



Lawrence K. Marks  
Chief Administrative Judge

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MEMORANDUM

March 15, 2021

To: Hon. George J. Silver  
Hon. Vito C. Caruso

From: Lawrence K. Marks *LM*

Subject: Commercial Foreclosure Proceedings Under the COVID-19 Emergency  
Protect Our Small Businesses Act of 2021 (L. 2021, c. 73)

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Governor Cuomo has signed into law chapter 73 of the Laws of 2021 (the COVID-19 Emergency Protect Our Small Businesses Act of 2021 ["Act" (effective March 9, 2021); Exh. A]), which, inter alia, provides COVID-related protections to defendants in certain commercial foreclosure matters (Act, Part B). Modeled upon the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 ("EEFPA") enacted last December, the Act imposes a 60-day stay upon (1) certain pending commercial foreclosure proceedings and (2) certain proceedings commenced within 30 days of the Act's effective date (i.e., on or before April 8, 2021).

In a manner similar to its treatment of commercial eviction proceedings – a subject addressed in a separate memorandum – the Act also sets forth a number of procedural requirements in commercial foreclosures similar to those imposed upon residential foreclosures under the EEFPA – the posting of Hardship Declarations by the Court System; the delivery of Hardship Declarations to thousands of property owners in pending matters; the holding of additional status conferences in matters where a judgment of sale has been issued but not yet executed. All of these requirements expire on May 1, 2021 (Act, Part B, Subpart A, §12). Highlights of the Act are as follows:

1. Matters and Owners/Mortgagors Covered by the Act: The Act applies to any action to foreclose a mortgage relating to commercial real property if the owner or mortgagor owns ten or fewer commercial units 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" ("Covered Matters") (Act, Part B, Subpart A, §1). The Act applies to tax lien foreclosure matters, with special provisions discussed in section 8 below.

Not covered: The Act does not apply to or affect mortgage loans “made, insured, purchased or securitized by a corporate governmental agency of the state constituted as a political subdivision and public benefit corporation....” (Act, Part B, Subpart A, §1).

2. Stay of Covered Matters: The Act immediately stays pending Covered Matters for sixty days (i.e., through May 8, 2021), including actions in which a judgment of sale has been issued but not executed (see paragraph 6, below). In addition, Covered Matters commenced between March 9, 2021 and April 8, 2021 shall be stayed for 60 days from commencement (Act, Part B, Subpart A, §3). An administrative order effectuating this stay (AO/95/21) is attached as Exh. B. **Commercial foreclosure actions that are not Covered Matters are not stayed, or otherwise impacted, by the Act.**

3. Notice to Commercial Mortgagor and Hardship Declaration – Publication and Translation: The Act contains a Notice to Commercial Mortgagor and a Hardship Declaration (collectively, “Hardship Declaration”; Exh. C), to be provided in blank format to defendants in Covered Matters, setting forth various grounds by which an owner/mortgagor might be adversely affected by the COVID-19 pandemic (Act, Part B, Subpart A, §2). The Act requires that the Declaration be posted on the Court System’s website (Act, Part B, Subpart A, §9).

4. Mailing of Hardship Declaration in Pending Matters: The Act directs the Court System to mail copies of the Hardship Declaration to all defendants in pending Covered Matters (Act, Part B, Subpart A, §3). Our Division of Technology will perform this task.

5. Further Stay of Pre-Judgment Foreclosure Proceedings, or Tolling of Commencement of Proceedings, Upon Submission of a Mortgagor’s Hardship Declaration: Where an owner or mortgagor delivers a Hardship Declaration to the foreclosing party or an agent of the foreclosing party in a Covered Matter, the Act requires that such action (if pending) be stayed until at least May 1, 2021,<sup>1</sup> or (if not yet commenced) tolls the time limit for the commencement of the action until May 1, 2021 (Act, Part B, Subpart A, §5). Where no Hardship Declaration is submitted in a Covered Matter, the matter may proceed in the normal course following expiration of the 60-day stay or the holding of the appropriate status conference or hearing.

