



Lawrence K. Marks  
Chief Administrative Judge

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## MEMORANDUM

May 24, 2021

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

From: Lawrence K. Marks *LM*

Subject: Residential Foreclosure Proceedings under the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 (Ch. 381, L. 2020) and Commercial Foreclosure Proceedings under the COVID-19 Protect Our Small Businesses Act of 2021 (Ch. 73, L. 2021) as amended by (Ch. 104, L. 2021)

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On May 4, 2021, Governor Cuomo signed into law chapter 104 of the Laws of 2021 ["Amendment" (effective May 4, 2020); Exh. A], amending chapter 381 of the Laws of 2020 (the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 ["Residential Act" (effective December 28, 2020)) and chapter 73 of the Laws of 2021 (the COVID-19 Protect Our Small Businesses Act of 2021 ["Commercial Act" (effective March 9, 2021)]). The amendment, among other things, provides COVID-related protections to owners and/or mortgagors in certain residential and commercial foreclosure matters. The specific provisions of these laws are discussed in prior memoranda dated December 31, 2020 and March 15, 2021 (Exhibits B, C). Briefly stated, where covered owners and mortgagors submitted a hardship declaration setting forth the ground(s) by which they were adversely affected by the COVID-19 pandemic, the law required that their cases be stayed to May 1, 2021. Under the recent amendments, that stay is now extended to August 31, 2021. An Administrative Order implementing these amendments is attached (AO/159/21, Exhibit D). Additional guidance follows.

### 1. Residential Foreclosure Matters

Updated Hardship Declarations: When the Residential Act was passed in December of 2020, our Division of Technology ("DoT") mailed blank Hardship Declarations to the defendants in all pending covered foreclosure proceedings. Defendants who submitted a Hardship Declaration had their case stayed through May 1, 2021. Under recent amendments to the Residential Act, these cases are now stayed to August 31, 2021. An

updated Hardship Declaration reflecting that the stay is now in effect to August 31, 2021 has been posted to the UCS website.

Court Practice Upon Commencement of a New Proceeding: The court cannot accept a new residential foreclosure filing unless it is accompanied by both (1) an affidavit of service of the Hardship Declaration and (2) an affidavit that neither the foreclosing party nor its agent have received a Hardship Declaration from the mortgagor. If the court confirms that the foreclosing party or its agent provided the mortgagor with the blank Hardship Declaration and that the mortgagor did not submit a completed Hardship Declaration to the foreclosing party, the foreclosing party's agent, or to the court, the matter may proceed.

NOTE - Where a mortgagor submits a Hardship Declaration to a foreclosing party or the foreclosing party's agent pre-filing, the commencement of the action must be tolled until August 31, 2021.

Pending Pre-Judgment Cases – Where a mortgagor delivers (or has already delivered) a Hardship Declaration to a foreclosing party, the foreclosing party's agent, or the court, a pending proceeding must be stayed until at least August 31, 2021. If an appropriate status conference has been held in a pending covered matter, and no Hardship Declaration has been submitted to the foreclosing party, its agent, or to the court, the matter may proceed.

Post-Judgment Cases - Where a judgment of foreclosure and sale was issued in a covered matter on or before December 28, 2020 but has not yet been executed, the auction must 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 court, the foreclosing party or to the foreclosing party's agent prior to the execution of the judgment, the action must be stayed until at least August 31, 2021. If the mortgagor does not submit a Hardship Declaration, the matter may proceed to auction.

## 2. Commercial Foreclosure Matters

Updated Hardship Declarations: When the Commercial Act was passed in March of this year, DoT mailed blank Hardship Declarations to the defendants in all pending covered foreclosure proceedings. Defendants who submitted a Hardship Declaration had their case stayed to May 1, 2021. Under the recent amendment to the Commercial Act, these cases are now stayed to August 31, 2020. An updated Hardship Declaration reflecting that the stay is now in effect to August 31, 2021 has been posted to the UCS website.

