

# STATE OF NEW YORK

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5742

2021-2022 Regular Sessions

## IN SENATE

March 17, 2021

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

AN ACT to amend a chapter of the laws of 2021 relating to establishing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021", in relation to providing for certain commercial small businesses to be eligible for relief under the "COVID-19 Emergency Protect Our Small Businesses Act of 2021"

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

1 Section 1. Section 3 of a chapter of the laws of 2021 relating to  
2 establishing the "COVID-19 Emergency Protect Our Small Businesses Act of  
3 2021", as proposed in legislative bills numbers S. 471-A and A. 3207, is  
4 amended to read as follows:

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

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

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

20 Ensuring small businesses and commercial property owners can survive  
21 in this unprecedented time is to the mutual benefit of all New Yorkers  
22 and will help the state address the pandemic, protect public health, and

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

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1 set the stage for recovery. It is, therefore, the intent of this legis-  
2 lation to avoid as many evictions and foreclosures of small businesses  
3 as possible for businesses experiencing a financial hardship during the  
4 COVID-19 pandemic.

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

10 § 2. Section 1 of part A of a chapter of the laws of 2021 relating to  
11 establishing the "COVID-19 Emergency Protect Our Small Businesses Act of  
12 2021", as proposed in legislative bills numbers S. 471-A and A. 3207, is  
13 amended to read as follows:

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

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

25 3. "Tenant" includes a commercial tenant that is a resident of the  
26 state, independently owned and operated, not dominant in its field and  
27 either employs [~~fifty~~] one hundred or fewer persons, or, the commercial  
28 tenant's business was closed to in-person operations by executive order  
29 or department of health directive for two or more weeks between May 15,  
30 2020 and May 1, 2021, and employs five hundred or fewer persons.

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

36 "NOTICE TO COMMERCIAL TENANT: If you have lost significant revenue or  
37 had significantly increased necessary costs during the COVID-19 pandem-  
38 ic, and you sign and deliver this hardship declaration form to your  
39 landlord, you cannot be evicted until at least May 1, 2021 for nonpay-  
40 ment of rent or for holding over after the expiration of your lease. You  
41 may still be evicted for violating your lease by persistently and unrea-  
42 sonably engaging in behavior that substantially infringes on the use and  
43 enjoyment of other tenants or occupants or causes a substantial safety  
44 hazard to others.

45 If your landlord has provided you with this form, your landlord must  
46 also provide you with a mailing address and e-mail address to which you  
47 can return this form. If your landlord has already started an eviction  
48 proceeding against you, you can return this form to either your land-  
49 lord, the court, or both at any time. You should keep a copy or picture  
50 of the signed form for your records. You will still owe any unpaid rent  
51 to your landlord. [~~You should also~~] To the extent you can pay less than  
52 the full rent, it is recommended you do so and keep careful track of  
53 what you have paid and any amount you still owe.

1 I am the owner, chief executive officer, president, or similar officer  
2 of (name of business), in which is a commercial tenant at (address of  
3 commercial unit). My business is resident in New York state, independ-  
4 ently owned and operated, not dominant in its field, and either employs  
5 [~~fifty~~] one hundred or fewer persons, or, the commercial business was  
6 closed to in-person operations by executive order or department of  
7 health directive for two or more weeks between May 15, 2020 and May 1,  
8 2021, and employs five hundred or fewer persons. My business is experi-  
9 encing financial hardship, and is unable to pay the rent in full or  
10 other financial obligations under the lease in full or obtain an alter-  
11 native suitable commercial property because of one or more of the  
12 following:

- 13 1. Significant loss of revenue during the COVID-19 pandemic.
- 14 2. Significant increase in necessary expenses related to providing  
15 personal protective equipment to employees or purchasing and installing  
16 other protective equipment to prevent the transmission of COVID-19 with-  
17 in the business.
- 18 3. Moving expenses and difficulty in securing an alternative commer-  
19 cial property make it a hardship for the business to relocate to another  
20 location during the COVID-19 pandemic.

21 To the extent the business has lost revenue or had increased expenses,  
22 any public assistance the business has received since the start of the  
23 COVID-19 pandemic [~~does~~] must not fully make up for the business's loss  
24 of revenue or increased expenses, and the business still meets the  
25 aforementioned eligibility criteria to qualify for a financial hardship.