6. Stay of Actions in Which a Judgment of Sale Has Been Issued But Not Yet Executed: In a pending Covered Matter where a judgment of sale was issued on or before March 9, 2021 but has not yet been executed, execution of the judgment shall be stayed at least until the court has held a status conference with the parties. During this conference, if the defendant submits a Hardship Declaration to the foreclosing party, the court, or an agent of the foreclosing

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<sup>1</sup> Where a Hardship Declaration is delivered in a Covered Matter in which a 60-day stay is already in force, this second stay has no practical impact. However, it may be consequential, for a short period, in matters filed after April 8, 2021.

party or the court prior to the execution of the judgment, the action shall be stayed until at least May 1, 2021 (Act, Part B, Subpart A, §8).<sup>2</sup>

7. Court Practice Upon Commencement of a New Proceeding: The court cannot accept a new commercial foreclosure proceeding filing unless it is accompanied by both (1) an affidavit of service of the Hardship Declaration,<sup>3</sup> and (2) an affidavit that neither the foreclosing party nor an agent of the foreclosing has received a Hardship Declaration from the mortgagor (Act, Part B, Subpart A, §6). This requirement expires on May 1, 2021 (Act, Part B, Subpart A, §§6, 12).

“At the earliest possible opportunity” following a new filing, the court must seek confirmation by the mortgagor, “on the record or in writing”, that the mortgagor has received the blank Declaration and has not submitted a completed Declaration to the foreclosing party or an agent of the foreclosing party. If the court determines that a mortgagor has not yet received a Hardship Declaration, the court must stay further proceedings for no less than 10 business days to ensure that the mortgagor has received and fully considered whether to submit a Declaration (Act, Part B, Subpart A, §6). Where these procedures have been followed and a mortgagor fails to deliver a Hardship Declaration to a foreclosing party, agent of a foreclosing party, or the court, the matter may proceed in the normal course. This requirement expires on May 1, 2021 (Act, Part B, Subpart A, §§6, 12).

8. Tax Lien Foreclosure Matters: The Act also applies to any action to foreclose on delinquent taxes or sell a tax lien relating to commercial real property (Act, Part B, Subpart B). This includes in-rem tax foreclosures commenced pursuant to article 11 of the real property tax law, but also any other local law related to real property tax lien sales or real property tax foreclosures (including, but not limited to, the New York City Tax Law).

Importantly, courts are not required to mail Hardship Declarations to respondents in these cases. Instead, it is the responsibility of the enforcing officer (or other entity conducting the tax lien sale or tax foreclosure) to notify the respondent of their rights under the Act 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 new petition of foreclosure of a tax lien. Should the respondent submit a Hardship Declaration, the Act requires that the proceeding be stayed through May 1, 2021.

9. Hardship Declaration as Prima Facie Evidence of Hardship: The Act provides that the Hardship Declaration shall serve as prima facie evidence establishing a rebuttable presumption that a commercial mortgagor is experiencing financial hardship in a proceeding as a defense under any federal or state executive order, local or state law, or other regulation limiting the eviction of a tenant suffering financial hardship due to COVID-19. However, the absence of a Hardship Declaration does not create a presumption that no hardship is present. (Act, Part B, Subpart A, §10). *This “prima facie” evidentiary effect is the single consequence of the Act’s*

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<sup>2</sup> Because these stays are in addition to the 60-day stay applicable to all Covered Matters pending on March 9, 2021 – and because this conference requirement expires on May 1, 2021 – the practical consequence of this provision is likely minimal.

<sup>3</sup> Foreclosing parties or agents are required to serve a blank copy of the Hardship Declaration and contact information with all future notices provided to the owner or mortgagor. (Act, Part B, Subpart A, §4).

