

STATE OF NEW YORK

8454--A

IN SENATE

June 3, 2020

Introduced by Sens. KAVANAGH, KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, in relation to authorizing commercial mortgage forbearance during the COVID-19 pandemic

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

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

3 § 9-y. Mortgage forbearance. 1. As used in this section, the following
4 terms shall have the following meanings:

5 (a) "covered period" means March seventh, two thousand twenty until
6 the date on which none of the provisions that closed or otherwise
7 restricted public or private businesses or places of public accommo-
8 dation, or required postponement or cancellation of all non-essential
9 gatherings of individuals of any size for any reason in executive order
10 numbers 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13
11 or 202.14 of two thousand twenty, as extended by executive order numbers
12 202.28 and 202.31 and as further extended by any future executive order,
13 issued in response to the COVID-19 pandemic continue to apply in the
14 county in which the property encumbered by the mortgage in question is
15 located; and

16 (b) "regulated institution" means any New York regulated banking
17 organization as defined under this chapter and any New York regulated
18 mortgage servicer entity subject to the authority of the department.

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

21 (a) make applications for forbearance of any payment due on a commer-
22 cial mortgage of a property located in New York widely available to any
23 qualified commercial mortgagor including those who are already in
24 arrears or on a trial period plan or who have applied for loss miti-
25 gation and who demonstrate financial hardship during the covered period;
26 and

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

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1 (b) grant such forbearance for a period of one hundred twenty days to
2 any such qualified commercial mortgagor, subject to the safety and
3 soundness requirements of the regulated institution.

4 (c) such forbearance may be backdated to March seventh, two thousand
5 twenty.

6 3. Notwithstanding any other provision of law, any mortgage forbear-
7 ance granted by a regulated institution pursuant to this section, or any
8 other law, rule or regulation, to the qualified commercial mortgagor as
9 a result of financial hardship during the covered period shall be
10 subject to the following provisions:

11 (a) the regulated institution shall defer arrears accumulated during
12 the forbearance period as a non-interest bearing balloon payment payable
13 twelve months after the end of the forbearance period and shall waive
14 any late fees accumulated as a result of the forbearance; and

15 (b) the total value of the deferred mortgage payment shall be appor-
16 tioned each month to each tenant according to the percentage of the
17 total rents due that their rental obligation represents on the mortgaged
18 property in receipt of the forbearance. Each commercial tenant shall
19 have their pro rata share of the forborne mortgage payment be deferred
20 each month for the duration of the forbearance period. Such deferred
21 rent shall be due within twelve months after the end of the forbearance
22 period, and shall not accumulate interest or be subject to late fees;
23 and

24 (c) no eviction proceedings may be commenced or continued against any
25 residential or commercial tenant for nonpayment of rents that came due
26 during the forbearance period.

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

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

41 § 2. This act shall take effect immediately.