

STATE OF NEW YORK

5742

2021-2022 Regular Sessions

IN SENATE

March 17, 2021

Introduced by Sen. KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend a chapter of the laws of 2021 relating to establishing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021", in relation to providing for certain commercial small businesses to be eligible for relief under the "COVID-19 Emergency Protect Our Small Businesses Act of 2021"

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

1 Section 1. Section 3 of a chapter of the laws of 2021 relating to
2 establishing the "COVID-19 Emergency Protect Our Small Businesses Act of
3 2021", as proposed in legislative bills numbers S. 471-A and A. 3207, is
4 amended to read as follows:

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

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

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

20 Ensuring small businesses and commercial property owners can survive
21 in this unprecedented time is to the mutual benefit of all New Yorkers
22 and will help the state address the pandemic, protect public health, and

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

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1 set the stage for recovery. It is, therefore, the intent of this legis-
2 lation to avoid as many evictions and foreclosures of small businesses
3 as possible for businesses experiencing a financial hardship during the
4 COVID-19 pandemic.

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

10 § 2. Section 1 of part A of a chapter of the laws of 2021 relating to
11 establishing the "COVID-19 Emergency Protect Our Small Businesses Act of
12 2021", as proposed in legislative bills numbers S. 471-A and A. 3207, is
13 amended to read as follows:

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

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

25 3. "Tenant" includes a commercial tenant that is a resident of the
26 state, independently owned and operated, not dominant in its field and
27 either employs ~~[fifty]~~ one hundred or fewer persons, or, the commercial
28 tenant's business was closed to in-person operations by executive order
29 or department of health directive for two or more weeks between May 15,
30 2020 and May 1, 2021, and employs five hundred or fewer persons.

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

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

45 If your landlord has provided you with this form, your landlord must
46 also provide you with a mailing address and e-mail address to which you
47 can return this form. If your landlord has already started an eviction
48 proceeding against you, you can return this form to either your land-
49 lord, the court, or both at any time. You should keep a copy or picture
50 of the signed form for your records. You will still owe any unpaid rent
51 to your landlord. ~~[You should also]~~ To the extent you can pay less than
52 the full rent, it is recommended you do so and keep careful track of
53 what you have paid and any amount you still owe.

I am the owner, chief executive officer, president, or similar officer of (name of business), in which is a commercial tenant at (address of commercial unit). My business is resident in New York state, independently owned and operated, not dominant in its field, and either employs [~~fifty~~] one hundred or fewer persons, or, the commercial business was closed to in-person operations by executive order or department of health directive for two or more weeks between May 15, 2020 and May 1, 2021, and employs five hundred or fewer persons. My business is experiencing financial hardship, and is unable to pay the rent in full or other financial obligations under the lease in full or obtain an alternative suitable commercial property because of one or more of the following:

1. Significant loss of revenue during the COVID-19 pandemic.
2. Significant increase in necessary expenses related to providing personal protective equipment to employees or purchasing and installing other protective equipment to prevent the transmission of COVID-19 within the business.
3. Moving expenses and difficulty in securing an alternative commercial property make it a hardship for the business to relocate to another location during the COVID-19 pandemic.

To the extent the business has lost revenue or had increased expenses, any public assistance the business has received since the start of the COVID-19 pandemic [~~does~~] must not fully make up for the business's loss of revenue or increased expenses, and the business still meets the aforementioned eligibility criteria to qualify for a financial hardship.

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

Signed:

Printed name:

Date signed:

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

§ 3. Sections 1 and 2 of subpart A of part B of a chapter of the laws of 2021 relating to establishing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021", as proposed in legislative bills numbers S. 471-A and A. 3207, are amended to read as follows:

Section 1. Application. This section shall apply to any action to foreclose a mortgage relating to commercial real property, provided the owner or mortgagor of such property owns ten or fewer commercial units whether directly or indirectly and is a business that is resident in New York State, independently owned and operated, not dominant in its field, and either employs [~~fifty~~] one hundred or fewer persons, or, the commercial tenant's business was closed to in-person operations by executive order or department of health directive for two or more weeks between May 15, 2020 and May 1, 2021, and employs five hundred or fewer persons.