*Hardship Declaration provisions that extends beyond May 1, 2021 (Act, Part B, Subpart A, §§11, 12).*

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Please distribute this memorandum and attachments to judges and non-judicial staff as you deem appropriate. Questions on the subject may be addressed to Steven Helfont of the Office for Justice Initiatives – Division of Policy & Planning, at [shelfont@nycourts.gov](mailto:shelfont@nycourts.gov).

c: Hon. Edwina G. Mendelson  
Steven Helfont

## **EXHIBIT A**

# STATE OF NEW YORK

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471--A

2021-2022 Regular Sessions

## IN SENATE

(Prefiled)

January 6, 2021

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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:

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  
7 Part, which makes reference to a section "of this act", when used in  
8 connection with that particular component, shall be deemed to mean and  
9 refer to the corresponding section of the Part in which it is found.  
10 Section four of this act sets forth the general effective date of this  
11 act.  
12 § 2. Short title. This act shall be known and may be cited as the  
13 "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



PRINTED ON RECYCLED PAPER

1 § 3. Legislative intent. The Legislature finds and declares all of the  
2 following:

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

8 COVID-19 presents a historic threat to small businesses. Thousands of  
9 small businesses are facing eviction or foreclosure due to necessary  
10 disease control measures that closed or restricted businesses across the  
11 state. The pandemic has further interrupted court operations, the avail-  
12 ability of counsel, the ability for parties to pay for counsel, and the  
13 ability to safely commute and enter a courtroom, settlement conference  
14 and the like.

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

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

26

#### PART A

27 Section 1. Definitions. For the purposes of this act: 1. "Eviction  
28 proceeding" means a summary proceeding to recover possession of real  
29 property under article seven of the real property actions and  
30 proceedings law relating to a commercial unit or any other judicial or  
31 administrative proceeding to recover possession of real property relat-  
32 ing to a commercial unit.

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

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

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

46 "NOTICE TO COMMERCIAL TENANT: If you have lost significant revenue or  
47 had significantly increased necessary costs during the COVID-19 pandem-  
48 ic, and you sign and deliver this hardship declaration form to your  
49 landlord, you cannot be evicted until at least May 1, 2021 for nonpay-  
50 ment of rent or for holding over after the expiration of your lease. You  
51 may still be evicted for violating your lease by 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.



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

9 COMMERCIAL TENANT'S DECLARATION OF HARDSHIP DURING THE  
10 COVID-19 PANDEMIC

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

- 19 1. Significant loss of revenue during the COVID-19 pandemic.  
20 2. Significant increase in necessary expenses related to providing  
21 personal protective equipment to employees or purchasing and installing  
22 other protective equipment to prevent the transmission of COVID-19 with-  
23 in the business.  
24 3. Moving expenses and difficulty in securing an alternative commer-  
25 cial property make it a hardship for the business to relocate to another  
26 location during the COVID-19 pandemic.  
27 To the extent the business has lost revenue or had increased expenses,  
28 any public assistance the business has received since the start of the  
29 COVID-19 pandemic does not fully make up for the business's loss of  
30 revenue or increased expenses.

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

40 Signed:  
41 Printed name:  
42 Date signed:

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

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

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





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

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

21 § 5. Prohibition on initiation of eviction proceeding. If there is no  
22 pending eviction proceeding and a tenant provides a hardship declaration  
23 to the landlord or an agent of the landlord, there shall be no initi-  
24 ation of an eviction proceeding against the tenant until at least May 1,  
25 2021, and in such event any specific time limit for the commencement of  
26 an eviction proceeding shall be tolled until May 1, 2021.

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

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

41 b. attesting that the respondent or defendant has returned a hardship  
42 declaration, but the respondent or defendant is persistently and unrea-  
43 sonably engaging in behavior that substantially infringes on the use and  
44 enjoyment of other tenants or occupants or causes a substantial safety  
45 hazard to others, with a specific description of the behavior alleged.

