

STATE OF NEW YORK

8190

IN SENATE

April 13, 2020

Introduced by Sen. SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development

AN ACT to establish the Emergency Coronavirus Affordable Housing Preservation Act of 2020

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

1 Section 1. This act shall be known and may be cited as the "Emergency
2 Coronavirus Affordable Housing Preservation Act of 2020".

3 § 2. Legislative findings. The legislature hereby finds that a serious
4 public emergency exists in the state of New York due to the impact of
5 the global outbreak of novel coronavirus, COVID-19, which as of the date
6 of this legislation, created destabilized housing, loss of employment
7 and/or income, closure of businesses and/or schools, and greatly exacerbated
8 financial insecurity in the state of New York. The legislature
9 further finds that it is currently impossible to accurately assess the
10 full scope, duration, and severity of impact this public emergency has
11 and will have on the residents of New York and that, in response to this
12 crisis, the executive declared a 'Disaster Emergency' which has put
13 extraordinary constraints on individuals, families, homeowners, small
14 businesses, not-for-profits, and local/state/federal agencies. The
15 legislature declares that it is both in the public interest and the
16 responsibility of government to provide and secure federal and/or state
17 emergency funding to ensure small businesses, public housing entities,
18 nonprofits, families, and individuals, unable to afford housing and/or
19 necessary expenses as a result of lost income related to public health
20 emergencies, such as the novel coronavirus, COVID-19, outbreak, not be
21 encumbered with severe financial burden and that, consistent with articles
22 17 and 18 of the state constitution, it is therefore incumbent on
23 the legislature and the executive to implement protections so as to
24 reduce the harm to New York residents and ensure safe, decent, sanitary,
25 affordable housing and financial stability during the novel coronavirus,
26 COVID-19, crisis and all other public emergencies.

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

LBD16102-02-0

§ 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, or occupants as defined by paragraph (b) of subdivision 1 of section 235-f of the real property law.

(b) "Commercial small business tenant" shall mean a small business, as defined in section 131 of the economic development law, lawfully occupying a covered property pursuant to a lease or other rental agreement.

(c) "Small homeowner" shall mean an owner of a dwelling with 4 or fewer units where such owner also resides as a primary residence.

(d) "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.

(e) "Residential cooperative" shall mean any not-for-profit corporation or housing development fund company owning and operating any housing project, of any size, for persons of low-income as defined in section 573 of the private housing finance law or any corporation or entity owning and operating a residential cooperative with 10 or fewer units.

§ 4. Abatement of rent in the case of residential and commercial small business tenants complying or formerly employed by small business complying with COVID-19 orders and tenants who are employees of small businesses; jurisdiction; evidentiary presumptions; effect of abatement; offset of abatement by owners. (a) Notwithstanding any other provision of law, rule or regulation to the contrary, for any residential tenant or commercial small business tenant in the state that has lost income as a result of such residential tenant's, or such tenant's employer's, compliance with government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19, or as a result of the closure of the premises when the premises are such commercial small business tenant's place of business in compliance with government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19, no rent shall be recovered by an owner of any premises used by such tenant thereof for human habitation, or for the operation of the small business, for the entire period of such compliance, which period shall run from March 20, 2020 until the date when the governor shall specify, in an executive order, that the prohibition on enforcement of either an eviction of any tenant, residential or commercial, imposed by executive order 202.8, shall have expired, but in no event shall such period be less than ninety days from March 20, 2020.

(b) (i) In the case of residential tenants, both the state division of housing and community renewal as well as any court of competent jurisdiction, which shall include the New York City Civil Court and any city, village, or town court within a summary proceeding under article 7 of the real property actions and proceedings law, shall have jurisdiction to determine rental abatements as provided herein. The state division of housing and community renewal shall issue regulations to effectuate this section.

(ii) In the case of commercial small business tenants, any court of competent jurisdiction, which shall include the New York City Civil Court and any city, village, or town court within a summary proceeding under article 7 of the real property actions and proceedings law, as well as the comptroller in a municipality having a comptroller, or in a municipality having no comptroller, then the chief fiscal officer of

1 such municipality, except that in the city of New York, then specif-
2 ically the department of small business services, shall have jurisdic-
3 tion to determine rental abatements as provided herein. Said comp-
4 troller, chief fiscal officer, or, in the city of New York, the
5 department of small business services, such shall issue regulations to
6 effectuate this section.

