STATE OF NEW YORK

10826

IN ASSEMBLY

July 16, 2020

Introduced by COMMITTEE ON RULES -- (at request of M. of A. Niou) -- read once and referred to the Committee on Housing

AN ACT to establish the Rent and Mortgage Cancellation Act of 2020

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

Section 1. This act shall be known and may be cited as the "Rent and Mortgage Cancellation Act of 2020".

§ 2. Legislative findings. The legislature hereby finds that a serious public emergency exists in the state of New York due to the impact of the global outbreak of novel coronavirus, COVID-19, which as of the date of this legislation, created destabilized housing, loss of employment and income, closure of businesses and schools, and greatly exacerbated financial insecurity in the state of New York. The legislature further finds that it is currently impossible to accurately assess the full scope, duration, and severity of impact this public emergency has and will have on the residents of New York and that, in response to this crisis, on March 7, 2020 the executive declared a 'State Disaster Emergency' which has put extraordinary constraints on individuals, families, homeowners, not-for-profits, residential housing cooperatives, and local, state, and federal agencies. The legislature further finds that the loss of employment, illness and deaths caused by the COVID-19 outbreak have rendered many individuals and families unable to pay for the costs of housing and other life necessities. The legislature further finds that safe and affordable housing is a key measure of positive individual, family, and public health outcomes. The legislature further finds that without government intervention, individuals and families who are unable to pay the costs of housing will be displaced, which will result in an increase in families who are cohabiting with one or more other families and an increase in the population of unhoused individuals and families, both of which will accelerate the spread of COVID-19 infection and, therefore, measures to prevent such individual and household displacement are necessary to prevent increased COVID-19 transmission. The legislature further finds that without rent and mortgage relief, the number of eviction case filings for nonpayment of rent and

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

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the number of mortgage foreclosures will increase tremendously, resulting in overburdened court systems which will not have the resources or space to operate functionally and also resulting in massive congestion and increased human contact in courthouse spaces, both of which will exacerbate the spread of COVID-19 creating a worsened public health hazard. The legislature further finds that a tremendous increase in evictions and foreclosures will overburden social services agencies and resources and that the shelter system does not have the capacity to accommodate a significantly increased homeless population, both of which will also worsen the spread of COVID-19. The legislature further finds that public housing authorities have incurred expenses resulting from the COVID-19 outbreak and have lost rental income due to widespread financial hardship suffered by public housing tenants and occupants as a result of the COVID-19 outbreak. The legislature declares that it is both in the public interest and the responsibility of government to provide and secure federal and state emergency funding to ensure that individuals and families are not rendered homeless or severely financially burdened because of an inability to pay for the cost of housing and other necessities due to the COVID-19 outbreak and to ensure that public housing entities, not-for-profits, residential cooperatives, and landlords unable to afford necessary expenses as a result of COVID-19 outbreak, not be encumbered with severe financial burden, and to promote the stability and proper maintenance of the housing stock and assist communities in recovering from the adverse social and economic impacts of the COVID-19 outbreak, and that, consistent with articles 17 and 18 of the state constitution, it is therefore incumbent on the legislature and the executive to implement protections and to provide rent and mortgage relief so as to reduce the harm to New York residents and ensure safe, decent, sanitary, affordable housing and financial stability during the novel coronavirus, COVID-19, crisis and all other public emergencies.

§ 3. Definitions. (a) "Residential tenant" shall have the same meaning as in paragraph (a) of subdivision 1 of section 235-f of the real property law, those who otherwise pay for the use and occupancy of a residential dwelling unit, occupants as defined by paragraph (b) of subdivision 1 of section 235-f of the real property law, or tenants or occupants of residential dwelling units funded pursuant to 42 U.S.C. 1437g.

(b) "Small homeowner" shall mean an owner of a dwelling with 6 or fewer units where such owner also resides as a primary residence.

(c) "Affordable housing operator" shall mean a not-for-profit entity as defined in the not-for-profit corporation law or a housing development fund company as defined in section 572 of the private housing finance law that owns and operates a housing project for persons of low-income.

(d) "Rent" shall have the same meaning as defined in section 702 of the real property actions and proceedings law.

(e) "Residential cooperative" shall mean any housing project, of any size, operated for persons of low income by a housing corporation as defined in section 572 of the private housing finance law, or any corporation or entity owning and operating a residential cooperative with 10 or fewer units.

(f) "Public housing authority" shall mean any municipal housing authority created under article 13 of the public housing law.

(g) "Commissioner" shall mean the commissioner of housing and community renewal.