Court Practice Upon Commencement of a New Proceeding: The court cannot accept a new commercial foreclosure filing unless it is accompanied by both (1) an affidavit of service of the Hardship Declaration and (2) an affidavit that neither the foreclosing party nor its agent have received a Hardship Declaration from the mortgagor. If the court confirms that the foreclosing party or its agent provided the mortgagor with the blank Hardship Declaration and that the mortgagor did not submit a completed Hardship Declaration to the foreclosing party, the foreclosing party's agent, or to the court, the matter may proceed.

NOTE - Where a mortgagor submits a Hardship Declaration to a foreclosing party or the foreclosing party's agent pre-filing, the commencement of an action must be tolled until August 31, 2021.

Pending Pre-Judgment Cases – Where a mortgagor delivers (or has already delivered) a Hardship Declaration to a foreclosing party, the foreclosing party's agent, or the court, a pending proceeding must be stayed until at least August 31, 2021. If an appropriate status conference has been held in a pending covered matter, and no hardship declaration has been submitted to the foreclosing party, its agent, or to the court, the matter may proceed.

Post-Judgment Cases - In a pending covered matter where a judgment of sale was issued on or before March 9, 2021 but has not yet been executed, the auction must 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, its agent or to the court prior to the execution of the judgment, the action must be stayed until at least August 31, 2021. If the mortgagor does not submit a hardship declaration, the matter may proceed to auction.

3. Tax Lien Foreclosures: The amendments apply to actions to foreclose on delinquent taxes or sell a tax lien relating to residential and commercial real property. 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. However, it is the responsibility of the enforcing officer (or other entity conducting the sale) to notify the respondent of their rights and provide a link to the Hardship Declaration on the New York State Department of Tax and Finance's website. Where the owner/respondent in a tax lien foreclosure has submitted or hereafter submits a Hardship Declaration, the case must be stayed to at least August 31, 2021.
4. Case Conferencing – It is anticipated that there will be an increase in both residential and commercial foreclosure filings once the existing federal and state emergency relief programs have concluded. In the interim courts should be conferencing all pending matters that are not stayed by these programs. Where possible, loan modifications and other loss mitigation options should be encouraged.

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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).

cc: Hon. Edwina G. Mendelson  
Steven Helfont

# **EXHIBIT A**

# STATE OF NEW YORK

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Cal. No. 796

6362--A

2021-2022 Regular Sessions

## IN SENATE

April 23, 2021

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Introduced by Sens. KAVANAGH, KAPLAN, MYRIE, BAILEY, HOYLMAN, JACKSON, KRUEGER, RIVERA, SALAZAR -- read twice and ordered printed, and when printed to be committed to the Committee on Housing, Construction and Community Development -- reported favorably from said committee and committed to the Committee on Rules -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend chapter 381 of the laws of 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020", in relation to extending the effectiveness thereof; and to amend chapter 73 of the laws of 2021 relating to establishing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021", in relation to extending the effectiveness thereof

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

1 Section 1. Subdivision 4 of section 1 of part A of chapter 381 of the  
2 laws of 2020 establishing the "COVID-19 Emergency Eviction and Foreclo-  
3 sure Prevention Act of 2020", is amended to read as follows:  
4 4. "Hardship declaration" means the following statement, or a substan-  
5 tially equivalent statement in the tenant's primary language, in  
6 14-point type, published by the office of court administration, whether  
7 in physical or electronic written form:  
8 "NOTICE TO TENANT: If you have lost income or had increased costs  
9 during the COVID-19 pandemic, or moving would pose a significant health  
10 risk for you or a member of your household due to an increased risk for  
11 severe illness or death from COVID-19 due to an underlying medical  
12 condition, and you sign and deliver this hardship declaration form to  
13 your landlord, you cannot be evicted until at least [May 1] August 31,  
14 2021 for nonpayment of rent or for holding over after the expiration of  
15 your lease. You may still be evicted for violating your lease by persis-  
16 tently and unreasonably engaging in behavior that substantially

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

LBD11083-03-1



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1 infringes on the use and enjoyment of other tenants or occupants or  
2 causes a substantial safety hazard to others.

