

# 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

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

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

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

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

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

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

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

33 PART A

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

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

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

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

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

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

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

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

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

- 26 1. Significant loss of revenue during the COVID-19 pandemic.
- 27 2. Significant increase in necessary expenses related to providing  
28 personal protective equipment to employees or purchasing and installing  
29 other protective equipment to prevent the transmission of COVID-19 with-  
30 in the business.
- 31 3. Moving expenses and difficulty in securing an alternative commer-  
32 cial property make it a hardship for the business to relocate to another  
33 location during the COVID-19 pandemic.

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

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

47 Signed:  
48 Printed name:  
49 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 ejection 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 ejection 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.

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

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

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

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

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

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

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

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

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

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

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

48 Signed:

49 Printed Name:

50 Date Signed:

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

54 § 3. Any action to foreclose a mortgage pending on the effective date  
55 of this act, including actions filed on or before March 7, 2020, or  
56 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.