7 (c) For the purpose of demonstrating that such residential tenant has
8 lost income as a result of such residential tenant's, or such tenant's
9 employer's, compliance with government ordered restrictions in response
10 to the outbreak of novel coronavirus, COVID-19, a rebuttable presumption
11 that such residential tenant has lost income shall be created if the
12 residential tenant establishes through testimony or documentary evidence
13 that the tenant has lost hourly income pay, or was terminated, laid-off,
14 subject to a reduction in work hours, or terminated from an independent
15 contract job or "gig" employment within 2 weeks of the issuance of
16 government ordered restrictions in response to the outbreak of novel
17 coronavirus, COVID-19. For the purpose of this subdivision, the 2 weeks
18 shall run from March 7, 2020.

19 (d) For the purpose of demonstrating that such commercial small busi-
20 ness tenant has lost income as a result of such commercial small busi-
21 ness tenant's compliance with government ordered restrictions in
22 response to the outbreak of novel coronavirus, COVID-19, a rebuttable
23 presumption that such commercial small business tenant has lost income
24 shall be created if such commercial small business tenant establishes
25 through testimony or documentary evidence that such commercial small
26 business tenant closed the premises when the premises are such commer-
27 cial small business' place of business within 2 weeks of the issuance of
28 government ordered restrictions in response to the outbreak of novel
29 coronavirus, COVID-19. For the purpose of this subdivision, the 2 weeks
30 shall run from March 7, 2020.

31 (e) Any abatement of rent provided to a residential or commercial
32 small business tenant hereunder shall have the same effect as a cancel-
33 lation of the rental debt and any claims related thereto for the purpose
34 of legal collection, enforcement, and reporting to a credit reporting or
35 tenant screening bureau, and shall render any person who seeks to
36 collect, enforce, or report to a credit reporting bureau or tenant
37 screening bureau such abated rent to all like penalties, sanctions, and
38 liabilities under the law for the unlawful collection, enforcement, or
39 reporting of debt.

40 (f) At such owner's election, any owner of premises subject to any
41 orders awarding abatements of rent issued by the state department of
42 housing and community renewal or other department or agency designated
43 by the chief executive of a city with a population of more than one
44 million or county, city, town, or village, or to any judgments issued by
45 a court of competent jurisdiction shall be entitled to recover the total
46 dollar amount of all abatements issued hereunder either: (i) as a
47 reduction in the owner's real property tax payment by deducting from the
48 amount due in any quarter or period an amount not in excess of 10% of
49 the total abatement dollar amount from each payment coming due until the
50 total abatement amount is deducted; or

51 (ii) a withholding of any mortgage or construction loan principal
52 payments, mortgage or construction loan interest payments, or mortgage
53 or construction loan extension fee payments due and owing to the state
54 or any political subdivision thereof until the total abatement amount is
55 repaid. The department of taxation and finance and all departments and
56 agencies specified in the private housing finance law, including the

1 supervising agency as defined in article 1 of the private housing
2 finance law, shall issue regulations establishing an application proce-
3 dure for an owner to elect a method of abatement offsetting.

4 § 5. Residential mortgage relief for individuals with financial hard-
5 ship. The provisions of executive order 202.9 of 2020, dated March 21,
6 2020, relating to a modification of subdivision two of section 39 of the
7 banking law to provide that any bank which is subject to the jurisdic-
8 tion of the department of financial services shall be deemed to be
9 engaging in an unsafe and unsound business practice if it does not grant
10 a forbearance to any person or business who has a financial hardship as
11 a result of the novel coronavirus, COVID-19, pandemic for a period of 90
12 days is hereby enacted, in its entirety, including with the directive
13 that the department of financial services promulgate regulations to
14 effectuate the contents of such directive.

