-
32 brance on real property, whether or not evidenced by a written instru-
33 ment.

34 2. "Tax foreclosure and tax lien sale" shall mean any such tax lien
35 sale or tax foreclosure pursuant to article 11 of the real property tax
36 law, or any general, special or local law related to real property tax
37 lien sales or real property tax foreclosures.

38 3. "Hardship Declaration" means the following statement in 14-point
39 type, whether in physical or electronic written form:

40 "COMMERCIAL OWNER DECLARATION OF COVID-19-RELATED HARDSHIP
41 I am the owner, chief executive officer, president, or similar officer
42 of (name of the business), which is the owner of the commercial property
43 at (address). My business owns, whether directly or indirectly, ten or
44 fewer commercial units. My business is resident in New York State,
45 independently owned and operated, not dominant in its field, and employs
46 fifty or fewer persons. My business is experiencing financial hardship,
47 and is unable to pay its full tax bill because of one or more of the
48 following:

49 1. Significant loss of revenue during the COVID-19 pandemic.

50 2. Significant increase in necessary expenses related to providing
51 personal protective equipment to employees or purchasing and installing
52 other protective equipment to prevent the transmission of COVID-19 with-
53 in the business.

1 3. Moving expenses and difficulty in securing an alternative commer-
2 cial property make it a hardship for the business to relocate to another
3 property during the COVID-19 pandemic.

4 4. One or more of the business's tenants has defaulted on a signif-
5 icant amount of their rent payments since March 1, 2020.

6 To the extent that the business has lost revenue or had increased
7 expenses, any public assistance that the business has received since the
8 start of the COVID-19 pandemic does not fully make up for the loss of
9 revenue or increased expenses.

10 I understand that lawful fees, penalties or interest for not having
11 paid the business's taxes in full may still be charged or collected and
12 may result in a foreclosure action against the business on or after May
13 1, 2021, if the business does not fully repay any missed or partial
14 payments and fees.

15 Signed:

16 Printed Name:

17 Date Signed:

18 NOTICE: You are signing and submitting this form under penalty of law.
19 That means it is against the law to make a statement on this form that
20 you know is false."

21 § 3. 1. A commercial real property owner may submit a "Hardship Decla-
22 ration" to any village, town, city, school district, county, or other
23 entity or person which conducts tax foreclosures or tax lien sales.

24 2. At least thirty days prior to the date on which a sale of a tax
25 lien is scheduled to occur, or upon the filing of a petition of foreclo-
26 sure of a tax lien, the enforcing officer or other person or entity
27 conducting such tax lien sale or tax foreclosure shall notify the owner
28 of the affected property of such owner's rights under this act and shall
29 notify the owner that a copy of the hardship declaration can be accessed
30 on the New York State Department of Tax and Finance's website and also
31 provide a link to such declaration form. For the purposes of this act,
32 "enforcing officer" shall have the same meaning as defined in subdivi-
33 sion 3 of section 1102 of the real property tax law. The New York State
34 Department of Tax and Finance shall publish a copy of the hardship
35 declaration on its website.

36 3. The submission of such a declaration, unless withdrawn by the
37 owner, shall act as a temporary stay applicable to all entities and
38 persons of all such tax lien sales and tax foreclosure actions and
39 proceedings against such owner for such property that have been
40 commenced or could have been commenced before May 1, 2021.

41 4. While such stay is in effect, no other action or proceeding shall
42 be commenced to recover any part of such delinquent taxes.

43 5. Any applicable statutes of limitation for the commencement of any
44 action or proceeding to sell a tax lien or foreclose a tax lien is
45 tolled until such stay has expired. The obligation to pay the balance of
46 such delinquent taxes is not rendered invalid, released or extinguished
47 by such stay.

48 6. A hardship declaration shall create a rebuttable presumption that
49 the owner is experiencing financial hardship, in any judicial or admin-
50 istrative proceeding that may be brought, for the purposes of establish-
51 ing a defense under an executive order of the governor or any other
52 local or state law, order or regulation restricting actions to sell a
53 tax lien or foreclose a tax lien against an owner suffering from a
54 financial hardship during or due to the COVID-19 pandemic, provided
55 that the absence of a hardship declaration shall not create a presump-
56 tion that a financial hardship is not present.

1 § 4. This act shall take effect immediately and sections one and two
2 and subdivisions one, two, three, four and five of section three shall
3 expire May 1, 2021.

4 SUBPART C

5 Section 1. Application. 1. This act shall apply to an owner of commer-
6 cial real property, provided the owner or mortgagor of such property
7 owns ten or fewer commercial units whether directly or indirectly and is
8 a business that is resident in New York State, independently owned and
9 operated, not dominant in its field, and employs fifty or fewer persons.
10 The ten or fewer commercial units may be in more than one property or
11 building as long as the total aggregate number of ten units are current-
12 ly occupied by a tenant or are available for rent.