§ 4. Cancellation of rent in the case of residential tenants; fines; termination of tenancy and eviction proceedings; debt; consumer credit reports. (a) Notwithstanding any other provision of law, the obligation of a residential tenant to pay rent shall be suspended for a period that shall run from March 7, 2020 until the expiration of 90 days after the executive declares that the state disaster emergency has ended.

(b) No tenant or tenant household may be charged a fine or fee for non-payment of rent in accordance with this section.

(c) The nonpayment of rent by a tenant in accordance with this section shall not be grounds for any termination of tenancy or eviction proceeding or civil judgment.

(d) No tenant or tenant household may be treated as accruing any debt by reason of suspension of rent under this section.

(e) No tenant or tenant household may be held liable for repayment of any amount of rent suspended under this section.

(f) The nonpayment of rent by a tenant in accordance with this section shall not be reported to a tenant screening agency or a consumer reporting agency nor shall such nonpayment adversely affect a tenant or member of a tenant's household's credit score nor shall such nonpayment be grounds for denying any future application for rental housing made by a tenant or a member of a tenant's household.

§ 5. Mortgage payment suspension, fees and penalties, credit scores. (a) Notwithstanding any other provision of law, the obligation of a small homeowner to make mortgage payments of principal or interest that become due during the period running from March 7, 2020 until the expiration of 90 days after the executive declares that the state disaster emergency has ended, is hereby suspended.

(b) No mortgagor who is a small homeowner may be held responsible for payment of mortgage payments suspended under this section or treated as accruing any debt by reason of suspension under this section of the obligation to make mortgage payments.

(c) A mortgagee, or servicer for such mortgagee, under a residential mortgage loan to a small homeowner may not commence or continue any judicial foreclosure action or non-judicial foreclosure process or any action for failure to make a payment due under such mortgage that is suspended pursuant to this section.

(d) No fees, penalties, or additional interest beyond the amounts scheduled or calculated as if the mortgagor made all contractual payments on time and in full under the terms of the mortgage contract in effect as of the commencement of the COVID-19 suspension period shall accrue.

(e) The nonpayment of a mortgage payment by a mortgagor pursuant to suspension of the obligation to make such payment under this section shall not be reported to a consumer reporting agency nor shall such nonpayment adversely affect a mortgagor's credit score.

(f) Assistance may not be provided under this section with respect to any dwelling for which assistance is provided pursuant to section seven or eight of this act.

§ 6. Assistance to residential housing cooperatives losing maintenance and rental income. (a) Except as modified in this section, any residential housing cooperatives that can demonstrate they lost maintenance or rental income during the period from March 7, 2020 until the expiration of 90 days after the executive declares that the state disaster emergency has ended shall be entitled to a payment of the total amount of maintenance or rental income lost during that period.

(b) (i) The commissioner of housing and community renewal, shall issue regulations establishing an application procedure for a residential housing cooperative seeking payment of lost maintenance or rental income.

(ii) Such regulations shall provide that as a condition of such assistance payments, a residential housing cooperative shall agree and shall be obligated, through executing an instrument in a form specified in the regulations issued hereunder to provide any tenants residing in the housing cooperative with a renewal lease of at least 1 year, at the same rental amount actually charged and collected 6 months prior to the application for relief.

(iii) Such regulations shall further provide that any rental housing cooperative shall not be eligible for the relief provided herein for rental or maintenance income imputable to any illegal unit or unit occupied in violation of the cooperative's bylaws or for rental income imputable to a unit containing uncorrected, as of the time of the application, immediately hazardous violations of a state or local housing or building code that existed prior to March 7, 2020 and which are the housing cooperative's legal duty to remedy.

(c) Any residential cooperative that receives payment for unpaid maintenance under this section shall waive all rights to receive said maintenance payments from the cooperative shareholder of the dwelling unit for which payment was received.

§ 7. Assistance to affordable housing operators losing rental income. (a) Except as modified in this section, any affordable housing operator that can demonstrate they lost rental income during the period from March 7, 2020 until the expiration of 90 days after the executive declares that the state disaster emergency has ended shall be entitled to a payment of the total amount of rental income lost during that period.

(b) The commissioner of housing and community renewal, shall issue regulations establishing an application procedure for an affordable housing operator seeking payment of lost rental income.

