STATE OF NEW YORK

3275

2019-2020 Regular Sessions

IN ASSEMBLY

January 29, 2019

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Banks

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

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

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

Increasingly, speculative behavior is also being linked to the displacement of commercial tenants, mostly small businesses, who are being pushed out of mixed-use residential buildings and others in stand-alone commercial buildings. The legislature further finds that it is

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

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necessary to scrutinize the role of the lenders involved in predatory equity, in order to determine appropriate accountability for the financial institutions involved. Affordable housing is critically important to the wellbeing of middle and low-income New Yorkers as well as the state as a whole. It is incumbent upon the state to take remedial action to resolve the affordability crisis and ensure that lenders are acting in the best interest of the local community by preserving long-term affordability and stability through their lending.

§ 2. 1. For the purposes of this act:

(a) "financial institutions" means a commercial bank, trust company, savings institution, credit union, or any other entity authorized to originate and service loans; and

(b) "small business" means a business that has revenues of one million or less, or meets the definition of a small business as defined by the United States Small Business Administration (SBA).

2. The department of financial services is hereby authorized and directed to prepare or have prepared a study to review the process in which financial institutions provide loans to landlords acquiring or refinancing property that includes rent-regulated and/or small business tenants. Such study shall examine and report upon trends, both in the aggregate, and disaggregated by type of lender, range of building sizes, and any other criteria that would show trends in predatory equity and shall include:

(a) whether and how financial institutions are considering the following factors when reviewing a landlord's loan application:

(i) debt service coverage ratio;

(ii) capitalization rate;

(iii) gross rent multiplier;

(iv) loan to value; and

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

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

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

(ii) current rent charged and projected rent increases to be charged in the future;

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

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

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

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

(vii) the number of rent-regulated units at the time of loan origination and how the financial institution verifies those numbers with the division of housing and community renewal;

(viii) any projected construction or major capital improvements;

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

(x) number of buildings financed in the loans;

(xi) any reserve funds for buyouts;

(xii) any regulatory agreements on the building and explanation of such agreements; and

(xiii) any government operating or capital subsidies and explanation of such subsidies.

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

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

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

(f) whether financial institutions are ascertaining whether the landlord or property manager is taking on more debt than the property can support;

(g) whether financial institutions are considering a landlord's additional private equity including the source of such equity and the expected rate of return;

(h) whether financial institutions are considering a landlord's additional debt on the building or buildings including debt from other lenders and whether financial institutions are considering any other outstanding debt a landlord has outside of the loan applied for;

(i) whether financial institutions are considering a landlord's other investments and what research is completed during such consideration;

(j)(i) how financial institutions are evaluating the records of landlords and property managers and whether such financial institutions are utilizing multiple sources and considering factors including, but not limited to liens and violations against the property managers and landlords, media reports, investigations by governmental agencies, and findings that the landlord engaged in tenant or commercial harassment, as well as any prior indication by not-for-profits or governmental organizations that such landlords or property managers have ever engaged in the practices associated with "predatory equity" including, but not limited to hazardous conditions and tenant harassment; and

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

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

(l) whether financial institutions hold information sessions with and/or conduct outreach regularly to tenant advocacy groups, small business advocacy groups and organizers;

(m) whether and how financial institutions monitor the number of rent-regulated units in a building prior to and after a loan disbursement;

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

(o) whether financial institutions take any measures to ensure loans are not used for buyouts;

(p) whether mortgages include clauses that require a certain debt service coverage ratio or debt yield which are predicated on rent increases or tenant turnover; and

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

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

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

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

§ 6. This act shall take effect immediately.