STATE OF NEW YORK

10544

IN ASSEMBLY

May 29, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Bichotte) -- read once and referred to the Committee on Banks

AN ACT to amend the banking law, in relation to the forbearance for commercial retail space property mortgage payments

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

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

§ 9-x. Commercial retail space property mortgage forbearance. 1. As used in this section, the following terms shall have the following meanings:

(a) "Covered period" means March seventh, two thousand twenty until the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in Executive Orders 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14, as extended by Executive Orders 202.28 and 202.31 and as further extended by any future Executive Order, issued in response to the COVID-19 pandemic continue to apply in the county in which the qualified mortgagor's business property is located;

(b) "qualified mortgagor" means a small business as defined in section one hundred thirty-one of the economic development law that is organized under New York law and owns a commercial retail space principal place of business in the state of New York that is encumbered by a mortgage loan and serviced by a regulated institution;

(c) "regulated institution" means any New York regulated banking organization as defined in this chapter and any New York regulated mortgage servicer entity subject to supervision by the department; and

(d) "trial period plan" means an agreement whereby the mortgagor is required to make trial payments in full and on-time in order to be considered for a permanent loan modification.

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

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

LBD16532-02-0

(a) make applications for forbearance of any payment due on a mortgage of a commercial retail space property located in New York widely available to any qualified mortgagor who, during the covered period, is in arrears or on a trial period plan, or who has applied for loss mitigation and demonstrates financial hardship during the covered period; and

(b) grant such forbearance for a period of one hundred eighty days to any such qualified mortgagor who is in arrears or on a trial period plan, or who has applied for loss mitigation and demonstrates financial hardship, with the option to extend an additional one hundred eighty days.

(c) Such forbearance may be backdated to March seventh, two thousand twenty.

3. Notwithstanding any other provision of law, any mortgage forbearance granted by a regulated institution pursuant to executive order number 202.9 of two thousand twenty, this section, or any other law, rule or regulation to the qualified mortgagor as a result of financial hardship during the covered period shall be subject to the following provisions:

(a) the mortgagor shall have the option to extend the term of the loan for the length of the period of forbearance. The regulated institution shall waive interest on the principal for the term of the forbearance and waive any late fees accumulated as a result of the forbearance; or

(b) the mortgagor shall have the option to have the arrears accumulated during the forbearance period payable on a monthly basis for the remaining term of the loan without being subject to penalties or late fees incurred as a result of the forbearance; or

(c) if the mortgagor is unable to make mortgage payments due to mortgagors' demonstrated hardship and the mortgagor and regulated institution cannot agree on a mutually acceptable loan modification, the mortgagor shall have the option to defer arrears accumulated during the forbearance period as a non-interest bearing balloon payment payable at the maturity of the loan consistent with the safety and soundness of such regulated institution, or at the time the loan is satisfied through a refinance or sale of the property. Any late fees accumulated as a result of the forbearance shall be waived.

(d) The exercising of options provided for in paragraph (a), (b) or (c) of this subdivision by a qualified mortgagor shall not be reported negatively to any credit bureau by any regulated institution.

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

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

§ 2. This act shall take effect immediately.