STATE OF NEW YORK

471--A

2021-2022 Regular Sessions

IN SENATE

(Prefiled)

January 6, 2021

Introduced by Sen. KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. This act enacts into law components of legislation relating to commercial eviction and foreclosure protections. Each component is wholly contained within a Part identified as Parts A through B. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section four of this act sets forth the general effective date of this act.

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

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

LBD07084-04-1

§ 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. Thousands of small businesses 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 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 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.

PART A

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 employs fifty 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 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 employs fifty or fewer persons. My business is experiencing financial hardship, and is unable to pay the rent 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 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 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."

§ 2. No commercial tenant shall be removed from the possession prior to May 1, 2021, except by an eviction proceeding.

§ 3. Pending eviction proceedings. Any eviction proceeding pending on the effective date of this act, including eviction proceedings filed on or before March 7, 2020, or commenced within thirty days of the effective date of this act shall be stayed for at least sixty days, or to

such later date that the chief administrative judge shall determine is necessary to ensure that courts are prepared to conduct proceedings in compliance with this act and to give tenants an opportunity to submit the hardship declaration pursuant to this act. The court in each case shall promptly issue an order directing such stay and promptly mail the respondent a copy of the hardship declaration in English, and, to the extent practicable, the language in which the commercial lease or tenancy agreement was written or negotiated, if other than English.

§ 4. Pre-eviction notices. A landlord shall include a "Hardship Declaration" with every written notice required by the commercial lease or tenancy agreement, law or rule to be provided prior to the commencement of an eviction proceeding, and with every notice of petition or summons and complaint served on a tenant. If the translation of the hardship declaration in the language in which the commercial lease or tenancy agreement was written or negotiated is not available on the office of court administration's public website, it shall be the landlord's responsibility to obtain a suitable translation of the hardship declaration. Such notice shall also include a mailing address, telephone number and active email address the tenant can use to contact the landlord and return the hardship declaration.

§ 5. Prohibition on initiation of eviction proceeding. If there is no pending eviction proceeding and a tenant provides a hardship declaration to the landlord or an agent of the landlord, there shall be no initiation of an eviction proceeding against the tenant until at least May 1, 2021, and in such event any specific time limit for the commencement of an eviction proceeding shall be tolled until May 1, 2021.

§ 6. Required affidavit. 1. No court shall accept for filing any petition or other filing to commence an eviction proceeding unless the petitioner or plaintiff or an agent of the petitioner or plaintiff files an affidavit of service, under penalty of perjury, demonstrating the manner in which the petitioner or plaintiff or the petitioner's or plaintiff's agent served a copy of the hardship declaration in English and the language in which the commercial lease or tenancy agreement was written or negotiated, if other than English, with any written notice required by the commercial lease or tenancy agreement, law or rule to be provided prior to the commencement of an eviction proceeding, and an affidavit under penalty of perjury:

a. attesting that at the time of filing, neither the petitioner or plaintiff nor any agent of the petitioner or plaintiff has received a hardship declaration from the respondent, or

b. attesting that the respondent or defendant has returned a hardship declaration, but the respondent or defendant is 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, with a specific description of the behavior alleged.

2. Upon accepting a petition or complaint, the attorney, judge or clerk of the court, as the case may be, shall determine whether a copy of the hardship declaration in English and the language in which the commercial lease or tenancy agreement was written or negotiated, if other than English, is annexed to the served notice of petition or summons and complaint and, if not, shall ensure that the hardship declaration is attached to such notice or summons. At the earliest possible opportunity, the court shall seek confirmation on the record or in writing from the respondent or defendant that the respondent or defendant has received the hardship declaration and that the respondent or defendant has not submitted a hardship declaration to the petitioner or plain-

tiff, an agent of the petitioner or plaintiff, or the court. If the court determines a respondent or defendant has not received a hardship declaration, then the court shall stay the proceeding for a reasonable period of time, which shall be no less than ten business days or any longer period provided by law, and provide the respondent or defendant with a copy of the hardship declaration in English and, to the extent practicable, the language in which the commercial lease or tenancy agreement was written or negotiated, if other than English, to ensure the respondent or defendant received and fully considered whether to submit the hardship declaration.

