STATE OF NEW YORK

2195

2021-2022 Regular Sessions

IN SENATE

January 20, 2021

Introduced by Sens. KAVANAGH, KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Banks

AN ACT to amend the banking law, in relation to authorizing commercial mortgage forbearance during the COVID-19 pandemic

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

Section 1. The banking law is amended by adding a new section 9-y to read as follows:

§ 9-y. Mortgage forbearance. 1. As used in this section, the following terms shall have the following meanings:

(a) "covered period" means March seventh, two thousand twenty until the date on which none of the provisions that closed or otherwise restricted public or private businesses or places of public accommodation, or required postponement or cancellation of all non-essential gatherings of individuals of any size for any reason in executive order numbers 202.3, 202.4, 202.5, 202.6, 202.7, 202.8, 202.10, 202.11, 202.13 or 202.14 of two thousand twenty, as extended by executive order numbers 202.28 and 202.31 and as further extended by any future executive order, issued in response to the COVID-19 pandemic continue to apply in the county in which the property encumbered by the mortgage in question is located; and

(b) "regulated institution" means any New York regulated banking organization as defined under this chapter and any New York regulated mortgage servicer entity subject to the authority of the department.

2. Notwithstanding any other provision of law, New York regulated institutions shall:

(a) make applications for forbearance of any payment due on a commercial mortgage of a property located in New York widely available to any qualified commercial mortgagor including those who are already in arrears or on a trial period plan or who have applied for loss miti-

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

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gation and who demonstrate financial hardship during the covered period; and

(b) grant such forbearance for a period of one hundred twenty days to any such qualified commercial mortgagor, subject to the safety and soundness requirements of the regulated institution.

(c) such forbearance may be backdated to March seventh, two thousand twenty.

3. Notwithstanding any other provision of law, any mortgage forbearance granted by a regulated institution pursuant to this section, or any other law, rule or regulation, to the qualified commercial mortgagor as a result of financial hardship during the covered period shall be subject to the following provisions:

(a) the regulated institution shall defer arrears accumulated during the forbearance period as a non-interest bearing balloon payment payable twelve months after the end of the forbearance period and shall waive any late fees accumulated as a result of the forbearance; and

(b) the total value of the deferred mortgage payment shall be apportioned each month to each tenant according to the percentage of the total rents due that their rental obligation represents on the mortgaged property in receipt of the forbearance. Each commercial tenant shall have their pro rata share of the forborne mortgage payment be deferred each month for the duration of the forbearance period. Such deferred rent shall be due within twelve months after the end of the forbearance period, and shall not accumulate interest or be subject to late fees; and

(c) no eviction proceedings may be commenced or continued against any residential or commercial tenant for nonpayment of rents that came due during the forbearance period.

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

5. Notwithstanding anything to the contrary in this section, this section shall not apply to, and does not affect any mortgage loans made, insured, or securitized by any agency or instrumentality of the United States, any government sponsored enterprise, or a federal home loan bank, or the rights and obligations of any lender, issuer, servicer or trustee of such obligations, including servicers for the Government National Mortgage Association.

§ 2. This act shall take effect immediately.