(c) The commissioner may provide a payment under this section only with respect to rental dwellings that meet all the following requirements:

(i) The affordable housing operator of the rental dwelling has made such certifications to, and entered into such binding agreements with, the commissioner as the commissioner considers necessary to ensure that during the five year period beginning upon initial receipt by such affordable housing operator of payment under this section for such dwelling, such dwelling shall be subject to the following requirements:

(1) the monthly rental amounts for the rental units within the property may not be increased from the amount of such rent charged as of the date of the enactment of this act;

(2) tenants of the rental units may be evicted only for the following reasons:

(A) the tenant is violating a substantial obligation of their tenancy other than the obligation to surrender possession of such housing accommodation and has failed to cure such violation after written notice by the landlord that the violation cease within 10 days, or within the 3 month period immediately prior to the commencement of the proceeding the tenant has willfully violated such an obligation inflicting serious and substantial injury to the landlord;

(B) the tenant is committing or permitting a nuisance in such housing accommodation or is maliciously or by reason of gross negligence

substantially damaging the housing accommodations, or the tenant's conduct is such as to interfere substantially with the comfort or safety of the landlord or of other tenants or occupants of the same or other adjacent building or structure;

(C) occupancy of the housing accommodations by the tenant is illegal because of the requirements of law, and the landlord is subject to civil or criminal penalties therefor, or both;

(D) the tenant is using or permitting such housing accommodation to be used for an illegal purpose;

(E) the tenant who had a written lease or other written rental agreement which terminates on or after the effective date of this statute, has refused upon demand of the landlord to execute a written extension or renewal thereof for a further term of like duration not in excess of one year but otherwise on the same terms and conditions as the previous lease except in so far as such terms and conditions are inconsistent with this act; or

(F) the tenant has unreasonably refused the landlord access to the housing accommodations for the purpose of making necessary repairs or improvements required by law or for the purpose of inspection or of showing the accommodations to a prospective purchaser, mortgagee or prospective mortgagee, or other person having a legitimate interest therein; provided, however, that in the latter event such refusal shall not be grounds for removal or eviction if such inspection or showing of the accommodations is contrary to the provisions of the tenant's lease or other rental agreement;

(3) the rental dwelling shall not have any outstanding violations for hazardous or immediately hazardous conditions;

(4) the affordable housing operator may not refuse to rent any rental dwelling unit, or discriminate in the renting of any rental dwelling unit, to a household based on the source of income of such household, including income under the program under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) or any similar tenant-based rental assistance program;

(5) the affordable housing operator may not restrict tenancy of the dwelling unit on the basis of sexual identity or orientation, gender identity or expression, conviction or arrest record, credit history, or immigration status;

(6) the affordable housing operator may not retaliate in any way against a tenant of the dwelling unit; and

(7) the affordable housing operator may not report the tenant of the dwelling unit or provide any adverse information regarding the tenant to any credit reporting or tenant screening agency.

(ii) Assistance may not be provided under this section with respect to any dwelling unit for which assistance is provided pursuant to section five, six or eight of this act.

(d) (i) Subject to paragraph (ii) of this subdivision, the amount of a payment under this section with respect to a rental dwelling may not exceed the aggregate amount of rent for the rental dwelling suspended pursuant to subdivision (a) of section four of this act and attributable only to days from March 7, 2020 until the expiration of 90 days after the executive declares that the state disaster emergency has ended during which the dwelling unit was occupied by a tenant otherwise required to pay rent for such occupancy.

(ii) In making payments under this section with respect to any rental dwelling unit for which a tenant made a payment of rent during the period run from March 7, 2020 until the expiration of 90 days after the

executive declares that the state disaster emergency has ended the commissioner of housing and community renewal agency shall:

(1) reduce the amount of the payment to the affordable housing operator under paragraph (i) of this subdivision by the amount of any such rent paid; and

(2) make a payment to such tenant in the amount of any such rent paid.

(iii) In making payments under this section with respect to any dwelling for which the affordable housing operator received mortgage payment relief under section five of this act the commissioner shall reduce the amount of the payment to the affordable housing operator for lost rent by the amount of mortgage payment relief received under section five of this act.

(e) If an affordable housing operator violates any requirement with respect to a covered rental dwelling unit under any certification or agreement entered into pursuant to paragraph (i) of subdivision (c) of this section, the commissioner shall recapture from the affordable housing operator an amount equal to the entire amount of assistance provided under this section that is attributable to such dwelling unit and ensure that such amount is recaptured.

(f) There is hereby authorized to be appropriated such sums as may be necessary to reimburse all affordable housing operators for all rent payments suspended pursuant to subdivision (a) of section four of this act.

(g) (i) Any affordable housing operator may apply for an exemption from one or more of the requirements set forth in subdivision (c) of this section and the commissioner shall grant exemptions from the requirements set forth in subdivision (c) of this section upon determining that the affordable housing operator would otherwise suffer undue financial hardship resulting from the requirements for which exemption is sought.