13 2. Hardship declaration. For purposes of this act, "hardship declara-
14 tion" shall mean the following statement in 14-point type, whether in
15 physical or electronic written form, and the department of financial
16 services shall publish a copy of the hardship declaration on its
17 website:

18 "NOTICE TO COMMERCIAL OWNER/MORTGAGOR: If you have lost significant
19 revenue or had significantly increased necessary costs due to the
20 COVID-19 pandemic, and you sign and deliver this hardship declaration
21 form to your lending institution, you cannot be discriminated against in
22 the determination of whether credit should be extended or reported nega-
23 tively to a credit reporting agency until at least May 1, 2021.

24 If a lending institution provided you with this form, the lending
25 institution must also provide you with a mailing address and e-mail
26 address to which you can return this form. You should keep a copy or
27 picture of the signed form for your records.

28 COMMERCIAL OWNER/MORTGAGOR DECLARATION OF COVID-19-RELATED HARDSHIP

29 I am the owner, chief executive officer, president, or similar officer
30 of (name of the business), which is the OWNER/MORTGAGOR of the property
31 at (address of commercial unit). My business owns, whether directly or
32 indirectly, ten or fewer commercial units. My business is resident in
33 New York State, independently owned and operated, not dominant in its
34 field, and employs fifty or fewer persons. My business is experiencing
35 financial hardship, and is unable to pay the mortgage in full because of
36 one or more of the following:

37 1. Significant loss of revenue during the COVID-19 pandemic.

38 2. Significant increase in necessary out-of-pocket expenses related to
39 providing personal protective equipment to employees or purchasing and
40 installing other protective equipment to prevent the transmission of
41 COVID-19 within the business.

42 3. Moving expenses and difficulty in securing an alternative commer-
43 cial property make it a hardship for the business to relocate to another
44 commercial property during the COVID-19 pandemic.

45 4. One or more of my tenants has defaulted on a significant amount of
46 their rent payments since March 1, 2020.

47 To the extent that the business has lost revenue or had increased
48 expenses, any public assistance that the business has received since the
49 start of the COVID-19 pandemic does not fully make up for the loss of
50 revenue or increased expenses.

51 Signed:

52 Printed Name:

53 Date Signed:

1 NOTICE: You are signing and submitting this form under penalty of law.
2 That means it is against the law to make a statement on this form that
3 you know is false."

4 3. Discrimination in credit decisions. Notwithstanding any law to the
5 contrary, lending institutions shall not discriminate in the determi-
6 nation of whether credit should be extended to any owner of commercial
7 real property as defined in subdivision one of this section because, as
8 provided for in this act, such owner has been granted a stay of mortgage
9 foreclosure proceedings, tax foreclosure proceedings or of tax lien
10 sales, or that an owner of commercial real property as defined in subdivi-
11 sion one of this section is currently in arrears and has filed a hard-
12 ship declaration with such lender.

13 4. Prohibition on negative credit reporting. Notwithstanding any law
14 to the contrary, as provided for in this act, the granting of a stay of
15 mortgage foreclosure proceedings, tax foreclosure proceedings or tax
16 lien sales, or that an owner of commercial real property as defined in
17 subdivision one of this section is currently in arrears and has filed a
18 hardship declaration with their lender shall not be negatively reported
19 to any credit reporting agency.

20 § 2. This act take effect immediately and shall expire May 1, 2021.

21 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
22 sion, section, item, subpart or part of this act shall be adjudged by
23 any court of competent jurisdiction to be invalid, such judgment shall
24 not affect, impair, or invalidate the remainder thereof, but shall be
25 confined in its operation to the clause, sentence, paragraph, subdivi-
26 sion, section, item, subpart or part thereof directly involved in the
27 controversy in which such judgment shall have been rendered. It is here-
28 by declared to be the intent of the legislature that this act would have
29 been enacted even if such invalid provisions had not been included here-
30 in.

31 § 3. This act shall take effect immediately provided, however, that
32 the applicable effective date of Subparts A through C of this act shall
33 be as specifically set forth in the last section of such Subparts.

34 § 4. Severability clause. If any clause, sentence, paragraph, subdivi-
35 sion, section or part of this act shall be adjudged by any court of
36 competent jurisdiction to be invalid, such judgment shall not affect,
37 impair, or invalidate the remainder thereof, but shall be confined in
38 its operation to the clause, sentence, paragraph, subdivision, section
39 or part thereof directly involved in the controversy in which such judg-
40 ment shall have been rendered. It is hereby declared to be the intent of
41 the legislature that this act would have been enacted even if such
42 invalid provisions had not been included herein.

43 § 5. This act shall take effect immediately provided, however, that
44 the applicable effective date of Parts A through B of this act shall be
45 as specifically set forth in the last section of such Parts.