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

35 Signed:  
36 Printed name:  
37 Date signed:

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

41 § 3. Sections 1 and 2 of subpart A of part B of a chapter of the laws  
42 of 2021 relating to establishing the "COVID-19 Emergency Protect Our  
43 Small Businesses Act of 2021", as proposed in legislative bills numbers  
44 S. 471-A and A. 3207, are amended to read as follows:

45 Section 1. Application. This section shall apply to any action to  
46 foreclose a mortgage relating to commercial real property, provided the  
47 owner or mortgagor of such property owns ten or fewer commercial units  
48 whether directly or indirectly and is a business that is resident in New  
49 York State, independently owned and operated, not dominant in its field,  
50 and either employs [~~fifty~~] one hundred or fewer persons, or, the commer-  
51 cial tenant's business was closed to in-person operations by executive  
52 order or department of health directive for two or more weeks between  
53 May 15, 2020 and May 1, 2021, and employs five hundred or fewer persons.

1 The ten or fewer commercial units may be in more than one property or  
2 building as long as the total aggregate number of ten units are current-  
3 ly occupied by a tenant or are available for rent.

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

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

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

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

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

27 I am the owner, chief executive officer, president, or similar officer  
28 of (name of the business), which is the mortgagor of the property at  
29 (address of commercial unit). My business owns, whether directly or  
30 indirectly, ten or fewer commercial units. My business is resident in  
31 New York State, independently owned and operated, not dominant in its  
32 field, and either employs [fifty] one hundred or fewer persons, or, the  
33 commercial business was closed to in-person operations by executive  
34 order or department of health directive for two or more weeks between  
35 May 15, 2020, and May 1, 2021, and employs five hundred or fewer  
36 persons. My business is experiencing financial hardship and is unable to  
37 pay the mortgage in full because of one or more of the following:

38 1. Significant loss of revenue during the COVID-19 pandemic.  
39 2. Significant increase in necessary expenses related to providing  
40 personal protective equipment to employees or purchasing and installing  
41 other protective equipment to prevent the transmission of COVID-19 with-  
42 in the business.  
43 3. Moving expenses and difficulty in securing an alternative commer-  
44 cial property make it a hardship for the business to relocate to another  
45 property during the COVID-19 pandemic.

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

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

52 I understand that the business must comply with all other lawful terms  
53 under my commercial mortgage agreement. I further understand that lawful  
54 fees, penalties or interest for not having paid the mortgage in full as  
55 required by the commercial mortgage agreement may still be charged or  
56 collected and may result in a monetary judgment. I also understand that

1 the mortgage lender or other foreclosing party may pursue a foreclosure  
2 action against the business on or after May 1, 2021, if I do not fully  
3 repay any missed or partial payments and lawful fees.

4 Signed:

5 Printed Name:

6 Date Signed:

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

10 § 4. Sections 1 and 2 of subpart B of part B of a chapter of the laws  
11 of 2021 relating to establishing the "COVID-19 Emergency Protect Our  
12 Small Businesses Act of 2021", as proposed in legislative bills numbers  
13 S. 471-A and A. 3207, are amended to read as follows:

14 Section 1. Application. This act shall apply to any action to fore-  
15 close on delinquent taxes or sell a tax lien relating to commercial real  
16 property, provided the owner or mortgagor of such property owns ten or  
17 fewer commercial units whether directly or indirectly and is a business  
18 that is resident in New York State, independently owned and operated,  
19 not dominant in its field, and either employs [fifty] one hundred or  
20 fewer persons, or, the commercial business was closed to in-person oper-  
21 ations by executive order or department of health directive for two or  
22 more weeks between May 15, 2020 and May 1, 2021, and employs five  
23 hundred or fewer persons. The ten or fewer commercial units may be in  
24 more than one property or building as long as the units are currently  
25 occupied by a tenant or are available for rent.

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

32 2. "Tax foreclosure and tax lien sale" shall mean any such tax lien  
33 sale or tax foreclosure pursuant to article 11 of the real property tax  
34 law, or any general, special or local law related to real property tax  
35 lien sales or real property tax foreclosures.