(ii) Any affordable housing operator aggrieved by the commissioner's decision on an application under this section or for a hardship exemption pursuant to paragraph (i) of this subdivision may within 30 days of the commissioner's decision seek judicial review pursuant to article 78 of the civil practice law and rules. In the event that the court may find that the decision of the commissioner constitutes the equivalent of a taking without compensation, it may, at the election of the commissioner, either set aside the decision or order the payment of just compensation by the commissioner.

§ 8. Landlord relief fund, application, fair rental requirements, prohibition on duplication of assistance. (a) The commissioner of housing and community renewal shall establish and manage a landlord relief fund, or in this section referred to as "the fund", to provide lessors payments under this section to reimburse such lessors for rent payments cancelled pursuant to subdivision (a) of section four of this act.

(b) The commissioner shall provide for lessors of rental dwellings to apply for reimbursement payments from the fund, which applications shall include the certifications and binding agreements required pursuant to subdivision (c) of this section.

(c) The commissioner may provide a payment under this section only with respect to rental dwellings that meet all of the following requirements:

(i) The lessor of the rental dwelling has made such certifications to, and entered into such binding agreements with, the commissioner as the commissioner considers necessary to ensure that during the five year period beginning upon initial receipt by such lessor of payment under

this section for such dwelling, such dwelling shall be subject to the following requirements:

(1) the monthly rental amounts for the rental units within the property may not be increased from the amount of such rent charged as of the date of the enactment of this act;

(2) tenants of the rental units may be evicted only for the following reasons:

(A) the tenant is violating a substantial obligation of his tenancy other than the obligation to surrender possession of such housing accommodation and has failed to cure such violation after written notice by the landlord that the violation cease within ten days, or within the 3 month period immediately prior to the commencement of the proceeding the tenant has willfully violated such an obligation inflicting serious and substantial injury to the landlord;

(B) the tenant is committing or permitting a nuisance in such housing accommodation or is maliciously or by reason of gross negligence substantially damaging the housing accommodations; or his conduct is such as to interfere substantially with the comfort or safety of the landlord or of other tenants or occupants of the same or other adjacent building or structure;

(C) occupancy of the housing accommodations by the tenant is illegal because of the requirements of law, and the landlord is subject to civil or criminal penalties therefor, or both;

(D) the tenant is using or permitting such housing accommodation to be used for an illegal purpose;

(E) the tenant who had a written lease or other written rental agreement which terminates on or after the effective date of this statute, has refused upon demand of the landlord to execute a written extension or renewal thereof for a further term of like duration not in excess of one year but otherwise on the same terms and conditions as the previous lease except in so far as such terms and conditions are inconsistent with this act; or

(F) the tenant has unreasonably refused the landlord access to the housing accommodations for the purpose of making necessary repairs or improvements required by law or for the purpose of inspection or of showing the accommodations to a prospective purchaser, mortgagee or prospective mortgagee, or other person having a legitimate interest therein; provided, however, that in the latter event such refusal shall not be grounds for removal or eviction if such inspection or showing of the accommodations is contrary to the provisions of the tenant's lease or other rental agreement;

(3) the rental dwelling shall not have any outstanding violations for hazardous or immediately hazardous conditions;

(4) the lessor may not refuse to rent any rental dwelling unit, or discriminate in the renting of any rental dwelling unit, to a household based on the source of income of such household, including income under the program under section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)) or any similar tenant-based rental assistance program;

(5) the lessor may not restrict tenancy of the dwelling unit on the basis of sexual identity or orientation, gender identity or expression, conviction or arrest record, credit history, or immigration status;

(6) the lessor may not retaliate in any way against a tenant of the dwelling unit; and

(7) the lessor may not report the tenant of the dwelling unit or provide any adverse information regarding the tenant to any credit reporting or tenant screening agency.

(ii) Assistance may not be provided under this section with respect to any dwelling unit for which assistance is provided pursuant to section five, six or seven of this act.

(d) (i) Subject to paragraph (ii) of this subdivision, the amount of a payment under this section with respect to a rental dwelling may not exceed the aggregate amount of rent for the rental dwelling suspended pursuant to subdivision (a) of section four of this act and attributable only to days from March 7, 2020 until the expiration of 90 days after the executive declares that the state disaster emergency has ended during which the dwelling unit was occupied by a tenant otherwise required to pay rent for such occupancy.

