STATE OF NEW YORK

8744

IN SENATE

July 13, 2020

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

AN ACT to amend the banking law, in relation to mortgage repayment forbearance

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-y to read as follows:

§ 9-y. Mortgage repayment forbearance; residential or commercial investment properties. 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 of the qualified mortgagor's residence;

(b) "qualified mortgagor" means an individual (i) who resides in New York and who owns a residential or commercial investment property encumbered by a home loan as defined by subdivision six of section thirteen hundred four of the real property actions and proceedings law, or by any other mortgage loan, from or serviced by a regulated institution, on such residential or commercial property held for investment; (ii) whose residential or commercial investment property contains one to four separate units; (iii) who receives at least thirty percent of his or her income from rent received from such residential or commercial investment property; and (iv) who demonstrates financial hardship as a result of COVID-19 during the covered period;

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

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(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 qualified mortgagor is required to make trial payments in full and on-time in order to be considered for a permanent loan repayment modification.

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

(a) make applications for forbearance of any payment due on a mortgage on a residential or commercial property held for investment 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

(b) grant such forbearance of all monthly payments due with respect to the mortgage secured by the qualified mortgagor's residential or commercial investment property in New York for a period of up to one hundred eighty days to any such qualified mortgagor, with the option to extend the forbearance of such monthly payments for up to an additional one hundred eighty days provided that this extension is subject to the mortgagor demonstrating continued financial hardship. Such forbearance may be backdated to March seventh, two thousand twenty, provided that the maximum length of the forbearance may be no longer than one hundred eighty days and any extension thereof pursuant to this section.

3. Notwithstanding any other provision of law, any mortgage forbearance granted by a regulated institution pursuant to this section to a qualified mortgagor as a result of financial hardship 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 not charge additional interest or any late fees or penalties on the forborne payment; 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) the mortgagor shall have the option to negotiate a loan modification or any other option that meets the changed circumstances of the qualified mortgagor; or

(d) if the mortgagor and regulated institution cannot reasonably agree on a mutually acceptable loan modification, the regulated institution shall offer to defer arrears accumulated during the forbearance period as a non-interest bearing balloon loan payable at the maturity of the loan, 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.

The exercising of options provided for in paragraph (a), (b), (c) or (d) 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, purchased, or securitized by any agency or instrumentality of the United States, any government sponsored enterprise, or a federal home loan bank, or a corporate governmental agency of the state constituted as a political subdivision and public benefit corporation, or the rights and obligations of any lender, issuer, servicer or trustee of such obligations, including servicers for the Government National Mortgage Association.

6. Notwithstanding any other provision of law or of this section, the obligation to grant the forbearance relief required by this section shall be subject to the regulated institution having sufficient capital and liquidity to meet its obligations and to operate in a safe and sound manner. Any regulated institution that determines that it is not able to offer relief pursuant to this section to any qualified mortgagor must notify the department within five business days of making such determination. Any such notice filed with the department shall include information about the qualified mortgagor, the reason the regulated institution determined that it was unable to offer any relief pursuant to this section, information about the regulated institution's financial condition supporting the regulated institution's determination, and any other information required by the department. At the same time that the regulated institution provides notice to the department, it shall advise the qualified mortgagor that the application for relief was denied and provide a statement that the applicant may file a complaint with the New York state department of financial services at 1-800-342-3736 or http://www.dfs.ny.gov if the applicant believes the application was wrongly denied.

§ 2. This act shall take effect immediately.