15 § 6. Assistance to small homeowners losing rental income as a result
16 of the novel coronavirus, COVID-19, public health crisis. (a) For the
17 purpose of ensuring that small homeowners possess sufficient funds to
18 continue operating safe, decent, and sanitary housing, for themselves
19 and for tenants, during the novel coronavirus, COVID-19, public health
20 crisis, any small homeowner who has lost 25% or greater of rental income
21 as a result of financial hardship to such small homeowner's tenants
22 shall be entitled to a payment of the total amount of lost rental income
23 if the small homeowner can establish that the rental income was lost as
24 a result of novel coronavirus, COVID-19, hardship, for which a rebutta-
25 ble presumption of loss resulting from the novel coronavirus, COVID-19,
26 shall be created if such small homeowner can demonstrate the loss of 25%
27 or more of rental income within 1 month of the issuance of government
28 ordered restrictions in response to the outbreak of novel coronavirus,
29 COVID-19. For the purpose of determining whether the rebuttable
30 presumption created herein shall apply, the month shall run from March
31 7, 2020 until April 20, 2020.

32 (b) Any payment made to a small homeowner under this provision shall
33 be monthly, paid on or before May 1, 2020 and such payment shall contin-
34 ue on a monthly basis until and through the date when the governor shall
35 specify, in an executive order, that the prohibition on enforcement of
36 either an eviction of any tenant, residential or commercial, imposed by
37 executive order 202.8, shall have expired, but in no event shall such
38 period be less than 90 days from March 20, 2020. The first payment on
39 May 1, 2020 shall cover the period of March 20 through April 30, 2020.

40 (c) The supervising agency, as defined in article 1 of the private
41 housing finance law, shall issue regulations establishing an application
42 procedure for a small homeowner to seek such lost rental income relief.
43 Such regulations shall provide that as a condition of such relief
44 payments, a small homeowner shall agree and shall be obligated, through
45 executing an instrument in a form specified in any regulations issued
46 hereunder, to provide all tenants residing in the dwelling with a
47 renewal lease of at least 1 year and at the amount of rent actually
48 charged and collected 6 months prior to the application, and such regu-
49 lations shall further provide that small homeowners shall not be eligi-
50 ble for the relief provided herein for rental income imputable to any
51 illegal unit or for rental income imputable to any unit containing
52 uncorrected, as of the time of the application, immediately hazardous
53 violations of a state or local housing or building code that existed
54 prior to March 1, 2020.

(d) The assistance provided under this section shall primarily be funded by any grants or funding available or repurposed by the state in relation to:

(i) the novel coronavirus, COVID-19, public health crisis;

(ii) any federal or state funds available in response to a national and/or state emergency order;

(iii) any funds received from federal programs in relation to public health emergencies;

(iv) the novel coronavirus, COVID-19, public health emergency allowing for the protection of low-income, marginalized communities, public housing programs and economic development, and the preservation and conservation of housing;

(v) any funds available to the state under the federal "Coronavirus Aid, Relief, and Economic Security Act" or the CARES Act; and/or

(vi) any federal or state emergency relief funds available to the state.

§ 7. Assistance for affordable housing operators losing rental income as a result of the novel coronavirus, COVID-19, public health crisis.

(a) For the purpose of ensuring that affordable housing operators possess sufficient funds to continue operating safe, decent, and sanitary housing for vulnerable low-income populations during the novel coronavirus, COVID-19, public health crisis, any affordable housing operator that has lost 25% or greater of rental income as a result of financial hardship to such affordable housing operator's tenants shall be entitled to a subsidy payment of the total amount of lost rental income if the affordable housing operator can establish that the rental income was lost as a result of novel coronavirus, COVID-19, hardship, for which a rebuttable presumption of loss resulting from the novel coronavirus, COVID-19, shall be created if such affordable housing operator can demonstrate the loss of 25% or more of rental income within 1 month of the issuance of government ordered restrictions in response to the outbreak of novel coronavirus, COVID-19. For the purpose of determining whether the rebuttable presumption created herein shall apply, the month shall be deemed to have begun on March 20, 2020 and shall run until April 20, 2020.

(b) Any payment made to an affordable housing operator under this provision shall be monthly, paid on May 1, 2020, and such payment shall continue on a monthly basis until and through the date when the governor shall specify, in an executive order, that the prohibition on enforcement of either an eviction of any tenant, residential or commercial, imposed by executive order 202.8, shall have expired, but in no event shall such period be less than 90 days from March 20, 2020. The first payment on May 1, 2020 shall cover the period of March 20 through April 30, 2020.