1 The ten or fewer commercial units may be in more than one property or
2 building as long as the total aggregate number of ten units are current-
3 ly occupied by a tenant or are available for rent.

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

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

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

18 If your mortgage lender or other foreclosing party provided you with
19 this form, the mortgage lender or other foreclosing party must also
20 provide you with a mailing address and e-mail address to which you can
21 return this form. If you are already in foreclosure proceedings, you may
22 return this form to the court. You should keep a copy or picture of the
23 signed form for your records. You will still owe any unpaid mortgage
24 payments and lawful fees to your lender. You should also keep careful
25 track of what you have paid and any amount you still owe.

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

27 I am the owner, chief executive officer, president, or similar officer
28 of (name of the business), which is the mortgagor of the property at
29 (address of commercial unit). My business owns, whether directly or
30 indirectly, ten or fewer commercial units. My business is resident in
31 New York State, independently owned and operated, not dominant in its
32 field, and either employs [fifty] one hundred or fewer persons, or, the
33 commercial business was closed to in-person operations by executive
34 order or department of health directive for two or more weeks between
35 May 15, 2020, and May 1, 2021, and employs five hundred or fewer
36 persons. My business is experiencing financial hardship and is unable to
37 pay the mortgage in full because of one or more of the following:

38 1. Significant loss of revenue during the COVID-19 pandemic.
39 2. Significant increase in necessary expenses related to providing
40 personal protective equipment to employees or purchasing and installing
41 other protective equipment to prevent the transmission of COVID-19 with-
42 in the business.

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

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

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

52 I understand that the business must comply with all other lawful terms
53 under my commercial mortgage agreement. I further understand that lawful
54 fees, penalties or interest for not having paid the mortgage in full as
55 required by the commercial mortgage agreement may still be charged or
56 collected and may result in a monetary judgment. I also understand that

1 the mortgage lender or other foreclosing party may pursue a foreclosure
2 action against the business on or after May 1, 2021, if I do not fully
3 repay any missed or partial payments and lawful fees.

4 Signed:

5 Printed Name:

6 Date Signed:

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

10 § 4. Sections 1 and 2 of subpart B of part B of a chapter of the laws
11 of 2021 relating to establishing the "COVID-19 Emergency Protect Our
12 Small Businesses Act of 2021", as proposed in legislative bills numbers
13 S. 471-A and A. 3207, are amended to read as follows:

14 Section 1. Application. This act shall apply to any action to fore-
15 close on delinquent taxes or sell a tax lien relating to commercial real
16 property, provided the owner or mortgagor of such property owns ten or
17 fewer commercial units whether directly or indirectly and is a business
18 that is resident in New York State, independently owned and operated,
19 not dominant in its field, and either employs [fifty] one hundred or
20 fewer persons, or, the commercial business was closed to in-person oper-
21 ations by executive order or department of health directive for two or
22 more weeks between May 15, 2020 and May 1, 2021, and employs five
23 hundred or fewer persons. The ten or fewer commercial units may be in
24 more than one property or building as long as the units are currently
25 occupied by a tenant or are available for rent.

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

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

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

38 "COMMERCIAL OWNER DECLARATION OF COVID-19-RELATED HARDSHIP

39 I am the owner, chief executive officer, president, or similar officer
40 of (name of the business), which is the owner of the commercial property
41 at (address). My business owns, whether directly or indirectly, ten or
42 fewer commercial units. My business is resident in New York State,
43 independently owned and operated, not dominant in its field, and either
44 employs [fifty] one hundred or fewer persons, or, the commercial busi-
45 ness was closed to in-person operations by executive order or department
46 of health directive for two or more weeks between May 15, 2020 and May
47 1, 2021, and employs five hundred or fewer persons. My business is expe-
48 riencing financial hardship, and is unable to pay its full tax bill
49 because of one or more of the following:

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

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

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

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

To the extent that the business has lost revenue or had increased expenses, any public assistance that the business has received since the start of the COVID-19 pandemic ~~[does]~~ must not fully make up for the loss of revenue or increased expenses, and the business still meets the aforementioned eligibility criteria to qualify for a financial hardship.

