

STATE OF NEW YORK

40

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

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

AN ACT to amend the real property law, in relation to judicial interpretation of commercial leases regarding whether COVID-19 was an event that could have been foreseen or guarded against

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

1 Section 1. The real property law is amended by adding a new section
2 235-i to read as follows:

3 § 235-i. Unforeseeable event: COVID-19. 1. If a court as a matter of
4 law finds performance under a commercial lease contract is frustrated or
5 objectively impossible, either wholly or in part, as a consequence of
6 the outbreak of novel coronavirus, COVID-19, such court shall further
7 hold that COVID-19 constitutes an event that could not have been fore-
8 seen or guarded against in such contract.

9 2. When a party claims that performance under a commercial lease has
10 been frustrated or made objectively impossible, either wholly or in
11 part, as a consequence of COVID-19, the parties to such contract shall
12 be afforded a reasonable opportunity to present evidence as to the
13 extent of the alleged frustration of purpose or impossibility, including
14 but not limited to:

15 a. tenant's loss in income compared to similar time periods;

16 b. prohibitions and guidance from governmental or industry authori-
17 ties; and

18 c. whether the temporary loss in income was otherwise recovered by the
19 tenant.

20 The court shall review any private financial documentation offered as
21 evidence pursuant to this subdivision in camera to the extent necessary
22 to protect the privacy of the tenant.

23 § 2. This act shall take effect immediately.

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

LBD02366-01-1