§ 7. Pending proceedings. In any eviction proceeding in which an eviction warrant or judgment of possession or ejectment has not been issued, including eviction proceedings filed on or before March 7, 2020, if the tenant provides a hardship declaration to the petitioner or plaintiff, the court, or an agent of the petitioner or plaintiff or the court, the eviction proceeding shall be stayed until at least May 1, 2021. If such hardship declaration is provided to the petitioner or plaintiff or agent, such petitioner or plaintiff or agent shall promptly file it with the court, advising the court in writing the index number of all relevant cases.

§ 8. Post warrant of eviction. a. (i) In any eviction proceeding in which an eviction warrant or judgment of possession or ejectment has been issued prior to the effective date of this act, but has not yet been executed as of the effective date of this act, including eviction proceedings filed on or before March 7, 2020, the court shall stay the execution of the warrant or judgment at least until the court has held a status conference with the parties. (ii) In any eviction proceeding, if the tenant provides a hardship declaration to the petitioner or plaintiff, the court, or an agent of the petitioner or plaintiff or the court, prior to the execution of the warrant or judgment, the execution shall be stayed until at least May 1, 2021. If such hardship declaration is provided to the petitioner or plaintiff or agent of the petitioner or plaintiff, such petitioner or plaintiff or agent shall promptly file it with the court, advising the court in writing the index number of all relevant cases.

b. In any eviction proceeding in which a warrant or execution has been issued, including eviction proceedings filed on or before March 7, 2020, any warrant or execution issued shall not be effective as against the occupants, unless, in addition to other requirements under law, such warrant or execution states:

(i) The tenant has not submitted the hardship declaration and the tenant was properly served with a copy of the hardship declaration pursuant to this section, listing dates the tenant was served with the hardship declaration by the petitioner or plaintiff and the court; or

(ii) The tenant is ineligible for a stay under this act because the court has found that the tenant is 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, with a specific description of the behavior.

c. No court shall issue a warrant or execution directed to the sheriff of the county or to any constable or marshal of the city in which the property, or a portion thereof, is situated, or, if it is not situated in a city, to any constable of any town in the county, that does not comply with the requirements of this section.

d. No officer to whom the warrant or execution is directed shall execute a warrant for eviction issued that does not comply with the requirements of this section.

e. Unless the warrant or execution contains the information contained in paragraph (ii) of subdivision b of this section, if any tenant delivers the hardship declaration to the officer to whom the warrant or execution is directed, the officer shall not execute the warrant or execution and shall return the hardship form to the court indicating the appropriate index/case number the form is associated with.

§ 9. Sections three, four, five, seven and paragraph (ii) of subdivision a of section eight of this act shall not apply if the tenant is 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, provided:

1. If an eviction proceeding is pending on the effective date of this act, but the petitioner or plaintiff has not previously alleged that the tenant persistently and unreasonably engaged in such behavior, the petitioner or plaintiff shall be required to submit a new petition or an amended complaint with such allegations and comply with all notice and service requirements under law.

2. If the court has awarded a judgment against a respondent or defendant prior to the effective date of this act on the basis of objectionable or nuisance behavior, the court shall hold a hearing to determine whether the tenant is continuing to persist in engaging in unreasonable behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

3. For the purposes of this act, a mere allegation of the behavior by the petitioner or plaintiff or an agent of the petitioner or plaintiff alleging such behavior shall not be sufficient evidence to establish that the tenant has engaged in such behavior.

4. If the petitioner or plaintiff fails to establish that the tenant persistently and unreasonably engaged in such behavior and the tenant provides or has provided a hardship declaration to the petitioner, petitioner's or plaintiff's agent or the court, the court shall stay or continue to stay any further proceedings until at least May 1, 2021.

5. If the petitioner or plaintiff establishes that the tenant persistently and unreasonably engaged in such behavior or the tenant fails to provide a hardship declaration to the petitioner or plaintiff, petitioner's or plaintiff's agent or the court, the proceeding may continue pursuant to law.