46 2. Upon accepting a petition or complaint, the attorney, judge or  
47 clerk of the court, as the case may be, shall determine whether a copy  
48 of the hardship declaration in English and the language in which the  
49 commercial lease or tenancy agreement was written or negotiated, if  
50 other than English, is annexed to the served notice of petition or  
51 summons and complaint and, if not, shall ensure that the hardship decla-  
52 ration is attached to such notice or summons. At the earliest possible  
53 opportunity, the court shall seek confirmation on the record or in writ-  
54 ing from the respondent or defendant that the respondent or defendant  
55 has received the hardship declaration and that the respondent or defend-  
56 ant has not submitted a hardship declaration to the petitioner or plain-



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

11 § 7. Pending proceedings. In any eviction proceeding in which an  
12 eviction warrant or judgment of possession or ejectment has not been  
13 issued, including eviction proceedings filed on or before March 7, 2020,  
14 if the tenant provides a hardship declaration to the petitioner or  
15 plaintiff, the court, or an agent of the petitioner or plaintiff or the  
16 court, the eviction proceeding shall be stayed until at least May 1,  
17 2021. If such hardship declaration is provided to the petitioner or  
18 plaintiff or agent, such petitioner or plaintiff or agent shall promptly  
19 file it with the court, advising the court in writing the index number  
20 of all relevant cases.

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

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

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

45 (ii) The tenant is ineligible for a stay under this act because the  
46 court has found that the tenant is persistently and unreasonably engag-  
47 ing in behavior that substantially infringes on the use and enjoyment of  
48 other tenants or occupants or causes a substantial safety hazard to  
49 others, with a specific description of the behavior.

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



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

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

10 § 9. Sections three, four, five, seven and paragraph (ii) of subdivi-  
11 sion a of section eight of this act shall not apply if the tenant is  
12 persistently and unreasonably engaging in behavior that substantially  
13 infringes on the use and enjoyment of other tenants or occupants or  
14 causes a substantial safety hazard to others, provided:

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

21 2. If the court has awarded a judgment against a respondent or defend-  
22 ant prior to the effective date of this act on the basis of objectiona-  
23 ble or nuisance behavior, the court shall hold a hearing to determine  
24 whether the tenant is continuing to persist in engaging in unreasonable  
25 behavior that substantially infringes on the use and enjoyment of other  
26 tenants or occupants or causes a substantial safety hazard to others.

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

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

36 5. If the petitioner or plaintiff establishes that the tenant persis-  
37 tently and unreasonably engaged in such behavior or the tenant fails to  
38 provide a hardship declaration to the petitioner or plaintiff,  
39 petitioner's or plaintiff's agent or the court, the proceeding may  
40 continue pursuant to law.

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

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

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

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

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

## 16 PART B

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

## 29 SUBPART A

30 Section 1. Application. This section shall apply to any action to  
31 foreclose a mortgage relating to commercial real property, provided the  
32 owner or mortgagor of such property owns ten or fewer commercial units  
33 whether directly or indirectly and is a business that is resident in New  
34 York State, independently owned and operated, not dominant in its field,  
35 and employs fifty or fewer persons. The ten or fewer commercial units  
36 may be in more than one property or building as long as the total aggre-  
37 gate number of ten units are currently occupied by a tenant or are  
38 available for rent.

39 Notwithstanding anything to the contrary, this act shall not apply to,  
40 and does not affect any mortgage loans made, insured, purchased or secu-  
41 ritized by a corporate governmental agency of the state constituted as a  
42 political subdivision and public benefit corporation, or the rights and  
43 obligations of any lender, issuer, servicer or trustee of such obli-  
44 gations.

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

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



1 If your mortgage lender or other foreclosing party provided you with  
2 this form, the mortgage lender or other foreclosing party must also  
3 provide you with a mailing address and e-mail address to which you can  
4 return this form. If you are already in foreclosure proceedings, you may  
5 return this form to the court. You should keep a copy or picture of the  
6 signed form for your records. You will still owe any unpaid mortgage  
7 payments and lawful fees to your lender. You should also keep careful  
8 track of what you have paid and any amount you still owe.

