

STATE OF NEW YORK

3207

2021-2022 Regular Sessions

IN ASSEMBLY

January 22, 2021

Introduced by M. of A. BRONSON, HEASTIE, PEOPLES-STOKES, LAVINE, STIRPE, DINOWITZ, CYMBROWITZ, JEAN-PIERRE, REYES, EPSTEIN, CRUZ, GOTTFRIED, WEINSTEIN, NOLAN, ABBATE, COOK, GLICK, AUBRY, CAHILL, ENGLEBRIGHT, GALEF, PERRY, PRETLOW, J. RIVERA, CUSICK, BENEDETTO, LUPARDO, HEVESI, L. ROSENTHAL, ZEBROWSKI, THIELE, WEPRIN, QUART, FAHY, KIM, OTIS, SOLAGES, STECK, DAVILA, PICHARDO, BARRON, BICHOTTE HERMELYN, JOYNER, SEAWRIGHT, SIMON, WALKER, HYNDMAN, BARNWELL, CARROLL, DE LA ROSA, DICKENS, NIOU, PHEFFER AMATO, VANEL, WALLACE, D. ROSENTHAL, TAYLOR, DARLING, FALL, FERNANDEZ, FRONTUS, GRIFFIN, JACOBSON, McMAHON, SAYEGH, ANDERSON, BURDICK, BURGOS, CLARK, GALLAGHER, GONZALEZ-ROJAS, JACKSON, KELLES, LUNSFORD, MAMDANI, MEEKS, MITAYNES, J. D. RIVERA, SEPTIMO, SILLITTI, SOUFFRANT FORREST, ZINERMAN -- read once and referred to the Committee on Judiciary

AN ACT establishing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021"; in relation to eviction proceedings; and to provide for the expiration of certain provisions upon the expiration thereof (Part A); and in relation to foreclosure proceedings; and providing for the expiration of certain provisions upon the expiration thereof (Subpart A); in relation to tax sales; and providing for the expiration of certain provisions upon the expiration thereof (Subpart B); to establish hardship declarations for owners of commercial real property; and providing for the expiration of such provisions upon the expiration thereof (Subpart C) (Part B)

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

1 Section 1. This act enacts into law components of legislation relating
2 to commercial eviction and foreclosure protections. Each component is
3 wholly contained within a Part identified as Parts A through B. The
4 effective date for each particular provision contained within such Part
5 is set forth in the last section of such Part. Any provision in any
6 section contained within a Part, including the effective date of the

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

LBD07084-05-1

Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section four of this act sets forth the general effective date of this act.

§ 2. Short title. This act shall be known and may be cited as the "COVID-19 Emergency Protect our Small Businesses Act of 2021".

§ 3. Legislative intent. The Legislature finds and declares all of the following:

On March 7, 2020, Governor Andrew Cuomo proclaimed a state of emergency in response to the Coronavirus disease (COVID-19) pandemic. Measures necessary to contain the spread of COVID-19 have brought about widespread economic and societal disruption, placing the state of New York in unprecedented circumstances.

COVID-19 presents a historic threat to small businesses. Thousands of small businesses are facing eviction or foreclosure due to necessary disease control measures that closed or restricted businesses across the state. The pandemic has further interrupted court operations, the availability of counsel, the ability for parties to pay for counsel, and the ability to safely commute and enter a courtroom, settlement conference and the like.

Ensuring small businesses can survive in this unprecedented time is to the mutual benefit of all New Yorkers and will help the state address the pandemic, protect public health, and set the stage for recovery. It is, therefore, the intent of this legislation to avoid as many evictions and foreclosures of small businesses as possible for businesses experiencing a financial hardship during the COVID-19 pandemic.

As such, it is necessary to temporarily allow small businesses impacted by COVID-19 to remain in their place of business. A limited, temporary stay is necessary to protect the public health, safety and morals of the people the Legislature represents from the dangers of the COVID-19 emergency pandemic.

PART A

Section 1. Definitions. For the purposes of this act: 1. "Eviction proceeding" means a summary proceeding to recover possession of real property under article seven of the real property actions and proceedings law relating to a commercial unit or any other judicial or administrative proceeding to recover possession of real property relating to a commercial unit.

2. "Landlord" includes a landlord, owner of a commercial property and any other person with a legal right to pursue eviction, possessory action or a money judgment for rent, including arrears, owed or that becomes due during the COVID-19 covered period, as defined in section 1 of chapter 127 of the laws of 2020.

3. "Tenant" includes a commercial tenant that is a resident of the state, independently owned and operated, not dominant in its field and employs fifty or fewer persons.

