

# STATE OF NEW YORK

8243--C

## IN SENATE

April 27, 2020

Introduced by Sens. KAVANAGH, KAMINSKY, ADDABBO, GIANARIS, GOUNARDES, HOYLMAN, KENNEDY, LITTLE, MARTINEZ, METZGER, SAVINO, SKOUFIS -- read twice and ordered printed, and when printed to be committed to the Committee on Banks -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the banking law, in relation to the forbearance of residential 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. Mortgage forbearance. 1. As used in this section, the following  
4 terms shall have the following meanings:

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

14 (b) "qualified mortgagor" means an individual who resides in New York  
15 whose principal dwelling is encumbered by a home loan pursuant to para-  
16 graph (a) of subdivision six of section thirteen hundred four of the  
17 real property actions and proceedings law or whose principal dwelling is  
18 a co-operative unit whose shares are encumbered by any loan otherwise  
19 meeting the requirements of a home loan under paragraph (a) of subdivi-  
20 sion six of section thirteen hundred four of the real property actions  
21 and proceedings law, from or serviced by a regulated institution;

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 mortgagor is  
5 required to make trial payments in full and on-time in order to be  
6 considered for a permanent loan 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 residen-  
10 tial mortgage of a property located in New York widely available to any  
11 qualified mortgagor who, during the covered period, is in arrears or on  
12 a trial period plan, or who has applied for loss mitigation and demon-  
13 strates financial hardship during the covered period; and

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

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

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

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

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

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

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

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

54 5. Notwithstanding anything to the contrary in this section, this  
55 section shall not apply to, and does not affect any mortgage loans made,  
56 insured, or securitized by any agency or instrumentality of the United

1 States, any government sponsored enterprise, or a federal home loan  
2 bank, or the rights and obligations of any lender, issuer, servicer or  
3 trustee of such obligations, including servicers for the Government  
4 National Mortgage Association.

5 § 2. This act shall take effect immediately.