

# STATE OF NEW YORK

8359

## IN SENATE

May 19, 2020

Introduced by Sen. HOYLMAN -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to amend the real property law, in relation to judicial interpretation of commercial leases regarding whether COVID-19 was an event that could have been foreseen or guarded against

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

1 Section 1. The real property law is amended by adding a new section  
2 235-i to read as follows:

3 § 235-i. Unforeseeable event: COVID-19. 1. If a court as a matter of  
4 law finds performance under a commercial lease contract is frustrated or  
5 objectively impossible, either wholly or in part, as a consequence of  
6 the outbreak of novel coronavirus, COVID-19, such court shall further  
7 hold that COVID-19 constitutes an event that could not have been fore-  
8 seen or guarded against in such contract.

9 2. When a party claims that performance under a commercial lease has  
10 been frustrated or made objectively impossible, either wholly or in  
11 part, as a consequence of COVID-19, the parties to such contract shall  
12 be afforded a reasonable opportunity to present evidence as to the  
13 extent of the alleged frustration of purpose or impossibility, including  
14 but not limited to:

15 a. tenant's loss in income compared to similar time periods;  
16 b. prohibitions and guidance from governmental or industry authori-  
17 ties; and  
18 c. whether the temporary loss in income was otherwise recovered by the  
19 tenant.

20 The court shall review any private financial documentation offered as  
21 evidence pursuant to this subdivision in camera to the extent necessary  
22 to protect the privacy of the tenant.

23 § 2. This act shall take effect immediately.

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

LBD16262-01-0