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

10 I am the owner, chief executive officer, president, or similar officer  
11 of (name of the business), which is the mortgagor of the property at  
12 (address of commercial unit). My business owns, whether directly or  
13 indirectly, ten or fewer commercial units. My business is resident in  
14 New York State, independently owned and operated, not dominant in its  
15 field, and employs fifty or fewer persons. My business is experiencing  
16 financial hardship and is unable to pay the mortgage in full because of  
17 one or more of the following:

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

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

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

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

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

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

40 Signed:

41 Printed Name:

42 Date Signed:

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

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

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

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

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

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

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

21    At the earliest possible opportunity, the court shall seek confirma-  
22 tion on the record or in writing that the mortgagor has received a copy  
23 of the hardship declaration and that the mortgagor has not returned the  
24 hardship declaration to the foreclosing party or an agent of the fore-  
25 closing party. If the court determines a mortgagor has not received a  
26 hardship declaration, then the court shall stay the proceeding for a  
27 reasonable period of time, which shall be no less than ten business days  
28 or any longer period provided by law, to ensure the mortgagor received  
29 and fully considered whether to submit the hardship declaration.

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

39    § 8. In any action to foreclose a mortgage in which a judgment of sale  
40 has been issued prior to the effective date of this act but has not yet  
41 been executed as of the effective date of this act, including actions  
42 filed on or before March 7, 2020, the court shall stay the execution of  
43 the judgment at least until the court has held a status conference with  
44 the parties. In any action to foreclose a mortgage, if the mortgagor  
45 provides a hardship declaration to the foreclosing party, the court, or  
46 an agent of the foreclosing party or the court, prior to the execution  
47 of the judgment, the execution shall be stayed until at least May 1,  
48 2021. If such hardship declaration is provided to the foreclosing party  
49 or agent of the foreclosing party, such foreclosing party or agent shall  
50 promptly file it with the court, advising the court in writing the index  
51 number of all relevant cases.

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

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

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

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

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

18 SUBPART B

19 Section 1. Application. This act shall apply to any action to fore-  
20 close on delinquent taxes or sell a tax lien relating to commercial real  
21 property, provided the owner or mortgagor of such property owns ten or  
22 fewer commercial units whether directly or indirectly and is a business  
23 that is resident in New York State, independently owned and operated,  
24 not dominant in its field, and employs fifty or fewer persons. The ten  
25 or fewer commercial units may be in more than one property or building  
26 as long as the units are currently occupied by a tenant or are available  
27 for rent.

28 § 2. Definitions. For purposes of this act: 1. "Tax lien" means an  
29 unpaid tax, special ad valorem levy, special assessment or other charge  
30 imposed upon real property by or on behalf of a municipal corporation or  
31 special district or other public or private entity which is an encum-  
32 brance on real property, whether or not evidenced by a written instru-  
33 ment.

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

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

40 "COMMERCIAL OWNER DECLARATION OF COVID-19-RELATED HARDSHIP  
41 I am the owner, chief executive officer, president, or similar officer  
42 of (name of the business), which is the owner of the commercial property  
43 at (address). My business owns, whether directly or indirectly, ten or  
44 fewer commercial units. My business is resident in New York State,  
45 independently owned and operated, not dominant in its field, and employs  
46 fifty or fewer persons. My business is experiencing financial hardship,  
47 and is unable to pay its full tax bill because of one or more of the  
48 following:

49 1. Significant loss of revenue during the COVID-19 pandemic.  
50 2. Significant increase in necessary expenses related to providing  
51 personal protective equipment to employees or purchasing and installing  
52 other protective equipment to prevent the transmission of COVID-19 with-  
53 in the business.



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

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

6 To the extent that the business has lost revenue or had increased  
7 expenses, any public assistance that the business has received since the  
8 start of the COVID-19 pandemic does not fully make up for the loss of  
9 revenue or increased expenses.

10 I understand that lawful fees, penalties or interest for not having  
11 paid the business's taxes in full may still be charged or collected and  
12 may result in a foreclosure action against the business on or after May  
13 1, 2021, if the business does not fully repay any missed or partial  
14 payments and fees.

15 Signed:

16 Printed Name:

17 Date Signed:

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

21 § 3. 1. A commercial real property owner may submit a "Hardship Decla-  
22 ration" to any village, town, city, school district, county, or other  
23 entity or person which conducts tax foreclosures or tax lien sales.