4. "Hardship declaration" means the following statement, or a substantially equivalent statement in the language in which the commercial lease or tenancy agreement was written or negotiated, in 14-point type, published by the office of court administration, whether in physical or electronic written form:

"NOTICE TO COMMERCIAL TENANT: If you have lost significant revenue or had significantly increased necessary costs during the COVID-19 pandem-

ic, and you sign and deliver this hardship declaration form to your landlord, you cannot be evicted until at least May 1, 2021 for nonpayment of rent or for holding over after the expiration of your lease. You may still be evicted for violating your lease by persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

If your landlord has provided you with this form, your landlord must also provide you with a mailing address and e-mail address to which you can return this form. If your landlord has already started an eviction proceeding against you, you can return this form to either your landlord, the court, or both at any time. You should keep a copy or picture of the signed form for your records. You will still owe any unpaid rent to your landlord. You should also keep careful track of what you have paid and any amount you still owe.

COMMERCIAL TENANT'S DECLARATION OF HARDSHIP DURING THE
COVID-19 PANDEMIC

I am the owner, chief executive officer, president, or similar officer of (name of business), in which is a commercial tenant at (address of commercial unit). My business is resident in New York state, independently owned and operated, not dominant in its field, and employs fifty or fewer persons. My business is experiencing financial hardship, and is unable to pay the rent or other financial obligations under the lease in full or obtain an alternative suitable commercial property because of one or more of the following:

1. Significant loss of revenue during the COVID-19 pandemic.
2. Significant increase in necessary expenses related to providing personal protective equipment to employees or purchasing and installing other protective equipment to prevent the transmission of COVID-19 within the business.
3. Moving expenses and difficulty in securing an alternative commercial property make it a hardship for the business to relocate to another location during the COVID-19 pandemic.

To the extent the business has lost revenue or had increased expenses, any public assistance the business has received since the start of the COVID-19 pandemic does not fully make up for the business's loss of revenue or increased expenses.

I understand that the business must comply with all other lawful terms under its commercial tenancy, lease agreement or similar contract. I further understand that lawful fees, penalties or interest for not having paid rent in full or met other financial obligations as required by the commercial tenancy, lease agreement or similar contract may still be charged or collected and may result in a monetary judgment. I further understand that the landlord may be able to seek eviction after May 1, 2021, and that the law may provide certain protections at that time that are separate from those available through this declaration.

Signed:

Printed name:

Date signed:

1 NOTICE: You are signing and submitting this form under penalty of law.
2 That means it is against the law to make a statement on this form that
3 you know is false."

4 § 2. No commercial tenant shall be removed from the possession prior
5 to May 1, 2021, except by an eviction proceeding.

6 § 3. Pending eviction proceedings. Any eviction proceeding pending on
7 the effective date of this act, including eviction proceedings filed on
8 or before March 7, 2020, or commenced within thirty days of the effec-
9 tive date of this act shall be stayed for at least sixty days, or to
10 such later date that the chief administrative judge shall determine is
11 necessary to ensure that courts are prepared to conduct proceedings in
12 compliance with this act and to give tenants an opportunity to submit
13 the hardship declaration pursuant to this act. The court in each case
14 shall promptly issue an order directing such stay and promptly mail the
15 respondent a copy of the hardship declaration in English, and, to the
16 extent practicable, the language in which the commercial lease or tenan-
17 cy agreement was written or negotiated, if other than English.

18 § 4. Pre-eviction notices. A landlord shall include a "Hardship Decla-
19 ration" with every written notice required by the commercial lease or
20 tenancy agreement, law or rule to be provided prior to the commencement
21 of an eviction proceeding, and with every notice of petition or summons
22 and complaint served on a tenant. If the translation of the hardship
23 declaration in the language in which the commercial lease or tenancy
24 agreement was written or negotiated is not available on the office of
25 court administration's public website, it shall be the landlord's
26 responsibility to obtain a suitable translation of the hardship declara-
27 tion. Such notice shall also include a mailing address, telephone number
28 and active email address the tenant can use to contact the landlord and
29 return the hardship declaration.

30 § 5. Prohibition on initiation of eviction proceeding. If there is no
31 pending eviction proceeding and a tenant provides a hardship declaration
32 to the landlord or an agent of the landlord, there shall be no initi-
33 ation of an eviction proceeding against the tenant until at least May 1,
34 2021, and in such event any specific time limit for the commencement of
35 an eviction proceeding shall be tolled until May 1, 2021.

