

STATE OF NEW YORK

3275

2019-2020 Regular Sessions

IN ASSEMBLY

January 29, 2019

Introduced by M. of A. EPSTEIN -- read once and referred to the Committee on Banks

AN ACT to direct the department of financial services to study, evaluate and make recommendations concerning lending practices by financial institutions to landlords acquiring property that includes small business tenants and/or rent-regulated tenants

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

1 Section 1. Legislative findings and intent. The legislature finds and
2 declares that the practice known as "predatory equity" is furthering the
3 state's affordable housing crisis. Predatory equity is a model that is
4 known to be exceptionally destructive of existing affordable housing,
5 and is commonly understood to be defined by one or both of the follow-
6 ing: (a) a speculative sale in which the landlord purchases naturally-
7 occurring affordable rental housing with the explicit or implicit under-
8 standing that low- and moderate-rent paying tenants will be encouraged
9 or actively pushed to move out of the building at a rate that does not
10 reflect normal tenant turnover, with the goal of the landlord to take
11 advantage of the vacancies in order to use loopholes in the rent regu-
12 lation laws to dramatically increase the building's rent roll; and/or
13 (b) a financing source used by a landlord to fund the acquisition debt
14 or the acquisition equity in which the financing source expects a rate
15 of return that is significantly in excess of the profit that would be
16 generated by a building operating within the rent law's historic norms,
17 and in which case the landlord is encouraged to resort to tactics that
18 aggressively undermine the building's affordability in order to meet the
19 demands of the financing source.

20 Increasingly, speculative behavior is also being linked to the
21 displacement of commercial tenants, mostly small businesses, who are
22 being pushed out of mixed-use residential buildings and others in stand-
23 alone commercial buildings. The legislature further finds that it is

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

LBD02520-01-9

1 necessary to scrutinize the role of the lenders involved in predatory
2 equity, in order to determine appropriate accountability for the finan-
3 cial institutions involved. Affordable housing is critically important
4 to the wellbeing of middle and low-income New Yorkers as well as the
5 state as a whole. It is incumbent upon the state to take remedial action
6 to resolve the affordability crisis and ensure that lenders are acting
7 in the best interest of the local community by preserving long-term
8 affordability and stability through their lending.

9 § 2. 1. For the purposes of this act:

10 (a) "financial institutions" means a commercial bank, trust company,
11 savings institution, credit union, or any other entity authorized to
12 originate and service loans; and

13 (b) "small business" means a business that has revenues of one million
14 or less, or meets the definition of a small business as defined by the
15 United States Small Business Administration (SBA).

16 2. The department of financial services is hereby authorized and
17 directed to prepare or have prepared a study to review the process in
18 which financial institutions provide loans to landlords acquiring or
19 refinancing property that includes rent-regulated and/or small business
20 tenants. Such study shall examine and report upon trends, both in the
21 aggregate, and disaggregated by type of lender, range of building sizes,
22 and any other criteria that would show trends in predatory equity and
23 shall include:

24 (a) whether and how financial institutions are considering the follow-
25 ing factors when reviewing a landlord's loan application:

26 (i) debt service coverage ratio;

27 (ii) capitalization rate;

28 (iii) gross rent multiplier;

29 (iv) loan to value; and

30 (v) net operating income, including income and expenses;

31 (b) whether and how financial institutions are including the following
32 factors in their underwriting calculations of debt:

33 (i) sources of income, including residential rent, commercial rent and
34 maintenance from cooperative apartment owners;

35 (ii) current rent charged and projected rent increases to be charged
36 in the future;

37 (iii) the number and size of units in a building and whether such
38 units are used for residential, commercial or another use;

39 (iv) whether any preferential rent is charged and any projections to
40 terminate such preferential rent in the future;

41 (v) the number of vacant units in a property, including whether such
42 units are classified as market rate, deregulated or rent-regulated and
43 how many vacant units are used for commercial or another non-residential
44 use;

45 (vi) whether individual apartment improvements will be performed on
46 any vacant units;

47 (vii) the number of rent-regulated units at the time of loan origi-
48 nation and how the financial institution verifies those numbers with the
49 division of housing and community renewal;

50 (viii) any projected construction or major capital improvements;

51 (ix) projections of any turnover in rent-regulated apartments;

52 (x) number of buildings financed in the loans;

53 (xi) any reserve funds for buyouts;

54 (xii) any regulatory agreements on the building and explanation of
55 such agreements; and

1 (xiii) any government operating or capital subsidies and explanation
2 of such subsidies.