(c) All departments and agencies specified in the private housing finance law, including the supervising agency as defined in article 1 of the private housing finance law, shall issue regulations establishing an application procedure for an affordable housing operator seeking such lost rental income relief. Such regulations shall provide that, as a condition of such relief, the affordable housing operator shall enter into a regulatory agreement, as defined in section 576 of the private housing finance law, with the executive unless such affordable housing operator is already subject to a regulatory agreement as defined therein, and such regulations shall further provide that affordable housing operators shall not be eligible for the relief provided herein for rental income imputable to any illegal unit or for rental income imputa-

1 ble to a unit containing uncorrected, as of the time of the application,
2 immediately hazardous violations of a state or local housing or building
3 code that existed prior to March 1, 2020.

4 (d) The assistance provided under this section shall primarily be
5 funded by any grants or funding available or repurposed by the state in
6 relation to:

7 (i) the novel coronavirus, COVID-19, public health crisis;

8 (ii) any federal or state funds available in response to a national
9 and/or state emergency order;

10 (iii) any funds received from federal programs in relation to public
11 health emergencies;

12 (iv) the novel coronavirus, COVID-19, public health emergency allowing
13 for the protection of low-income, marginalized communities, public hous-
14 ing programs and economic development, and the preservation and conser-
15 vation of housing;

16 (v) any funds available to the state under the federal "Coronavirus
17 Aid, Relief, and Economic Security Act" or the CARES Act; and/or

18 (vi) any federal or state emergency relief funds available to the
19 state.

20 § 8. Assistance to residential housing cooperatives losing maintenance
21 and rental income as a result of the novel coronavirus, COVID-19, public
22 health crisis. (a) For the purpose of ensuring that residential housing
23 cooperatives possess sufficient funds to continue operating safe,
24 decent, and sanitary multifamily housing during the novel coronavirus,
25 COVID-19, public health crisis, any residential housing cooperatives
26 that have lost 25% or greater of maintenance or rental income as a
27 result of financial hardship to such residential housing cooperative's
28 tenants or shareholders shall be entitled to a payment of the total
29 amount of lost maintenance or rental income if the residential housing
30 cooperative can establish that the maintenance or rental income was lost
31 as a result of novel coronavirus, COVID-19, hardship, for which a
32 rebuttable presumption of loss resulting from the novel coronavirus,
33 COVID-19, shall be created if such residential housing cooperative can
34 demonstrate the loss of 25% or more of maintenance or rental income
35 within a month of the issuance of government ordered restrictions in
36 response to the outbreak of novel coronavirus, COVID-19. For the purpose
37 of determining whether the rebuttable presumption created herein shall
38 apply, the month shall run from March 20, 2020 until April 20, 2020.

39 (b) Any payment made to a residential housing cooperative under this
40 provision shall be monthly, paid on or before May 1, 2020 and such
41 payment shall continue on a monthly basis until and through the date
42 when the governor shall specify, in an executive order, that the prohi-
43 bition on enforcement of an eviction of any tenant, residential or
44 commercial, imposed by executive order 202.8, shall have expired, but in
45 no event shall such period be less than 90 days from March 20, 2020.

46 (c) All departments and agencies specified in the private housing
47 finance law as supervising housing development fund companies, as well
48 as the supervising agency as defined in article 1 of the private housing
49 finance law, shall issue regulations establishing an application proce-
50 dure for a residential housing cooperative seeking assistance with such
51 lost maintenance and rental income relief. Such regulations shall
52 provide that as a condition of such assistance payments, a residential
53 housing cooperative shall agree and shall be obligated, through execut-
54 ing an instrument in a form specified in the regulations issued here-
55 under, to provide any tenants residing in the housing cooperative with a
56 renewal lease of at least 1 year, at the same rental amount actually

1 charged and collected 6 months prior to the application for relief. Such
2 regulations shall further provide that any rental housing cooperative
3 shall not be eligible for the relief provided herein for rental or main-
4 tenance income imputable to any illegal unit or unit occupied in
5 violation of the cooperative's bylaws or for rental income imputable to
6 a unit containing uncorrected, as of the time of the application, imme-
7 diately hazardous violations of a state or local housing or building
8 code that existed prior to March 1, 2020 and which are the housing coop-
9 erative's legal duty to remedy.