36 § 6. Required affidavit. 1. No court shall accept for filing any peti-
37 tion or other filing to commence an eviction proceeding unless the peti-
38 tioner or plaintiff or an agent of the petitioner or plaintiff files an
39 affidavit of service, under penalty of perjury, demonstrating the manner
40 in which the petitioner or plaintiff or the petitioner's or plaintiff's
41 agent served a copy of the hardship declaration in English and the
42 language in which the commercial lease or tenancy agreement was written
43 or negotiated, if other than English, with any written notice required
44 by the commercial lease or tenancy agreement, law or rule to be provided
45 prior to the commencement of an eviction proceeding, and an affidavit
46 under penalty of perjury:

47 a. attesting that at the time of filing, neither the petitioner or
48 plaintiff nor any agent of the petitioner or plaintiff has received a
49 hardship declaration from the respondent, or

50 b. attesting that the respondent or defendant has returned a hardship
51 declaration, but the respondent or defendant is persistently and unrea-
52 sonably engaging in behavior that substantially infringes on the use and
53 enjoyment of other tenants or occupants or causes a substantial safety
54 hazard to others, with a specific description of the behavior alleged.

55 2. Upon accepting a petition or complaint, the attorney, judge or
56 clerk of the court, as the case may be, shall determine whether a copy

1 of the hardship declaration in English and the language in which the
2 commercial lease or tenancy agreement was written or negotiated, if
3 other than English, is annexed to the served notice of petition or
4 summons and complaint and, if not, shall ensure that the hardship decla-
5 ration is attached to such notice or summons. At the earliest possible
6 opportunity, the court shall seek confirmation on the record or in writ-
7 ing from the respondent or defendant that the respondent or defendant
8 has received the hardship declaration and that the respondent or defend-
9 ant has not submitted a hardship declaration to the petitioner or plain-
10 tiff, an agent of the petitioner or plaintiff, or the court. If the
11 court determines a respondent or defendant has not received a hardship
12 declaration, then the court shall stay the proceeding for a reasonable
13 period of time, which shall be no less than ten business days or any
14 longer period provided by law, and provide the respondent or defendant
15 with a copy of the hardship declaration in English and, to the extent
16 practicable, the language in which the commercial lease or tenancy
17 agreement was written or negotiated, if other than English, to ensure
18 the respondent or defendant received and fully considered whether to
19 submit the hardship declaration.

20 § 7. Pending proceedings. In any eviction proceeding in which an
21 eviction warrant or judgment of possession or ejectment has not been
22 issued, including eviction proceedings filed on or before March 7, 2020,
23 if the tenant provides a hardship declaration to the petitioner or
24 plaintiff, the court, or an agent of the petitioner or plaintiff or the
25 court, the eviction proceeding shall be stayed until at least May 1,
26 2021. If such hardship declaration is provided to the petitioner or
27 plaintiff or agent, such petitioner or plaintiff or agent shall promptly
28 file it with the court, advising the court in writing the index number
29 of all relevant cases.

30 § 8. Post warrant of eviction. a. (i) In any eviction proceeding in
31 which an eviction warrant or judgment of possession or ejectment has
32 been issued prior to the effective date of this act, but has not yet
33 been executed as of the effective date of this act, including eviction
34 proceedings filed on or before March 7, 2020, the court shall stay the
35 execution of the warrant or judgment at least until the court has held a
36 status conference with the parties. (ii) In any eviction proceeding, if
37 the tenant provides a hardship declaration to the petitioner or plain-
38 tiff, the court, or an agent of the petitioner or plaintiff or the
39 court, prior to the execution of the warrant or judgment, the execution
40 shall be stayed until at least May 1, 2021. If such hardship declaration
41 is provided to the petitioner or plaintiff or agent of the petitioner or
42 plaintiff, such petitioner or plaintiff or agent shall promptly file it
43 with the court, advising the court in writing the index number of all
44 relevant cases.

45 b. In any eviction proceeding in which a warrant or execution has been
46 issued, including eviction proceedings filed on or before March 7, 2020,
47 any warrant or execution issued shall not be effective as against the
48 occupants, unless, in addition to other requirements under law, such
49 warrant or execution states:

50 (i) The tenant has not submitted the hardship declaration and the
51 tenant was properly served with a copy of the hardship declaration
52 pursuant to this section, listing dates the tenant was served with the
53 hardship declaration by the petitioner or plaintiff and the court; or

54 (ii) The tenant is ineligible for a stay under this act because the
55 court has found that the tenant is persistently and unreasonably engag-
56 ing in behavior that substantially infringes on the use and enjoyment of

1 other tenants or occupants or causes a substantial safety hazard to
2 others, with a specific description of the behavior.

3 c. No court shall issue a warrant or execution directed to the sheriff
4 of the county or to any constable or marshal of the city in which the
5 property, or a portion thereof, is situated, or, if it is not situated
6 in a city, to any constable of any town in the county, that does not
7 comply with the requirements of this section.