3 (c) whether financial institutions are appropriately considering only
4 currently established rents and realistic maintenance costs when deter-
5 mining the net operating costs for the property such that they are
6 acting in the best interest of the long-term affordability and stability
7 of the local community;

8 (d) whether financial institutions are appropriately examining the
9 types of capital improvements included in the landlord's plans for the
10 property;

11 (e) whether financial institutions are using realistic appraisal
12 values and appropriately doing so;

13 (f) whether financial institutions are ascertaining whether the land-
14 lord or property manager is taking on more debt than the property can
15 support;

16 (g) whether financial institutions are considering a landlord's addi-
17 tional private equity including the source of such equity and the
18 expected rate of return;

19 (h) whether financial institutions are considering a landlord's addi-
20 tional debt on the building or buildings including debt from other lend-
21 ers and whether financial institutions are considering any other
22 outstanding debt a landlord has outside of the loan applied for;

23 (i) whether financial institutions are considering a landlord's other
24 investments and what research is completed during such consideration;

25 (j)(i) how financial institutions are evaluating the records of land-
26 lords and property managers and whether such financial institutions are
27 utilizing multiple sources and considering factors including, but not
28 limited to liens and violations against the property managers and land-
29 lords, media reports, investigations by governmental agencies, and find-
30 ings that the landlord engaged in tenant or commercial harassment, as
31 well as any prior indication by not-for-profits or governmental organ-
32 izations that such landlords or property managers have ever engaged in
33 the practices associated with "predatory equity" including, but not
34 limited to hazardous conditions and tenant harassment; and

35 (ii) whether financial institutions have an explicit plan to protect
36 tenants if they choose to lend to a landlord that has engaged in any of
37 the practices reviewed in subparagraph (i) of this paragraph;

38 (k) whether financial institutions intend to have individuals
39 personally visit the buildings and correspond with the tenants to
40 address their needs;

41 (l) whether financial institutions hold information sessions with
42 and/or conduct outreach regularly to tenant advocacy groups, small busi-
43 ness advocacy groups and organizers;

44 (m) whether and how financial institutions monitor the number of rent-
45 regulated units in a building prior to and after a loan disbursement;

46 (n) whether financial institutions have any established standards and
47 practices when loaning to a landlord or property manager and if such
48 practices are at least as rigorous as those that apply to one to four
49 family mortgages;

50 (o) whether financial institutions take any measures to ensure loans
51 are not used for buyouts;

52 (p) whether mortgages include clauses that require a certain debt
53 service coverage ratio or debt yield which are predicated on rent
54 increases or tenant turnover; and

55 (q) any other criteria the department of financial services deems
56 necessary to understand the nature and frequency of predatory equity.

1 § 3. The superintendent of financial services, in consultation with
2 appropriate staff, is authorized to draft and issue a request for
3 proposal (RFP) to an outside firm or entity in order to conduct the
4 study.

5 § 4. The department of financial services is authorized to charge
6 financial institutions, collectively, for the costs of conducting the
7 study up to \$350,000.

8 § 5. No later than eighteen months after the effective date of this
9 act, the department of financial services shall report to the legisla-
10 ture and the governor on the findings of the study conducted pursuant to
11 section two of this act including on the scope, nature and frequency of
12 involvement in predatory equity throughout the financial industry and
13 any legislative recommendations deemed to be necessary.

14 § 6. This act shall take effect immediately.