

# STATE OF NEW YORK

10532

## IN ASSEMBLY

May 28, 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 of residential investment property or second home mortgage payments

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-x to  
2 read as follows:

3 § 9-x. Residential investment property or second home mortgage  
4 forbearance. 1. As used in this section, the following terms shall have  
5 the following meanings:

6 (a) "Covered period" means March 7, 2020 until the date on which none  
7 of the provisions that closed or otherwise restricted public or private  
8 businesses or places of public accommodation, or required postponement  
9 or cancellation of all non-essential gatherings of individuals of any  
10 size for any reason in Executive Orders 202.3, 202.4, 202.5, 202.6,  
11 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14, as extended by Executive  
12 Orders 202.28 and 202.31 and as further extended by any future Executive  
13 Order, issued in response to the COVID-19 pandemic continue to apply in  
14 the county of the qualified mortgagor's residence;

15 (b) "qualified mortgagor" means an individual who resides in New York  
16 whose residential investment property or second home is encumbered by a  
17 home loan, from or serviced by a regulated institution or who is the  
18 holder of a mortgage on a residential property held for investment;

19 (c) "regulated institution" means any New York regulated banking  
20 organization as defined in this chapter and any New York regulated mort-  
21 gage servicer entity subject to supervision by the department; and

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

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

27 (a) make applications for forbearance of any payment due on a mortgage  
28 of a residential property held for investment or on a second home

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

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1 located in New York widely available to any qualified mortgagor who,  
2 during the covered period, is in arrears or on a trial period plan, or  
3 who has applied for loss mitigation and demonstrates financial hardship  
4 during the covered period; and

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

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

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

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

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

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

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

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

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

52 § 2. This act shall take effect immediately.