§ 10. Translation of hardship declaration. The office of court administration shall translate the hardship declaration, as defined in section one of this act, into Spanish and, to the extent practicable, the six most common languages in the city of New York, after Spanish, and shall post and maintain such translations and an English language copy of the hardship declaration on the website of such office beginning within fifteen days of the effective date of this act. To the extent practicable, the office of court administration shall post and maintain on its website translations into such additional languages as the chief administrative judge shall deem appropriate to ensure that tenants have an opportunity to understand and submit hardship declarations pursuant to this act.

§ 11. Rebuttable presumption. A hardship declaration shall create a rebuttable presumption that the tenant is experiencing financial hardship, in any judicial or administrative proceeding that may be brought, for the purposes of establishing a defense under an executive order of

the governor or any other local or state law, order or regulation restricting the eviction of a tenant suffering from a financial hardship during or due to COVID-19 provided that the absence of a hardship declaration shall not create a presumption that a financial hardship is not present.

§ 12. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 13. This act shall take effect immediately and sections one, two, three, four, five, six, seven, eight, nine, ten and twelve of this act shall expire May 1, 2021.

PART B

Section 1. This Part enacts into law components of legislation relating to mortgage foreclosure, tax foreclosure, credit discrimination and tax renewal exemption protections. Each component is wholly contained within a Subpart identified as Subparts A through C. The effective date for each particular provision contained within such Subpart is set forth in the last section of such Subpart. Any provision in any section contained within a Subpart, including the effective date of the Subpart, which makes reference to a section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Subpart in which it is found. Section three of this Part sets forth the general effective date of this Part.

SUBPART A

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 employs fifty 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 employs fifty 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."

§ 3. Any action to foreclose a mortgage pending on the effective date of this act, including actions filed on or before March 7, 2020, or commenced within thirty days of the effective date of this act shall be stayed for at least sixty days, or to such later date that the chief administrative judge shall determine is necessary to ensure that courts are prepared to conduct proceedings in compliance with this act and to give mortgagors an opportunity to submit the hardship declaration pursuant to this act. The court in each case shall promptly issue an order directing such stay and promptly mail the mortgagor a copy of the hardship declaration.

§ 4. The foreclosing party shall include a "Hardship Declaration" with every notice required provided to a mortgagor prior to filing an action for foreclosure. Such notice shall also include a mailing address, telephone number and active email address the mortgagor can use to contact the foreclosing party and return the hardship declaration.

§ 5. If a mortgagor provides a hardship declaration to the foreclosing party or an agent of the foreclosing party, there shall be no initiation of an action to foreclose a mortgage against the mortgagor until at least May 1, 2021, and in such event any specific time limit for the commencement of an action to foreclose a mortgage shall be tolled until May 1, 2021.

§ 6. No court shall accept for filing any action to foreclose a mortgage unless the foreclosing party or an agent of the foreclosing party files an affidavit, under penalty of perjury:

(i) of service demonstrating the manner in which the foreclosing party's agent served a copy of the hardship declaration with required notices, if any, provided to the mortgagor, and

(ii) attesting that at the time of filing, neither the foreclosing party nor any agent of the foreclosing party has received a hardship declaration from the mortgagor.

At the earliest possible opportunity, the court shall seek confirmation on the record or in writing that the mortgagor has received a copy of the hardship declaration and that the mortgagor has not returned the hardship declaration to the foreclosing party or an agent of the foreclosing party. If the court determines a mortgagor has not received a hardship declaration, then the court shall stay the proceeding for a reasonable period of time, which shall be no less than ten business days or any longer period provided by law, to ensure the mortgagor received and fully considered whether to submit the hardship declaration.

§ 7. In any action to foreclose a mortgage in which a judgment of sale has not been issued, including actions filed on or before March 7, 2020, if the mortgagor provides a hardship declaration to the foreclosing party, the court, or an agent of the foreclosing party or the court, the proceeding shall be stayed until at least May 1, 2021. If such hardship declaration is provided to the foreclosing party or agent of the foreclosing party, such foreclosing party or agent shall promptly file it with the court, advising the court in writing the index number of all relevant cases.