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

11 For more information about legal resources that may be available to  
12 you, go to [www.nycourts.gov/evictions/nyc/](http://www.nycourts.gov/evictions/nyc/) or call 718-557-1379 if you  
13 live in New York City or go to [www.nycourts.gov/evictions/outside-nyc/](http://www.nycourts.gov/evictions/outside-nyc/)  
14 or call a local bar association or legal services provider if you live  
15 outside of New York City. Rent relief may be available to you, and you  
16 should contact your local housing assistance office.

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

18 I am a tenant, lawful occupant, or other person responsible for paying  
19 rent, use and occupancy, or any other financial obligation under a lease  
20 or tenancy agreement at (address of dwelling unit).

21 YOU MUST INDICATE BELOW YOUR QUALIFICATION FOR EVICTION PROTECTION BY  
22 SELECTING OPTION "A" OR "B", OR BOTH.

23 A. ( ) I am experiencing financial hardship, and I am unable to pay my  
24 rent or other financial obligations under the lease in full or obtain  
25 alternative suitable permanent housing because of one or more of the  
26 following:

27 1. Significant loss of household income during the COVID-19 pandemic.

28 2. Increase in necessary out-of-pocket expenses related to performing  
29 essential work or related to health impacts during the COVID-19 pandem-  
30 ic.

31 3. Childcare responsibilities or responsibilities to care for an  
32 elderly, disabled, or sick family member during the COVID-19 pandemic  
33 have negatively affected my ability or the ability of someone in my  
34 household to obtain meaningful employment or earn income or increased my  
35 necessary out-of-pocket expenses.

36 4. Moving expenses and difficulty I have securing alternative housing  
37 make it a hardship for me to relocate to another residence during the  
38 COVID-19 pandemic.

39 5. Other circumstances related to the COVID-19 pandemic have negative-  
40 ly affected my ability to obtain meaningful employment or earn income or  
41 have significantly reduced my household income or significantly  
42 increased my expenses.

43 To the extent that I have lost household income or had increased  
44 expenses, any public assistance, including unemployment insurance,  
45 pandemic unemployment assistance, disability insurance, or paid family  
46 leave, that I have received since the start of the COVID-19 pandemic  
47 does not fully make up for my loss of household income or increased  
48 expenses.

49 B. ( ) Vacating the premises and moving into new permanent housing would  
50 pose a significant health risk because I or one or more members of my  
51 household have an increased risk for severe illness or death from  
52 COVID-19 due to being over the age of sixty-five, having a disability or





1 having an underlying medical condition, which may include but is not  
2 limited to being immunocompromised.

3 I understand that I must comply with all other lawful terms under my  
4 tenancy, lease agreement or similar contract. I further understand that  
5 lawful fees, penalties or interest for not having paid rent in full or  
6 met other financial obligations as required by my tenancy, lease agree-  
7 ment or similar contract may still be charged or collected and may  
8 result in a monetary judgment against me. I further understand that my  
9 landlord may be able to seek eviction after [May 1] August 31, 2021, and  
10 that the law may provide certain protections at that time that are sepa-  
11 rate from those available through this declaration.

12 Signed:

13 Printed name:

14 Date signed:

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

18 § 2. Sections 4, 6 and 7 of part A of chapter 381 of the laws of 2020  
19 establishing the "COVID-19 Emergency Eviction and Foreclosure Prevention  
20 Act of 2020", are amended to read as follows:

21 § 4. 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  
25 1] August 31, 2021, and in such event any specific time limit for the  
26 commencement of an eviction proceeding shall be tolled until [May 1]  
27 August 31, 2021.

28 § 6. Pending proceedings. In any eviction proceeding in which an  
29 eviction warrant has not been issued, including eviction proceedings  
30 filed on or before March 7, 2020, if the tenant provides a hardship  
31 declaration to the petitioner, the court, or an agent of the petitioner  
32 or the court, the eviction proceeding shall be stayed until at least  
33 [May 1] August 31, 2021. If such hardship declaration is provided to the  
34 petitioner or agent, such petitioner or agent shall promptly file it  
35 with the court, advising the court in writing the index number of all  
36 relevant cases.