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

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

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

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

48 6. A hardship declaration shall create a rebuttable presumption that  
49 the owner is experiencing financial hardship, in any judicial or admin-  
50 istrative proceeding that may be brought, for the purposes of establish-  
51 ing a defense under an executive order of the governor or any other  
52 local or state law, order or regulation restricting actions to sell a  
53 tax lien or foreclose a tax lien against an owner suffering from a  
54 financial hardship during or due to the COVID-19 pandemic, provided  
55 that the absence of a hardship declaration shall not create a presump-  
56 tion that a financial hardship is not present.



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

4 SUBPART C

5 Section 1. Application. 1. This act shall apply to an owner of commer-  
6 cial real property, provided the owner or mortgagor of such property  
7 owns ten or fewer commercial units whether directly or indirectly and is  
8 a business that is resident in New York State, independently owned and  
9 operated, not dominant in its field, and employs fifty or fewer persons.  
10 The ten or fewer commercial units may be in more than one property or  
11 building as long as the total aggregate number of ten units are current-  
12 ly occupied by a tenant or are available for rent.

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

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

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

28 COMMERCIAL OWNER/MORTGAGOR DECLARATION OF COVID-19-RELATED HARDSHIP

29 I am the owner, chief executive officer, president, or similar officer  
30 of (name of the business), which is the OWNER/MORTGAGOR of the property  
31 at (address of commercial unit). My business owns, whether directly or  
32 indirectly, ten or fewer commercial units. My business is resident in  
33 New York State, independently owned and operated, not dominant in its  
34 field, and employs fifty or fewer persons. My business is experiencing  
35 financial hardship, and is unable to pay the mortgage in full because of  
36 one or more of the following:

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

38 2. Significant increase in necessary out-of-pocket expenses related to  
39 providing personal protective equipment to employees or purchasing and  
40 installing other protective equipment to prevent the transmission of  
41 COVID-19 within the business.

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

45 4. One or more of my tenants has defaulted on a significant amount of  
46 their rent payments since March 1, 2020.

47 To the extent that the business has lost revenue or had increased  
48 expenses, any public assistance that the business has received since the  
49 start of the COVID-19 pandemic does not fully make up for the loss of  
50 revenue or increased expenses.

51 Signed:

52 Printed Name:

53 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 3. Discrimination in credit decisions. Notwithstanding any law to the  
5 contrary, lending institutions shall not discriminate in the determi-  
6 nation of whether credit should be extended to any owner of commercial  
7 real property as defined in subdivision one of this section because, as  
8 provided for in this act, such owner has been granted a stay of mortgage  
9 foreclosure proceedings, tax foreclosure proceedings or of tax lien  
10 sales, or that an owner of commercial real property as defined in subdivi-  
11 sion one of this section is currently in arrears and has filed a hard-  
12 ship declaration with such lender.

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

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

21 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
22 sion, section, item, subpart or part of this act shall be adjudged by  
23 any court of competent jurisdiction to be invalid, such judgment shall  
24 not affect, impair, or invalidate the remainder thereof, but shall be  
25 confined in its operation to the clause, sentence, paragraph, subdivi-  
26 sion, section, item, subpart or part thereof directly involved in the  
27 controversy in which such judgment shall have been rendered. It is here-  
28 by declared to be the intent of the legislature that this act would have  
29 been enacted even if such invalid provisions had not been included here-  
30 in.

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

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

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



MEMORANDUM filed with Senate Bill Number 471-A, entitled:

"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)"

APPROVED

This legislation provides additional protections to New York's small commercial businesses and commercial property owners who have suffered hardship during the COVID-19 public health crisis by prohibiting evictions, foreclosures and tax lien sales for covered persons and businesses until May 1, 2021. The legislation also prohibits discrimination in credit decisions for any covered entity.

First, the legislation suspends all eviction, foreclosure and tax lien proceedings for a period of sixty days from the signing of the legislation, buying critical time for struggling commercial businesses to get back on their feet. Second, the bill suspends these proceedings for any covered commercial business who files a financial hardship declaration until May 1, 2021. Covered businesses include a commercial tenant that is a resident of the state, independently owned and operated, not dominant in its field and employing fifty or fewer persons. A covered commercial property owner owns ten or fewer commercial units relating to commercial real property.