§ 8. In any action to foreclose a mortgage in which a judgment of sale has been issued prior to the effective date of this act but has not yet been executed as of the effective date of this act, including actions filed on or before March 7, 2020, the court shall stay the execution of the judgment at least until the court has held a status conference with the parties. In any action to foreclose a mortgage, if the mortgagor provides a hardship declaration to the foreclosing party, the court, or an agent of the foreclosing party or the court, prior to the execution of the judgment, the execution shall be stayed until at least May 1, 2021. If such hardship declaration is provided to the foreclosing party or agent of the foreclosing party, such foreclosing party or agent shall promptly file it with the court, advising the court in writing the index number of all relevant cases.

§ 9. The office of court administration shall post and maintain a copy of the hardship declaration on the website of such office beginning within fifteen days of the effective date of this act.

§ 10. A hardship declaration shall create a rebuttable presumption that the mortgagor is suffering financial hardship, in any judicial or

administrative proceeding that may be brought, for the purposes of establishing a defense under an executive order of the governor or any other local or state law, order or regulation restricting actions to foreclose a mortgage against a mortgagor suffering from a financial hardship during or due to the COVID-19 pandemic provided that the absence of a hardship declaration shall not create a presumption that a financial hardship is not present.

§ 11. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

§ 12. This act shall take effect immediately and sections one, two, three, four, five, six, seven, eight, nine and eleven of this act shall expire May 1, 2021.

SUBPART B

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 employs fifty 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 employs fifty 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 not fully make up for the loss of revenue or increased expenses.

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."

§ 3. 1. A commercial real property owner may submit a "Hardship Declaration" to any village, town, city, school district, county, or other entity or person which conducts tax foreclosures or tax lien sales.

2. At least thirty days prior to the date on which a sale of a tax lien is scheduled to occur, or upon the filing of a petition of foreclosure of a tax lien, the enforcing officer or other person or entity conducting such tax lien sale or tax foreclosure shall notify the owner of the affected property of such owner's rights under this act and shall notify the owner that a copy of the hardship declaration can be accessed on the New York State Department of Tax and Finance's website and also provide a link to such declaration form. For the purposes of this act, "enforcing officer" shall have the same meaning as defined in subdivision 3 of section 1102 of the real property tax law. The New York State Department of Tax and Finance shall publish a copy of the hardship declaration on its website.

3. The submission of such a declaration, unless withdrawn by the owner, shall act as a temporary stay applicable to all entities and persons of all such tax lien sales and tax foreclosure actions and proceedings against such owner for such property that have been commenced or could have been commenced before May 1, 2021.

4. While such stay is in effect, no other action or proceeding shall be commenced to recover any part of such delinquent taxes.

5. Any applicable statutes of limitation for the commencement of any action or proceeding to sell a tax lien or foreclose a tax lien is tolled until such stay has expired. The obligation to pay the balance of such delinquent taxes is not rendered invalid, released or extinguished by such stay.

6. A hardship declaration shall create a rebuttable presumption that the owner is experiencing financial hardship, in any judicial or administrative proceeding that may be brought, for the purposes of establishing a defense under an executive order of the governor or any other local or state law, order or regulation restricting actions to sell a tax lien or foreclose a tax lien against an owner suffering from a financial hardship during or due to the COVID-19 pandemic, provided that the absence of a hardship declaration shall not create a presumption that a financial hardship is not present.

§ 4. This act shall take effect immediately and sections one and two and subdivisions one, two, three, four and five of section three shall expire May 1, 2021.

SUBPART C

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 employs fifty 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 employs fifty 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 not fully make up for the loss of revenue or increased expenses.

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.

§ 2. This act take effect immediately and shall expire May 1, 2021.

§ 2. Severability clause. If any clause, sentence, paragraph, subdivision, section, item, subpart or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, item, subpart or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 3. This act shall take effect immediately provided, however, that the applicable effective date of Subparts A through C of this act shall be as specifically set forth in the last section of such Subparts.

§ 4. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

§ 5. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through B of this act shall be as specifically set forth in the last section of such Parts.