8 d. No officer to whom the warrant or execution is directed shall
9 execute a warrant for eviction issued that does not comply with the
10 requirements of this section.

11 e. Unless the warrant or execution contains the information contained
12 in paragraph (ii) of subdivision b of this section, if any tenant deliv-
13 ers the hardship declaration to the officer to whom the warrant or
14 execution is directed, the officer shall not execute the warrant or
15 execution and shall return the hardship form to the court indicating the
16 appropriate index/case number the form is associated with.

17 § 9. Sections three, four, five, seven and paragraph (ii) of subdivi-
18 sion a of section eight of this act shall not apply if the tenant is
19 persistently and unreasonably engaging in behavior that substantially
20 infringes on the use and enjoyment of other tenants or occupants or
21 causes a substantial safety hazard to others, provided:

22 1. If an eviction proceeding is pending on the effective date of this
23 act, but the petitioner or plaintiff has not previously alleged that the
24 tenant persistently and unreasonably engaged in such behavior, the peti-
25 tioner or plaintiff shall be required to submit a new petition or an
26 amended complaint with such allegations and comply with all notice and
27 service requirements under law.

28 2. If the court has awarded a judgment against a respondent or defend-
29 ant prior to the effective date of this act on the basis of objectiona-
30 ble or nuisance behavior, the court shall hold a hearing to determine
31 whether the tenant is continuing to persist in engaging in unreasonable
32 behavior that substantially infringes on the use and enjoyment of other
33 tenants or occupants or causes a substantial safety hazard to others.

34 3. For the purposes of this act, a mere allegation of the behavior by
35 the petitioner or plaintiff or an agent of the petitioner or plaintiff
36 alleging such behavior shall not be sufficient evidence to establish
37 that the tenant has engaged in such behavior.

38 4. If the petitioner or plaintiff fails to establish that the tenant
39 persistently and unreasonably engaged in such behavior and the tenant
40 provides or has provided a hardship declaration to the petitioner,
41 petitioner's or plaintiff's agent or the court, the court shall stay or
42 continue to stay any further proceedings until at least May 1, 2021.

43 5. If the petitioner or plaintiff establishes that the tenant persis-
44 tently and unreasonably engaged in such behavior or the tenant fails to
45 provide a hardship declaration to the petitioner or plaintiff,
46 petitioner's or plaintiff's agent or the court, the proceeding may
47 continue pursuant to law.

48 § 10. Translation of hardship declaration. The office of court admin-
49 istration shall translate the hardship declaration, as defined in
50 section one of this act, into Spanish and, to the extent practicable,
51 the six most common languages in the city of New York, after Spanish,
52 and shall post and maintain such translations and an English language
53 copy of the hardship declaration on the website of such office beginning
54 within fifteen days of the effective date of this act. To the extent
55 practicable, the office of court administration shall post and maintain
56 on its website translations into such additional languages as the chief

1 administrative judge shall deem appropriate to ensure that tenants have
2 an opportunity to understand and submit hardship declarations pursuant
3 to this act.

4 § 11. Rebuttable presumption. A hardship declaration shall create a
5 rebuttable presumption that the tenant is experiencing financial hard-
6 ship, in any judicial or administrative proceeding that may be brought,
7 for the purposes of establishing a defense under an executive order of
8 the governor or any other local or state law, order or regulation
9 restricting the eviction of a tenant suffering from a financial hardship
10 during or due to COVID-19 provided that the absence of a hardship decla-
11 ration shall not create a presumption that a financial hardship is not
12 present.

13 § 12. If any clause, sentence, paragraph, section or part of this act
14 shall be adjudged by any court of competent jurisdiction to be invalid
15 and after exhaustion of all further judicial review, the judgment shall
16 not affect, impair or invalidate the remainder thereof, but shall be
17 confined in its operation to the clause, sentence, paragraph, section or
18 part of this act directly involved in the controversy in which the judg-
19 ment shall have been rendered.

20 § 13. This act shall take effect immediately and sections one, two,
21 three, four, five, six, seven, eight, nine, ten and twelve of this act
22 shall expire May 1, 2021.

23 PART B

24 Section 1. This Part enacts into law components of legislation relat-
25 ing to mortgage foreclosure, tax foreclosure, credit discrimination and
26 tax renewal exemption protections. Each component is wholly contained
27 within a Subpart identified as Subparts A through C. The effective date
28 for each particular provision contained within such Subpart is set forth
29 in the last section of such Subpart. Any provision in any section
30 contained within a Subpart, including the effective date of the Subpart,
31 which makes reference to a section "of this act", when used in
32 connection with that particular component, shall be deemed to mean and
33 refer to the corresponding section of the Subpart in which it is found.
34 Section three of this Part sets forth the general effective date of this
35 Part.