Since March 2020, during the earliest days of the public health crisis, I have repeatedly acted by Executive Order to protect commercial businesses and commercial property owners from eviction and foreclosure. I believe that such measures, and by extension this legislation, are vital to the continued success of businesses across New York and the State's economic recovery. This legislation also functions as a public health measure - giving small business owners the opportunity to operate their business even while at diminished capacity, ensuring their long-term survival and allowing their owners and employees to remain housed, fed and financially secure.

I have reached an agreement with the Legislature to expand the protections in the original legislation to additional commercial businesses suffering financial hardship. The agreement will expand protections to small businesses with one hundred or fewer employees, and to any business with five hundred or fewer employees that was closed to in-person operations by Executive Order or Department of Health directive for two or more weeks between May 15, 2020 and May 1, 2021.

With these changes, I am pleased to sign this bill into law and provide further relief to New York's residents as the State moves towards a full-economic recovery.

This bill is approved.

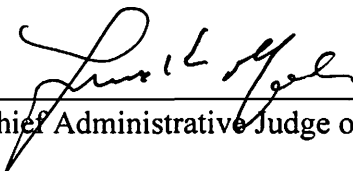
(signed) ANDREW M. CUOMO

## **EXHIBIT B**

ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and as required by L. 2021, c. 73 (the COVID-19 Protect Our Small Businesses Act of 2021 ["Act"; Exh. 1]), I hereby direct that, effective March 9, 2021, the following procedures and restrictions shall apply to the conduct of commercial foreclosure matters before the New York State courts:

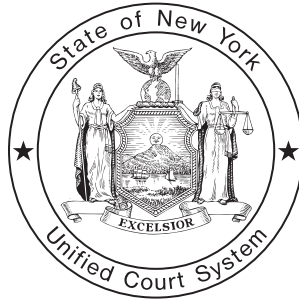
1. Stay of Pending Commercial Foreclosure Proceedings: Any action to foreclose a mortgage relating to commercial real property as defined in the Act ("Action") pending on March 9, 2021, and any Action commenced on or before April 8, 2021, shall be stayed for at least 60 days (Act, Part B, Subpart A, §§1, 3).
2. Requirement of Additional Affidavits in Newly-Commenced Actions: No court shall accept for filing commencement papers in an Action unless those papers include affidavits as required by Part B, Subpart A, §6 of the Act.
3. Stay of Actions in Which the Mortgagor Provides a Hardship Declaration: In any Action in which a judgment of sale has not been issued and a commercial mortgagor as defined in the Act ("Mortgagor") submits a hardship declaration as defined in the Act ("Hardship Declaration") to the foreclosing party, the court, or an agent of the foreclosing party or the court, the Action shall be stayed until at least May 1, 2021 (Act, Part B, Subpart A, §§2, 7).
4. Stay of Actions in Which a Judgment of Sale Has Been Issued But Not Yet Executed: If a judgment of sale has been issued in any Action on or before March 9, 2021 but has not yet been executed, execution of the judgment shall be stayed until the court has held a status conference with the parties. If a Mortgagor submits a Hardship Declaration to the foreclosing party, an agent of the foreclosing party or the court prior to the execution of the judgment, the Action shall be stayed until at least May 1, 2021 (Act, Part B, Subpart A, §8).
5. Paragraphs 2, 3, and 4 of this order shall expire May 1, 2021.
6. All Actions shall be conducted as required by the further provisions of the Act.

  
\_\_\_\_\_  
Chief Administrative Judge of the Courts

Dated: March 15, 2021

AO/95/21

## **EXHIBIT C**



## **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.

Index Number (if known/applicable): \_\_\_\_\_

County and Court (if known/applicable): \_\_\_\_\_

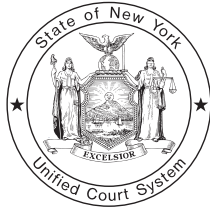
## **COMMERCIAL MORTGAGOR'S DECLARATION OF COVID-19-RELATED HARDSHIP**

I am the owner, chief executive officer, president, or similar officer of (name of 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.

