

# STATE OF NEW YORK

8744

## IN SENATE

July 13, 2020

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

AN ACT to amend the banking law, in relation to mortgage repayment forbearance

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-y to  
2 read as follows:

3 § 9-y. Mortgage repayment forbearance; residential or commercial  
4 investment properties. 1. As used in this section, the following terms  
5 shall have the following meanings:

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

16 (b) "qualified mortgagor" means an individual (i) who resides in New  
17 York and who owns a residential or commercial investment property encum-  
18 bered by a home loan as defined by subdivision six of section thirteen  
19 hundred four of the real property actions and proceedings law, or by any  
20 other mortgage loan, from or serviced by a regulated institution, on  
21 such residential or commercial property held for investment; (ii) whose  
22 residential or commercial investment property contains one to four separ-  
23 ate units; (iii) who receives at least thirty percent of his or her  
24 income from rent received from such residential or commercial investment  
25 property; and (iv) who demonstrates financial hardship as a result of  
26 COVID-19 during the covered period;

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 qualified mort-  
5 gagor is required to make trial payments in full and on-time in order to  
6 be considered for a permanent loan repayment 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 mortgage  
10 on a residential or commercial property held for investment located in  
11 New York widely available to any qualified mortgagor who, during the  
12 covered period, is in arrears or on a trial period plan, or who has  
13 applied for loss mitigation; and

14 (b) grant such forbearance of all monthly payments due with respect to  
15 the mortgage secured by the qualified mortgagor's residential or commer-  
16 cial investment property in New York for a period of up to one hundred  
17 eighty days to any such qualified mortgagor, with the option to extend  
18 the forbearance of such monthly payments for up to an additional one  
19 hundred eighty days provided that this extension is subject to the mort-  
20 gagor demonstrating continued financial hardship. Such forbearance may  
21 be backdated to March seventh, two thousand twenty, provided that the  
22 maximum length of the forbearance may be no longer than one hundred  
23 eighty days and any extension thereof pursuant to this section.

24 3. Notwithstanding any other provision of law, any mortgage forbear-  
25 ance granted by a regulated institution pursuant to this section to a  
26 qualified mortgagor as a result of financial hardship shall be subject  
27 to the following provisions:

28 (a) the mortgagor shall have the option to extend the term of the loan  
29 for the length of the period of forbearance. The regulated institution  
30 shall not charge additional interest or any late fees or penalties on  
31 the forborne payment; or

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

36 (c) the mortgagor shall have the option to negotiate a loan modifica-  
37 tion or any other option that meets the changed circumstances of the  
38 qualified mortgagor; or

39 (d) if the mortgagor and regulated institution cannot reasonably agree  
40 on a mutually acceptable loan modification, the regulated institution  
41 shall offer to defer arrears accumulated during the forbearance period  
42 as a non-interest bearing balloon loan payable at the maturity of the  
43 loan, or at the time the loan is satisfied through a refinance or sale  
44 of the property. Any late fees accumulated as a result of the forbear-  
45 ance shall be waived.

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

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

1 5. Notwithstanding anything to the contrary in this section, this  
2 section shall not apply to, and does not affect any mortgage loans made,  
3 insured, purchased, or securitized by any agency or instrumentality of  
4 the United States, any government sponsored enterprise, or a federal  
5 home loan bank, or a corporate governmental agency of the state consti-  
6 tuted as a political subdivision and public benefit corporation, or the  
7 rights and obligations of any lender, issuer, servicer or trustee of  
8 such obligations, including servicers for the Government National Mort-  
9 gage Association.

10 6. Notwithstanding any other provision of law or of this section, the  
11 obligation to grant the forbearance relief required by this section  
12 shall be subject to the regulated institution having sufficient capital  
13 and liquidity to meet its obligations and to operate in a safe and sound  
14 manner. Any regulated institution that determines that it is not able to  
15 offer relief pursuant to this section to any qualified mortgagor must  
16 notify the department within five business days of making such determi-  
17 nation. Any such notice filed with the department shall include informa-  
18 tion about the qualified mortgagor, the reason the regulated institution  
19 determined that it was unable to offer any relief pursuant to this  
20 section, information about the regulated institution's financial condi-  
21 tion supporting the regulated institution's determination, and any other  
22 information required by the department. At the same time that the regu-  
23 lated institution provides notice to the department, it shall advise the  
24 qualified mortgagor that the application for relief was denied and  
25 provide a statement that the applicant may file a complaint with the New  
26 York state department of financial services at 1-800-342-3736 or  
27 <http://www.dfs.ny.gov> if the applicant believes the application was  
28 wrongly denied.

29 § 2. This act shall take effect immediately.