36 SUBPART A

37 Section 1. Application. This section shall apply to any action to
38 foreclose a mortgage relating to commercial real property, provided the
39 owner or mortgagor of such property owns ten or fewer commercial units
40 whether directly or indirectly and is a business that is resident in New
41 York State, independently owned and operated, not dominant in its field,
42 and employs fifty or fewer persons. The ten or fewer commercial units
43 may be in more than one property or building as long as the total aggre-
44 gate number of ten units are currently occupied by a tenant or are
45 available for rent.

46 Notwithstanding anything to the contrary, this act shall not apply to,
47 and does not affect any mortgage loans made, insured, purchased or secu-
48 ritized by a corporate governmental agency of the state constituted as a
49 political subdivision and public benefit corporation, or the rights and
50 obligations of any lender, issuer, servicer or trustee of such obli-
51 gations.

§ 2. Definitions. For the purposes of this act, "Hardship Declaration" means the following statement in 14-point type, published by the office of court administration, whether in physical or electronic written form:

"NOTICE TO COMMERCIAL MORTGAGOR: If you have lost significant revenue or had significantly increased necessary costs during the COVID-19 pandemic, and you sign and deliver this hardship declaration form to your mortgage lender or other foreclosing party, you cannot be foreclosed on until at least May 1, 2021.

If your mortgage lender or other foreclosing party provided you with this form, the mortgage lender or other foreclosing party must also provide you with a mailing address and e-mail address to which you can return this form. If you are already in foreclosure proceedings, you may return this form to the court. You should keep a copy or picture of the signed form for your records. You will still owe any unpaid mortgage payments and lawful fees to your lender. You should also keep careful track of what you have paid and any amount you still owe.

COMMERCIAL MORTGAGOR'S DECLARATION OF COVID-19-RELATED HARDSHIP

I am the owner, chief executive officer, president, or similar officer of (name of the business), which is the mortgagor of the property at (address of commercial unit). My business owns, whether directly or indirectly, ten or fewer commercial units. My business is resident in New York State, independently owned and operated, not dominant in its field, and employs fifty or fewer persons. My business is experiencing financial hardship and is unable to pay the mortgage in full because of one or more of the following:

1. Significant loss of revenue during the COVID-19 pandemic.

2. Significant increase in necessary expenses related to providing personal protective equipment to employees or purchasing and installing other protective equipment to prevent the transmission of COVID-19 within the business.

3. Moving expenses and difficulty in securing an alternative commercial property make it a hardship for the business to relocate to another property during the COVID-19 pandemic.

4. One or more of the business's tenants has defaulted on a significant amount of their rent payments since March 1, 2020.

To the extent that the business has lost revenue or had increased expenses, any public assistance the business has received since the start of the COVID-19 pandemic does not fully make up for the business's loss of revenue or increased expenses.

I understand that the business must comply with all other lawful terms under my commercial mortgage agreement. I further understand that lawful fees, penalties or interest for not having paid the mortgage in full as required by the commercial mortgage agreement may still be charged or collected and may result in a monetary judgment. I also understand that the mortgage lender or other foreclosing party may pursue a foreclosure action against the business on or after May 1, 2021, if I do not fully repay any missed or partial payments and lawful fees.

Signed:

Printed Name:

Date Signed:

NOTICE: You are signing and submitting this form under penalty of law. That means it is against the law to make a statement on this form that you know is false."

§ 3. Any action to foreclose a mortgage pending on the effective date of this act, including actions filed on or before March 7, 2020, or commenced within thirty days of the effective date of this act shall be

1 stayed for at least sixty days, or to such later date that the chief
2 administrative judge shall determine is necessary to ensure that courts
3 are prepared to conduct proceedings in compliance with this act and to
4 give mortgagors an opportunity to submit the hardship declaration pursu-
5 ant to this act. The court in each case shall promptly issue an order
6 directing such stay and promptly mail the mortgagor a copy of the hard-
7 ship declaration.

8 § 4. The foreclosing party shall include a "Hardship Declaration" with
9 every notice required provided to a mortgagor prior to filing an action
10 for foreclosure. Such notice shall also include a mailing address, tele-
11 phone number and active email address the mortgagor can use to contact
12 the foreclosing party and return the hardship declaration.

13 § 5. If a mortgagor provides a hardship declaration to the foreclosing
14 party or an agent of the foreclosing party, there shall be no initiation
15 of an action to foreclose a mortgage against the mortgagor until at
16 least May 1, 2021, and in such event any specific time limit for the
17 commencement of an action to foreclose a mortgage shall be tolled until
18 May 1, 2021.