10 (d) The assistance provided under this section shall primarily be
11 funded by any grants or funding available or repurposed by the state in
12 relation to:

13 (i) the novel coronavirus, COVID-19, public health crisis;

14 (ii) any federal or state funds available in response to a national
15 and/or state emergency order;

16 (iii) any funds received from federal programs in relation to public
17 health emergencies;

18 (iv) the novel coronavirus, COVID-19, public health emergency allowing
19 for the protection of low-income, marginalized communities, public hous-
20 ing programs and economic development, and the preservation and conser-
21 vation of housing;

22 (v) any funds available to the state under the federal "Coronavirus
23 Aid, Relief, and Economic Security Act" or the CARES Act; and/or

24 (vi) any federal or state emergency relief funds available to the
25 state.

26 § 9. Regulatory relief for affordable housing operators and residen-
27 tial housing cooperatives providing housing during the novel coronavi-
28 rus, COVID-19, public health crisis. (a) Notwithstanding any contrary
29 provision of law, rule, regulation or provision of any regulatory or
30 other agreement by and between an affordable housing operator, residen-
31 tial housing cooperative, or any affiliate or subsidiary of an afforda-
32 ble housing operator or residential housing cooperative, as one party,
33 and the department or agency of the state or any political subdivision
34 of the state, as another party, affordable housing operators and resi-
35 dential housing cooperatives shall: (i) have the right to use or apply
36 any operating account reserves toward or for building or housing project
37 operations or the satisfaction of any debts or obligations arising from
38 financial hardship caused by the novel coronavirus, COVID-19, public
39 health crisis without any penalty or sanction otherwise provided for in
40 such law, rule, regulation, or provision of a regulatory or other agree-
41 ment; and (ii) the right to withhold any mortgage or construction loan
42 principal payments, mortgage or construction loan interest payments, or
43 mortgage or construction loan extension fee payments due and owing to
44 the state or any political subdivision thereof and apply such mortgage
45 interest payments to housing project operations or the satisfaction of
46 any debts or obligations arising from financial hardship caused by the
47 novel coronavirus, COVID-19, public health crisis or to the replenish-
48 ment of any operating account reserves.

49 (b) Notwithstanding any contrary provision of law, rule, regulation or
50 provision of any regulatory or other agreement by and between any corpo-
51 ration, not-for-profit corporation, community benefit corporation, local
52 community development corporation, as one party, and the department or
53 agency of the state or any political subdivision of the state, as anoth-
54 er party, relating to the provision of funding to any affordable housing
55 operator or residential housing cooperative, whether as a mortgage or as
56 any supportive fund, such community benefit corporation or local commu-

1 nity development shall, upon request of such affordable housing operator
2 or residential housing cooperative, grant a forbearance to such afforda-
3 ble housing operator or residential housing cooperative who has a finan-
4 cial hardship as a result of the novel coronavirus, COVID-19, pandemic
5 for a period of at least 90 days, which period shall be extended if the
6 governor extends the period of the mortgage forbearance as provided in
7 section five of this act.

8 (c) All departments and agencies specified in the private housing
9 finance law, including the supervising agency as defined in article 1 of
10 the private housing finance law, shall issue regulations to effectuate
11 the provisions of this section.

12 § 10. Severability clause. If any clause, sentence, paragraph, subdi-
13 vision, section or part of this act shall be adjudged by a court of
14 competent jurisdiction to be invalid, such judgment shall not affect,
15 impair or invalidate the remainder thereof, but shall be confined in its
16 operation to the clause, sentence, paragraph, subdivision, section or
17 part thereof directly involved in the controversy in which such judgment
18 shall have been rendered. It is hereby declared to be the intent of the
19 legislature that this act would have been enacted even if such invalid
20 provisions had not been included herein.

21 § 11. This act shall take effect immediately.