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

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

39 I am the owner, chief executive officer, president, or similar officer  
40 of (name of the business), which is the owner of the commercial property  
41 at (address). My business owns, whether directly or indirectly, ten or  
42 fewer commercial units. My business is resident in New York State,  
43 independently owned and operated, not dominant in its field, and either  
44 employs [fifty] one hundred or fewer persons, or, the commercial busi-  
45 ness was closed to in-person operations by executive order or department  
46 of health directive for two or more weeks between May 15, 2020 and May  
47 1, 2021, and employs five hundred or fewer persons. My business is expe-  
48 riencing financial hardship, and is unable to pay its full tax bill  
49 because of one or more of the following:

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

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

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

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

6 To the extent that the business has lost revenue or had increased  
7 expenses, any public assistance that the business has received since the  
8 start of the COVID-19 pandemic [~~does~~] must not fully make up for the  
9 loss of revenue or increased expenses, and the business still meets the  
10 mentioned eligibility criteria to qualify for a financial hardship.

11 I understand that lawful fees, penalties or interest for not having  
12 paid the business's taxes in full may still be charged or collected and  
13 may result in a foreclosure action against the business on or after May  
14 1, 2021, if the business does not fully repay any missed or partial  
15 payments and fees.

16 Signed:

17 Printed Name:

18 Date Signed:

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

22 § 5. Section 1 of subpart C of part B of a chapter of the laws of 2021  
23 relating to establishing the "COVID-19 Emergency Protect Our Small Busi-  
24 nesses Act of 2021", as proposed in legislative bills numbers S. 471-A  
25 and A. 3207, is amended to read as follows:

26 Section 1. Application. 1. This act shall apply to an owner of commer-  
27 cial real property, provided the owner or mortgagor of such property  
28 owns ten or fewer commercial units whether directly or indirectly and is  
29 a business that is resident in New York State, independently owned and  
30 operated, not dominant in its field, and either employs [~~fifty~~] one  
31 hundred or fewer persons, or, the commercial business was closed to  
32 in-person operations by executive order or department of health direc-  
33 tive for two or more weeks between May 15, 2020 and May 1, 2021, and  
34 employs five hundred or fewer persons. The ten or fewer commercial units  
35 may be in more than one property or building as long as the total aggre-  
36 gate number of ten units are currently occupied by a tenant or are  
37 available for rent.

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

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

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

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

54 I am the owner, chief executive officer, president, or similar officer  
55 of (name of the business), which is the OWNER/MORTGAGOR of the property  
56 at (address of commercial unit). My business owns, whether directly or

1 indirectly, ten or fewer commercial units. My business is resident in  
2 New York State, independently owned and operated, not dominant in its  
3 field, and either employs [~~fifty~~] one hundred or fewer persons, or, the  
4 commercial business was closed to in-person operations by executive  
5 order or department of health directive for two or more weeks between  
6 May 15, 2020 and May 1, 2021, and employs five hundred or fewer persons.

7 My business is experiencing financial hardship, and is unable to pay the  
8 mortgage in full because of one or more of the following:

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

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

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

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

19 To the extent that the business has lost revenue or had increased  
20 expenses, any public assistance that the business has received since the  
21 start of the COVID-19 pandemic [~~does~~] must not fully make up for the  
22 loss of revenue or increased expenses, and the business still meets the  
23 forementioned eligibility criteria to qualify for a financial hardship.

24 Signed:

25 Printed Name:

26 Date Signed:

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

30 3. Discrimination in credit decisions. Notwithstanding any law to the  
31 contrary, lending institutions shall not discriminate in the determi-  
32 nation of whether credit should be extended to any owner of commercial  
33 real property as defined in subdivision one of this section because, as  
34 provided for in this act, such owner has been granted a stay of mortgage  
35 foreclosure proceedings, tax foreclosure proceedings or of tax lien  
36 sales, or that an owner of commercial real property as defined in subdivi-  
37 sion one of this section is currently in arrears and has filed a hard-  
38 ship declaration with such lender.

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

46 § 6. This act shall take effect on the same date and in the same  
47 manner as a chapter of the laws of 2021, relating to establishing the  
48 "COVID-19 Emergency Protect Our Small Businesses Act of 2021", as  
49 proposed in legislative bills numbers S. 471-A and A. 3207, takes  
50 effect; provided that the amendments to section 1 of part A, sections 1  
51 and 2 of subpart A of part B, sections 1 and 2 of subpart B of part B,  
52 and section 1 of subpart C of part B of a chapter of the laws of 2021,  
53 relating to establishing the "COVID-19 Emergency Protect Our Small  
54 Businesses Act of 2021", as proposed in legislative bills numbers  
55 S. 471-A and A. 3207, made by sections two, three, four and five of

1 this act, respectively, shall not affect the expiration of such sections  
2 and shall be deemed expired therewith.