19 § 6. No court shall accept for filing any action to foreclose a mort-
20 gage unless the foreclosing party or an agent of the foreclosing party
21 files an affidavit, under penalty of perjury:

22 (i) of service demonstrating the manner in which the foreclosing
23 party's agent served a copy of the hardship declaration with required
24 notices, if any, provided to the mortgagor, and

25 (ii) attesting that at the time of filing, neither the foreclosing
26 party nor any agent of the foreclosing party has received a hardship
27 declaration from the mortgagor.

28 At the earliest possible opportunity, the court shall seek confirma-
29 tion on the record or in writing that the mortgagor has received a copy
30 of the hardship declaration and that the mortgagor has not returned the
31 hardship declaration to the foreclosing party or an agent of the fore-
32 closing party. If the court determines a mortgagor has not received a
33 hardship declaration, then the court shall stay the proceeding for a
34 reasonable period of time, which shall be no less than ten business days
35 or any longer period provided by law, to ensure the mortgagor received
36 and fully considered whether to submit the hardship declaration.

37 § 7. In any action to foreclose a mortgage in which a judgment of sale
38 has not been issued, including actions filed on or before March 7, 2020,
39 if the mortgagor provides a hardship declaration to the foreclosing
40 party, the court, or an agent of the foreclosing party or the court, the
41 proceeding shall be stayed until at least May 1, 2021. If such hardship
42 declaration is provided to the foreclosing party or agent of the fore-
43 closing party, such foreclosing party or agent shall promptly file it
44 with the court, advising the court in writing the index number of all
45 relevant cases.

46 § 8. In any action to foreclose a mortgage in which a judgment of sale
47 has been issued prior to the effective date of this act but has not yet
48 been executed as of the effective date of this act, including actions
49 filed on or before March 7, 2020, the court shall stay the execution of
50 the judgment at least until the court has held a status conference with
51 the parties. In any action to foreclose a mortgage, if the mortgagor
52 provides a hardship declaration to the foreclosing party, the court, or
53 an agent of the foreclosing party or the court, prior to the execution
54 of the judgment, the execution shall be stayed until at least May 1,
55 2021. If such hardship declaration is provided to the foreclosing party
56 or agent of the foreclosing party, such foreclosing party or agent shall

1 promptly file it with the court, advising the court in writing the index
2 number of all relevant cases.

3 § 9. The office of court administration shall post and maintain a copy
4 of the hardship declaration on the website of such office beginning
5 within fifteen days of the effective date of this act.

6 § 10. A hardship declaration shall create a rebuttable presumption
7 that the mortgagor is suffering financial hardship, in any judicial or
8 administrative proceeding that may be brought, for the purposes of
9 establishing a defense under an executive order of the governor or any
10 other local or state law, order or regulation restricting actions to
11 foreclose a mortgage against a mortgagor suffering from a financial
12 hardship during or due to the COVID-19 pandemic provided that the
13 absence of a hardship declaration shall not create a presumption that a
14 financial hardship is not present.

15 § 11. If any clause, sentence, paragraph, section or part of this act
16 shall be adjudged by any court of competent jurisdiction to be invalid
17 and after exhaustion of all further judicial review, the judgment shall
18 not affect, impair or invalidate the remainder thereof, but shall be
19 confined in its operation to the clause, sentence, paragraph, section or
20 part of this act directly involved in the controversy in which the judg-
21 ment shall have been rendered.

22 § 12. This act shall take effect immediately and sections one, two,
23 three, four, five, six, seven, eight, nine and eleven of this act shall
24 expire May 1, 2021.

25 SUBPART B

26 Section 1. Application. This act shall apply to any action to fore-
27 close on delinquent taxes or sell a tax lien relating to commercial real
28 property, provided the owner or mortgagor of such property owns ten or
29 fewer commercial units whether directly or indirectly and is a business
30 that is resident in New York State, independently owned and operated,
31 not dominant in its field, and employs fifty or fewer persons. The ten
32 or fewer commercial units may be in more than one property or building
33 as long as the units are currently occupied by a tenant or are available
34 for rent.

35 § 2. Definitions. For purposes of this act: 1. "Tax lien" means an
36 unpaid tax, special ad valorem levy, special assessment or other charge
37 imposed upon real property by or on behalf of a municipal corporation or
38 special district or other public or private entity which is an encum-
39 brance on real property, whether or not evidenced by a written instru-
40 ment.

41 2. "Tax foreclosure and tax lien sale" shall mean any such tax lien
42 sale or tax foreclosure pursuant to article 11 of the real property tax
43 law, or any general, special or local law related to real property tax
44 lien sales or real property tax foreclosures.