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

Signed:

Printed Name:

Date Signed:

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

§ 5. Section 1 of subpart C of part B of a chapter of the laws of 2021 relating to establishing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021", as proposed in legislative bills numbers S. 471-A and A. 3207, is amended to read as follows:

Section 1. Application. 1. This act shall apply to an owner of commercial real property, provided the owner or mortgagor of such property owns ten or fewer commercial units whether directly or indirectly and is a business that is resident in New York State, independently owned and operated, not dominant in its field, and either employs ~~[fifty]~~ one hundred or fewer persons, or, the commercial business was closed to in-person operations by executive order or department of health directive for two or more weeks between May 15, 2020 and May 1, 2021, and employs five hundred or fewer persons. The ten or fewer commercial units may be in more than one property or building as long as the total aggregate number of ten units are currently occupied by a tenant or are available for rent.

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

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

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

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

I am the owner, chief executive officer, president, or similar officer of (name of the business), which is the OWNER/MORTGAGOR of the property at (address of commercial unit). My business owns, whether directly or

1 indirectly, ten or fewer commercial units. My business is resident in
2 New York State, independently owned and operated, not dominant in its
3 field, and either employs [~~fifty~~] one hundred or fewer persons, or, the
4 commercial business was closed to in-person operations by executive
5 order or department of health directive for two or more weeks between
6 May 15, 2020 and May 1, 2021, and employs five hundred or fewer persons.

7 My business is experiencing financial hardship, and is unable to pay the
8 mortgage in full because of one or more of the following:

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

10 2. Significant increase in necessary out-of-pocket expenses related to
11 providing personal protective equipment to employees or purchasing and
12 installing other protective equipment to prevent the transmission of
13 COVID-19 within the business.

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

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

19 To the extent that the business has lost revenue or had increased
20 expenses, any public assistance that the business has received since the
21 start of the COVID-19 pandemic [~~does~~] must not fully make up for the
22 loss of revenue or increased expenses, and the business still meets the
23 forementioned eligibility criteria to qualify for a financial hardship.

24 Signed:

25 Printed Name:

26 Date Signed:

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

30 3. Discrimination in credit decisions. Notwithstanding any law to the
31 contrary, lending institutions shall not discriminate in the determi-
32 nation of whether credit should be extended to any owner of commercial
33 real property as defined in subdivision one of this section because, as
34 provided for in this act, such owner has been granted a stay of mortgage
35 foreclosure proceedings, tax foreclosure proceedings or of tax lien
36 sales, or that an owner of commercial real property as defined in subdi-
37 vision one of this section is currently in arrears and has filed a hard-
38 ship declaration with such lender.

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

46 § 6. This act shall take effect on the same date and in the same
47 manner as a chapter of the laws of 2021, relating to establishing the
48 "COVID-19 Emergency Protect Our Small Businesses Act of 2021", as
49 proposed in legislative bills numbers S. 471-A and A. 3207, takes
50 effect; provided that the amendments to section 1 of part A, sections 1
51 and 2 of subpart A of part B, sections 1 and 2 of subpart B of part B,
52 and section 1 of subpart C of part B of a chapter of the laws of 2021,
53 relating to establishing the "COVID-19 Emergency Protect Our Small
54 Businesses Act of 2021", as proposed in legislative bills numbers
55 S. 471-A and A. 3207, made by sections two, three, four and five of

1 this act, respectively, shall not affect the expiration of such sections
2 and shall be deemed expired therewith.