STATE OF NEW YORK

5742

2021-2022 Regular Sessions

IN SENATE

March 17, 2021

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:

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

§ 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 **and commercial property owners**. Thousands of small businesses **and commercial property owners** 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 **and commercial property owners** 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

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

LBD07084-06-1

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.

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

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 **either** employs [~~**fifty**~~] **one hundred** or fewer persons**, or, the commercial tenant's business was closed to in-person operations by executive order or department of health directive for two or more weeks between May 15, 2020 and May 1, 2021, and employs five hundred 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 pandemic, 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**~~] **To the extent you can pay less than the full rent, it is recommended you do so and** 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 **either** employs [~~**fifty**~~] **one hundred** or fewer persons**, or, the commercial business was closed to in-person operations by executive order or department of health directive for two or more weeks between May 15, 2020 and May 1, 2021, and employs five hundred or fewer persons**. My business is experiencing financial hardship, and is unable to pay the rent **in full** 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**~~] **must** not fully make up for the business's loss of revenue or increased expenses**, and the business still meets the aforementioned eligibility criteria to qualify for a financial hardship**.

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:

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

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

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

Notwithstanding anything to the contrary, this act shall not apply to, and does not affect any mortgage loans made, insured, purchased or securitized by a corporate governmental agency of the state constituted as a political subdivision and public benefit corporation, or the rights and obligations of any lender, issuer, servicer or trustee of such obligations.

§ 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 **either** employs [~~**fifty**~~] **one hundred** or fewer persons**, or, the commercial business was closed to in-person operations by executive order or department of health directive for two or more weeks between May 15, 2020, and May 1, 2021, and employs five hundred 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."

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

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

§ 2. Definitions. For purposes of this act: 1. "Tax lien" means an unpaid tax, special ad valorem levy, special assessment or other charge imposed upon real property by or on behalf of a municipal corporation or special district or other public or private entity which is an encumbrance on real property, whether or not evidenced by a written instrument.

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

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

"COMMERCIAL OWNER 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 owner of the commercial property at (address). 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 **either** employs [~~**fifty**~~] **one hundred** or fewer persons**, or, the commercial business was closed to in-person operations by executive order or department of health directive for two or more weeks between May 15, 2020 and May 1, 2021, and employs five hundred or fewer persons**. My business is experiencing financial hardship, and is unable to pay its full tax bill 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 that the business has received since the start of the COVID-19 pandemic [~~does~~] **must** not fully make up for the loss of revenue or increased expenses**, and the business still meets the aforementioned eligibility criteria to qualify for a financial hardship**.

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

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

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

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

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

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

COMMERCIAL OWNER/MORTGAGOR 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 OWNER/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 **either** employs [~~**fifty**~~] **one hundred** or fewer persons**, or, the commercial business was closed to in-person operations by executive order or department of health directive for two or more weeks between May 15, 2020 and May 1, 2021, and employs five hundred 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 out-of-pocket 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 commercial property during the COVID-19 pandemic.

4. One or more of my 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 that the business has received since the start of the COVID-19 pandemic [~~**does**~~] **must** not fully make up for the loss of revenue or increased expenses**, and the business still meets the aforementioned eligibility criteria to qualify for a financial hardship**.

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. Discrimination in credit decisions. Notwithstanding any law to the contrary, lending institutions shall not discriminate in the determination of whether credit should be extended to any owner of commercial real property as defined in subdivision one of this section because, as provided for in this act, such owner has been granted a stay of mortgage foreclosure proceedings, tax foreclosure proceedings or of tax lien sales, or that an owner of commercial real property as defined in subdivision one of this section is currently in arrears and has filed a hardship declaration with such lender.

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

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

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