45 3. "Hardship Declaration" means the following statement in 14-point
46 type, whether in physical or electronic written form:

47 "COMMERCIAL OWNER DECLARATION OF COVID-19-RELATED HARDSHIP

48 I am the owner, chief executive officer, president, or similar officer
49 of (name of the business), which is the owner of the commercial property
50 at (address). My business owns, whether directly or indirectly, ten or
51 fewer commercial units. My business is resident in New York State,
52 independently owned and operated, not dominant in its field, and employs
53 fifty or fewer persons. My business is experiencing financial hardship,

1 and is unable to pay its full tax bill because of one or more of the
2 following:

3 1. Significant loss of revenue during the COVID-19 pandemic.

4 2. Significant increase in necessary expenses related to providing
5 personal protective equipment to employees or purchasing and installing
6 other protective equipment to prevent the transmission of COVID-19 with-
7 in the business.

8 3. Moving expenses and difficulty in securing an alternative commer-
9 cial property make it a hardship for the business to relocate to another
10 property during the COVID-19 pandemic.

11 4. One or more of the business's tenants has defaulted on a signif-
12 icant amount of their rent payments since March 1, 2020.

13 To the extent that the business has lost revenue or had increased
14 expenses, any public assistance that the business has received since the
15 start of the COVID-19 pandemic does not fully make up for the loss of
16 revenue or increased expenses.

17 I understand that lawful fees, penalties or interest for not having
18 paid the business's taxes in full may still be charged or collected and
19 may result in a foreclosure action against the business on or after May
20 1, 2021, if the business does not fully repay any missed or partial
21 payments and fees.

22 Signed:

23 Printed Name:

24 Date Signed:

25 NOTICE: You are signing and submitting this form under penalty of law.
26 That means it is against the law to make a statement on this form that
27 you know is false."

28 § 3. 1. A commercial real property owner may submit a "Hardship Decla-
29 ration" to any village, town, city, school district, county, or other
30 entity or person which conducts tax foreclosures or tax lien sales.

31 2. At least thirty days prior to the date on which a sale of a tax
32 lien is scheduled to occur, or upon the filing of a petition of foreclo-
33 sure of a tax lien, the enforcing officer or other person or entity
34 conducting such tax lien sale or tax foreclosure shall notify the owner
35 of the affected property of such owner's rights under this act and shall
36 notify the owner that a copy of the hardship declaration can be accessed
37 on the New York State Department of Tax and Finance's website and also
38 provide a link to such declaration form. For the purposes of this act,
39 "enforcing officer" shall have the same meaning as defined in subdivi-
40 sion 3 of section 1102 of the real property tax law. The New York State
41 Department of Tax and Finance shall publish a copy of the hardship
42 declaration on its website.

43 3. The submission of such a declaration, unless withdrawn by the
44 owner, shall act as a temporary stay applicable to all entities and
45 persons of all such tax lien sales and tax foreclosure actions and
46 proceedings against such owner for such property that have been
47 commenced or could have been commenced before May 1, 2021.

48 4. While such stay is in effect, no other action or proceeding shall
49 be commenced to recover any part of such delinquent taxes.

50 5. Any applicable statutes of limitation for the commencement of any
51 action or proceeding to sell a tax lien or foreclose a tax lien is
52 tolled until such stay has expired. The obligation to pay the balance of
53 such delinquent taxes is not rendered invalid, released or extinguished
54 by such stay.

55 6. A hardship declaration shall create a rebuttable presumption that
56 the owner is experiencing financial hardship, in any judicial or admin-

1 istrative proceeding that may be brought, for the purposes of establish-
2 ing a defense under an executive order of the governor or any other
3 local or state law, order or regulation restricting actions to sell a
4 tax lien or foreclose a tax lien against an owner suffering from a
5 financial hardship during or due to the COVID-19 pandemic, provided
6 that the absence of a hardship declaration shall not create a presump-
7 tion that a financial hardship is not present.

8 § 4. This act shall take effect immediately and sections one and two
9 and subdivisions one, two, three, four and five of section three shall
10 expire May 1, 2021.

11 SUBPART C

12 Section 1. Application. 1. This act shall apply to an owner of commer-
13 cial real property, provided the owner or mortgagor of such property
14 owns ten or fewer commercial units whether directly or indirectly and is
15 a business that is resident in New York State, independently owned and
16 operated, not dominant in its field, and employs fifty or fewer persons.
17 The ten or fewer commercial units may be in more than one property or
18 building as long as the total aggregate number of ten units are current-
19 ly occupied by a tenant or are available for rent.