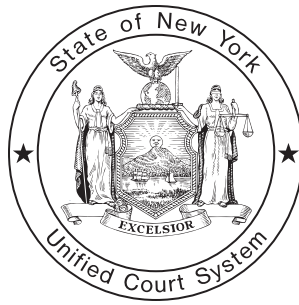
Signed: \_\_\_\_\_

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.





## **AVISO AL DEUDOR HIPOTECARIO COMERCIAL:**

Si ha perdido ingresos significativos o han aumentado de manera significativa sus gastos necesarios durante la pandemia de COVID-19 y firma y entrega este formulario de declaración de adversidad a su acreedor hipotecario o a otra parte que haya iniciado una ejecución hipotecaria, a usted no se le someterá a una ejecución hipotecaria por lo menos hasta el 1 de mayo de 2021.

Si su acreedor hipotecario u otra parte que haya iniciado una ejecución hipotecaria le proporcionó este formulario, el acreedor hipotecario o la parte que inició una ejecución hipotecaria también debe proporcionarle una dirección postal y una dirección de correo electrónico a las que pueda enviar este formulario. Si ya se encuentra en medio de un procedimiento de ejecución hipotecaria, podrá entregar este formulario al tribunal. Debe conservar una copia o fotografía del formulario firmado para su archivo. Usted aún debe la hipoteca impaga y las cuotas legales a su acreedor. También debe mantener un registro detallado de lo que ha pagado y de los importes que aún debe..

Número de índice (si lo sabe/si corresponde): \_\_\_\_\_

Condado y tribunal (si lo sabe/si corresponde): \_\_\_\_\_

## **DECLARACIÓN DEL DEUDOR HIPOTECARIO DE PENURIA RELACIONADA CON COVID-19**

Soy el(la) propietario(a), director(a) general, presidente o ejecutivo(a) similar de (nombre del negocio),

\_\_\_\_\_  
deudor hipotecario del inmueble situado en (dirección de la unidad comercial).  
\_\_\_\_\_

Mi negocio posee, de manera directa o indirecta, diez o menos unidades comerciales. Mi negocio es residente en el estado de Nueva York, de propiedad y operación independiente, no es dominante en su sector y emplea a cincuenta personas o menos. Mi negocio está sufriendo penuria financiera y no puede pagar la hipoteca en su totalidad por una o más de las siguientes causas

1. Pérdida significativa de ingresos durante la pandemia de COVID-19.
2. Aumento significativo de los gastos necesarios relacionados con el suministro de equipo de protección personal a los empleados o con la compra e instalación de otros equipos protectores para prevenir la transmisión de COVID-19 en el negocio.
3. Los gastos de mudanza y la dificultad de conseguir un inmueble comercial alternativo le dificultan excesivamente al negocio mudarse a otro inmueble durante la pandemia de COVID-19.
4. Uno o más de los inquilinos del negocio han incumplido con la entrega de una cantidad significativa de sus pagos de alquileres desde el 1 de marzo de 2020.

En la medida en que el negocio ha perdido ingresos o han aumentado sus gastos, la asistencia pública que el negocio ha recibido desde el inicio de la pandemia de COVID-19 no compensa por completo la pérdida de los ingresos o el aumento de los gastos del negocio.

Entiendo que el negocio debe cumplir con todos los demás términos legales de mi contrato hipotecario comercial. Además, entiendo que aún se pueden acumular o cobrar las cuotas legales, multas e intereses por no haber liquidado la hipoteca según lo establecido en mi contrato hipotecario comercial, y que pueden redundar en un fallo monetario. Además, entiendo que el acreedor hipotecario u otra parte que haya iniciado una ejecución hipotecaria pueden iniciar una demanda de ejecución hipotecaria en contra del negocio a partir del 1 de mayo de 2021, si no liquido en su totalidad todos los pagos omitidos o parciales y las cuotas legales.

Firma: \_\_\_\_\_

Nombre en letra de molde: \_\_\_\_\_

Fecha: \_\_\_\_\_

**AVISO:** Usted firma y envía este formulario bajo pena de ley. Esto significa que es ilegal hacer a sabiendas una declaración falsa en este formulario.