

STATE OF NEW YORK

8675

IN SENATE

May 10, 2018

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

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

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

1 Section 1. Legislative findings and intent. The legislature finds and
2 declares that the practice known as "predatory equity" is furthering the
3 state's affordable housing crisis. Predatory equity is a model that is
4 known to be exceptionally destructive of existing affordable housing,
5 and is commonly understood to be defined by one or both of the follow-
6 ing: (a) a speculative sale in which the landlord purchases naturally-
7 occurring affordable rental housing with the explicit or implicit under-
8 standing that low- and moderate-rent paying tenants will be encouraged
9 or actively pushed to move out of the building at a rate that does not
10 reflect normal tenant turnover, with the goal of the landlord to take
11 advantage of the vacancies in order to use loopholes in the rent regu-
12 lation laws to dramatically increase the building's rent roll; and/or
13 (b) a financing source used by a landlord to fund the acquisition debt
14 or the acquisition equity in which the financing source expects a rate
15 of return that is significantly in excess of the profit that would be
16 generated by a building operating within the rent law's historic norms,
17 and in which case the landlord is encouraged to resort to tactics that
18 aggressively undermine the building's affordability in order to meet the
19 demands of the financing source.

20 The legislature further finds that it is necessary to scrutinize the
21 role of the lenders involved in predatory equity, in order to determine
22 appropriate accountability for the financial institutions involved.
23 Affordable housing is critically important to the wellbeing of middle
24 and low-income New Yorkers as well as the state as a whole. It is incum-
25 bent upon the state to take remedial action to resolve the affordability
26 crisis and ensure that lenders are acting in the best interest of the

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

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1 local community by preserving long-term affordability and stability
2 through their multi-family lending.

3 § 2. 1. For the purposes of this act, "financial institutions" means a
4 bank, trust company, savings institution, credit union, or any other
5 entity authorized to originate and service loans.

6 2. The department of financial services is hereby authorized and
7 directed to prepare or have prepared a study to review the process in
8 which financial institutions provide loans to landlords acquiring or
9 refinancing property that includes rent-regulated tenants. Such study
10 shall examine:

11 (a) whether and how financial institutions are considering the follow-
12 ing factors when reviewing a landlord's loan application:

13 (i) debt service coverage ratio;

14 (ii) capitalization rate;

15 (iii) gross rent multiplier;

16 (iv) loan to value; and

17 (v) net operating income, including income and expenses;

18 (b) whether and how financial institutions are including the following
19 factors in their underwriting calculations of debt:

20 (i) sources of income, including residential rent, commercial rent and
21 maintenance from cooperative apartment owners;

22 (ii) current rent charged or rent expected to be charged in the
23 future;

24 (iii) the number and size of units in a building and whether such
25 units are used for residential, commercial or another use;

26 (iv) whether any preferential rent is charged and any projections to
27 terminate such preferential rent in the future;

28 (v) the number of vacant units in a property, including whether such
29 units are classified as market rate, deregulated or rent-regulated and
30 how many vacant units are used for commercial or another non-residential
31 use;

32 (vi) whether individual apartment improvements will be performed on
33 any vacant units;

34 (vii) the number of rent-regulated units at the time of loan origi-
35 nation;

36 (viii) any projected construction or major capital improvements; and

37 (ix) projections of any turnover in rent-regulated apartments.

38 (c) whether financial institutions are appropriately considering only
39 currently established rents and realistic maintenance costs when deter-
40 mining the net operating costs for the property such that they are
41 acting in the best interest of the long-term affordability and stability
42 of the local community;

43 (d) whether financial institutions are appropriately examining the
44 types of capital improvements included in the landlord's plans for the
45 property;

46 (e) whether financial institutions are using realistic appraisal
47 values and appropriately doing so;

48 (f) whether financial institutions are ascertaining whether the land-
49 lord or property manager is taking on more debt than the property can
50 support;

51 (g) whether financial institutions are considering a landlord's addi-
52 tional private equity including the source of such equity and the
53 expected rate of return;

54 (h) whether financial institutions are considering a landlord's addi-
55 tional debt on the building or buildings including debt from other lend-

1 ers and whether financial institutions are considering any other
2 outstanding debt a landlord has outside of the loan applied for;

3 (i)(i) how financial institutions are evaluating the records of land-
4 lords and property managers and whether such financial institutions are
5 utilizing multiple sources and considering factors including, but not
6 limited to liens and violations against the property managers and land-
7 lords, as well as any prior indication by not-for-profits or govern-
8 mental organizations that such landlords or property managers have ever
9 engaged in the practices associated with "predatory equity" including,
10 but not limited to hazardous conditions and tenant harassment; and

11 (ii) whether financial institutions have an explicit plan to protect
12 tenants if they choose to lend to a landlord that has engaged in any of
13 the practices reviewed in subparagraph (i) of this paragraph;

14 (j) whether financial institutions intend to have individuals
15 personally visit the buildings and correspond with the tenants to
16 address their needs;

17 (k) whether financial institutions hold information sessions with
18 tenant advocacy groups and organizers;

19 (l) whether financial institutions review the number of rent-regulated
20 units in a building two years prior to and two years after a loan
21 disbursement;

22 (m) whether financial institutions have any established standards and
23 practices when loaning to a landlord or property manager and if such
24 practices are at least as rigorous as those that apply to one to four
25 family mortgages; and

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

28 § 3. The superintendent of financial services, in consultation with
29 appropriate staff, is authorized to draft and issue a request for
30 proposal (RFP) to an outside firm or entity in order to conduct the
31 study.

32 § 4. The department of financial services is authorized to charge
33 financial institutions, collectively, for the costs of conducting the
34 study up to \$350,000.

35 § 5. No later than eighteen months after the effective date of this
36 act, the department of financial services shall report to the legisla-
37 ture and the governor on the findings of the study conducted pursuant to
38 section two of this act including on the scope, nature and frequency of
39 involvement in predatory equity throughout the financial industry and
40 any legislative recommendations deemed to be necessary.

41 § 6. This act shall take effect immediately.