

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:

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

3 § 9-y. Mortgage repayment forbearance; residential or commercial
4 investment properties. 1. As used in this section, the following terms
5 shall have the following meanings:

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

16 (b) "qualified mortgagor" means an individual (i) who resides in New
17 York and who owns a residential or commercial investment property encum-
18 bered by a home loan as defined by subdivision six of section thirteen
19 hundred four of the real property actions and proceedings law, or by any
20 other mortgage loan, from or serviced by a regulated institution, on
21 such residential or commercial property held for investment; (ii) whose
22 residential or commercial investment property contains one to four sepa-
23 rate units; (iii) who receives at least thirty percent of his or her
24 income from rent received from such residential or commercial investment
25 property; and (iv) who demonstrates financial hardship as a result of
26 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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1 (c) "regulated institution" means any New York regulated banking
2 organization as defined in this chapter and any New York regulated mort-
3 gage servicer entity subject to supervision by the department; and

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

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

9 (a) make applications for forbearance of any payment due on a mortgage
10 on a residential or commercial property held for investment located in
11 New York widely available to any qualified mortgagor who, during the
12 covered period, is in arrears or on a trial period plan, or who has
13 applied for loss mitigation; and

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

24 3. Notwithstanding any other provision of law, any mortgage forbear-
25 ance granted by a regulated institution pursuant to this section to a
26 qualified mortgagor as a result of financial hardship shall be subject
27 to the following provisions:

28 (a) the mortgagor shall have the option to extend the term of the loan
29 for the length of the period of forbearance. The regulated institution
30 shall not charge additional interest or any late fees or penalties on
31 the forborne payment; or

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

36 (c) the mortgagor shall have the option to negotiate a loan modifica-
37 tion or any other option that meets the changed circumstances of the
38 qualified mortgagor; or

39 (d) if the mortgagor and regulated institution cannot reasonably agree
40 on a mutually acceptable loan modification, the regulated institution
41 shall offer to defer arrears accumulated during the forbearance period
42 as a non-interest bearing balloon loan payable at the maturity of the
43 loan, or at the time the loan is satisfied through a refinance or sale
44 of the property. Any late fees accumulated as a result of the forbear-
45 ance shall be waived.

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

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

1 5. Notwithstanding anything to the contrary in this section, this
2 section shall not apply to, and does not affect any mortgage loans made,
3 insured, purchased, or securitized by any agency or instrumentality of
4 the United States, any government sponsored enterprise, or a federal
5 home loan bank, or a corporate governmental agency of the state consti-
6 tuted as a political subdivision and public benefit corporation, or the
7 rights and obligations of any lender, issuer, servicer or trustee of
8 such obligations, including servicers for the Government National Mort-
9 gage Association.

10 6. Notwithstanding any other provision of law or of this section, the
11 obligation to grant the forbearance relief required by this section
12 shall be subject to the regulated institution having sufficient capital
13 and liquidity to meet its obligations and to operate in a safe and sound
14 manner. Any regulated institution that determines that it is not able to
15 offer relief pursuant to this section to any qualified mortgagor must
16 notify the department within five business days of making such determi-
17 nation. Any such notice filed with the department shall include informa-
18 tion about the qualified mortgagor, the reason the regulated institution
19 determined that it was unable to offer any relief pursuant to this
20 section, information about the regulated institution's financial condi-
21 tion supporting the regulated institution's determination, and any other
22 information required by the department. At the same time that the regu-
23 lated institution provides notice to the department, it shall advise the
24 qualified mortgagor that the application for relief was denied and
25 provide a statement that the applicant may file a complaint with the New
26 York state department of financial services at 1-800-342-3736 or
27 <http://www.dfs.ny.gov> if the applicant believes the application was
28 wrongly denied.

29 § 2. This act shall take effect immediately.