20 2. Hardship declaration. For purposes of this act, "hardship declara-
21 tion" shall mean the following statement in 14-point type, whether in
22 physical or electronic written form, and the department of financial
23 services shall publish a copy of the hardship declaration on its
24 website:

25 "NOTICE TO COMMERCIAL OWNER/MORTGAGOR: If you have lost significant
26 revenue or had significantly increased necessary costs due to the
27 COVID-19 pandemic, and you sign and deliver this hardship declaration
28 form to your lending institution, you cannot be discriminated against in
29 the determination of whether credit should be extended or reported nega-
30 tively to a credit reporting agency until at least May 1, 2021.

31 If a lending institution provided you with this form, the lending
32 institution must also provide you with a mailing address and e-mail
33 address to which you can return this form. You should keep a copy or
34 picture of the signed form for your records.

35 COMMERCIAL OWNER/MORTGAGOR DECLARATION OF COVID-19-RELATED HARDSHIP

36 I am the owner, chief executive officer, president, or similar officer
37 of (name of the business), which is the OWNER/MORTGAGOR of the property
38 at (address of commercial unit). My business owns, whether directly or
39 indirectly, ten or fewer commercial units. My business is resident in
40 New York State, independently owned and operated, not dominant in its
41 field, and employs fifty or fewer persons. My business is experiencing
42 financial hardship, and is unable to pay the mortgage in full because of
43 one or more of the following:

44 1. Significant loss of revenue during the COVID-19 pandemic.

45 2. Significant increase in necessary out-of-pocket expenses related to
46 providing personal protective equipment to employees or purchasing and
47 installing other protective equipment to prevent the transmission of
48 COVID-19 within the business.

49 3. Moving expenses and difficulty in securing an alternative commer-
50 cial property make it a hardship for the business to relocate to another
51 commercial property during the COVID-19 pandemic.

52 4. One or more of my tenants has defaulted on a significant amount of
53 their rent payments since March 1, 2020.

1 To the extent that the business has lost revenue or had increased
2 expenses, any public assistance that the business has received since the
3 start of the COVID-19 pandemic does not fully make up for the loss of
4 revenue or increased expenses.

5 Signed:

6 Printed Name:

7 Date Signed:

8 NOTICE: You are signing and submitting this form under penalty of law.

9 That means it is against the law to make a statement on this form that
10 you know is false."

11 3. Discrimination in credit decisions. Notwithstanding any law to the
12 contrary, lending institutions shall not discriminate in the determi-
13 nation of whether credit should be extended to any owner of commercial
14 real property as defined in subdivision one of this section because, as
15 provided for in this act, such owner has been granted a stay of mortgage
16 foreclosure proceedings, tax foreclosure proceedings or of tax lien
17 sales, or that an owner of commercial real property as defined in subdivi-
18 sion one of this section is currently in arrears and has filed a hard-
19 ship declaration with such lender.

20 4. Prohibition on negative credit reporting. Notwithstanding any law
21 to the contrary, as provided for in this act, the granting of a stay of
22 mortgage foreclosure proceedings, tax foreclosure proceedings or tax
23 lien sales, or that an owner of commercial real property as defined in
24 subdivision one of this section is currently in arrears and has filed a
25 hardship declaration with their lender shall not be negatively reported
26 to any credit reporting agency.

27 § 2. This act take effect immediately and shall expire May 1, 2021.

28 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-
29 sion, section, item, subpart or part of this act shall be adjudged by
30 any court of competent jurisdiction to be invalid, such judgment shall
31 not affect, impair, or invalidate the remainder thereof, but shall be
32 confined in its operation to the clause, sentence, paragraph, subdivi-
33 sion, section, item, subpart or part thereof directly involved in the
34 controversy in which such judgment shall have been rendered. It is here-
35 by declared to be the intent of the legislature that this act would have
36 been enacted even if such invalid provisions had not been included here-
37 in.

38 § 3. This act shall take effect immediately provided, however, that
39 the applicable effective date of Subparts A through C of this act shall
40 be as specifically set forth in the last section of such Subparts.

41 § 4. Severability clause. If any clause, sentence, paragraph, subdivi-
42 sion, section or part of this act shall be adjudged by any court of
43 competent jurisdiction to be invalid, such judgment shall not affect,
44 impair, or invalidate the remainder thereof, but shall be confined in
45 its operation to the clause, sentence, paragraph, subdivision, section
46 or part thereof directly involved in the controversy in which such judg-
47 ment shall have been rendered. It is hereby declared to be the intent of
48 the legislature that this act would have been enacted even if such
49 invalid provisions had not been included herein.

50 § 5. This act shall take effect immediately provided, however, that
51 the applicable effective date of Parts A through B of this act shall be
52 as specifically set forth in the last section of such Parts.