(ii) In making payments under this section with respect to any rental dwelling unit for which a tenant made a payment of rent during the period run from March 7, 2020 until the expiration of 90 days after the executive declares that the state disaster emergency has ended the commissioner shall:

(1) reduce the amount of the payment to the lessor under paragraph (i) of this subdivision by the amount of any such rent paid; and

(2) make a payment to such tenant in the amount of any such rent paid.

(iii) In making payments under this section with respect to any dwelling for which the lessor received mortgage payment relief under section five of this act the commissioner shall reduce the amount of the payment to the lessor for lost rent by the amount of mortgage payment relief received under section five of this act.

(e) In making payments under this section, the commissioner shall establish a tiered system for priority for such payments based on assets, revenues, and disclosure requirements with respect to lessors. Such system shall provide priority for making payments to eligible small homeowners and lessors having the fewest available amount of assets.

(f) If a lessor violates any requirement with respect to a covered rental dwelling unit under any certification or agreement entered into pursuant to paragraph (i) of subdivision (c) of this section, the commissioner shall recapture from the lessor an amount equal to the entire amount of assistance provided under this section that is attributable to such dwelling unit and ensure that such amount is recaptured into the fund.

(g) There is authorized to be appropriated for the fund established pursuant to this section such sums as may be necessary to reimburse all lessors for all rent payments suspended pursuant to subdivision (a) of section four of this act.

(h) (i) Any lessor may apply for an exemption from one or more of the requirements set forth in subdivision (c) of this section and the commissioner shall grant exemptions from requirements set forth in subdivision (c) of this section upon determining that the lessor would otherwise suffer undue financial hardship resulting from the requirements for which exemption is sought.

(ii) Any lessor aggrieved by the commissioner's decision on an application to the Fund or for a hardship exemption pursuant to paragraph (i) of this subdivision may within 30 days of the commissioner's decision seek judicial review pursuant to article 78 of the civil practice law and rules. In the event that the court may find that the decision of the commissioner constitutes the equivalent of a taking without compensation, it may, at the election of the commissioner, either set aside

the decision or order the payment of just compensation by the commissioner.

§ 9. Assistance to public housing authorities. (a) The commissioner of housing and community renewal shall establish and manage a public housing relief fund, or in this section referred to as "the public housing relief fund", to provide public housing authorities with funds to compensate for expenses related to COVID-19 and unpaid rent that would have been payable by residential tenants pursuant to 42 U.S.C. 1437a during the period from March 7, 2020 until the expiration of 90 days after the executive declares that the state disaster emergency has ended.

(b) The commissioner shall provide for public housing authorities to apply for payments from the public housing relief fund and shall promulgate regulations establishing the procedural requirements for such applications.

(c) It is hereby declared to be the intent of the legislature that to the extent that any part of this section is inconsistent with article 4 of the public housing law, this statute will prevail.

§ 10. Civil action. (a) Any individual aggrieved by an adverse action taken by a lessor, affordable housing operator, public housing authority, or mortgagee for exercising rights under section four or five of this act may commence a civil action under this section against the lessor, affordable housing operator, public housing authority, or mortgagee violating such section in an appropriate state court or a local court of competent jurisdiction not later than 2 years after such violation occurs for damages under subdivision (b) of this section.

(b) Any lessor or mortgagee found to have taken adverse action against any lessee or mortgagor for exercising rights under section four or five of this act shall be liable:

(i) to the individual aggrieved by such violation, for any actual damages as a result of such adverse action; and

(ii) for a fine in the amount of:

(1) $10,000, in the case of a violation that is the first violation by such lessor or mortgagee;

(2) $20,000, in the case of a violation that is the second violation by such lessor or mortgagee; and

(3) $100,000 or forfeiture of the property, in the case of a violation that is the third or subsequent violation by such lessor or mortgagee.

(c) In an action brought under this section, the court:

(i) may award preventative relief, including a permanent or temporary injunction or other order, to ensure the full rights granted by sections four and five of this act; and

(ii) shall award any prevailing plaintiff reasonable attorney's fees and costs.

(d) The attorney general may bring a civil action in any appropriate court against any individual or entity which violates section four or five of this act for fines under paragraph (ii) of subdivision (b) of this section.

§ 11. Non-severability clause. If section four of this act is adjudged by a court of competent jurisdiction to be invalid, then sections six, seven and eight of this act shall also be deemed invalid and it is hereby declared to be the intent of the legislature that sections six, seven and eight of this act would not have been enacted if section four of this act had not been included herein.

§ 12. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act other than section four of this act

shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 13. This act shall take effect immediately.