37 § 7. Default judgments. No court shall issue a judgment in any  
38 proceeding authorizing a warrant of eviction against a respondent who  
39 has defaulted, or authorize the enforcement of an eviction pursuant to a  
40 default judgment, prior to [May 1] August 31, 2021, without first hold-  
41 ing a hearing after the effective date of this act upon motion of the  
42 petitioner. The petitioner or an agent of the petitioner shall file an  
43 affidavit attesting that the petitioner or the petitioner's agent has  
44 served notice of the date, time, and place of such hearing on the  
45 respondent, including a copy of such notice. If a default judgment has  
46 been awarded prior to the effective date of this act, the default judg-  
47 ment shall be removed and the matter restored to the court calendar upon  
48 the respondent's written or oral request to the court either before or  
49 during such hearing and an order to show cause to vacate the default  
50 judgment shall not be required.

51 § 3. Subdivision a of section 8 of part A of chapter 381 of the laws  
52 of 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure  
53 Prevention Act of 2020", is amended to read as follows:



1 a. (i) In any eviction proceeding in which an eviction warrant has  
2 been issued prior to the effective date of this act, but has not yet  
3 been executed as of the effective date of this act, including eviction  
4 proceedings filed on or before March 7, 2020, the court shall stay the  
5 execution of the warrant at least until the court has held a status  
6 conference with the parties. (ii) In any eviction proceeding, if the  
7 tenant provides a hardship declaration to the petitioner, the court, or  
8 an agent of the petitioner or the court, prior to the execution of the  
9 warrant, the execution shall be stayed until at least [May 1] August 31,  
10 2021. If such hardship declaration is provided to the petitioner or  
11 agent of the petitioner, such petitioner or agent shall promptly file it  
12 with the court, advising the court in writing the index number of all  
13 relevant cases.

14 § 4. Subdivision 4 of section 9 of part A of chapter 381 of the laws  
15 of 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure  
16 Prevention Act of 2020", is amended to read as follows:

17 4. If the petitioner fails to establish that the tenant persistently  
18 and unreasonably engaged in such behavior and the tenant provides or has  
19 provided a hardship declaration to the petitioner, petitioner's agent or  
20 the court, the court shall stay or continue to stay any further  
21 proceedings until at least [May 1] August 31, 2021.

22 § 5. Section 13 of part A of chapter 381 of the laws of 2020 estab-  
23 lishing the "COVID-19 Emergency Eviction and Foreclosure Prevention Act  
24 of 2020", is amended to read as follows:

25 § 13. This act shall take effect immediately and sections one, two,  
26 three, four, five, six, seven, eight, nine, ten and twelve of this act  
27 shall expire [May 1] August 31, 2021.

28 § 6. Section 2 of subpart A of part B of chapter 381 of the laws of  
29 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure  
30 Prevention Act of 2020", is amended to read as follows:

31 § 2. Definitions. For the purposes of this act, "Hardship Declaration"  
32 means the following statement, or a substantially equivalent statement  
33 in the mortgagor's primary language, in 14-point type, published by the  
34 office of court administration, whether in physical or electronic writ-  
35 ten form:

36 "NOTICE TO MORTGAGOR: If you have lost income or had increased costs  
37 during the COVID-19 pandemic, and you sign and deliver this hardship  
38 declaration form to your mortgage lender or other foreclosing party, you  
39 cannot be foreclosed on until at least [May 1] August 31, 2021.

40 If your mortgage lender or other foreclosing party provided you with  
41 this form, the mortgage lender or other foreclosing party must also  
42 provide you with a mailing address and e-mail address to which you can  
43 return this form. If you are already in foreclosure proceedings, you may  
44 return this form to the court. You should keep a copy or picture of the  
45 signed form for your records. You will still owe any unpaid mortgage  
46 payments and lawful fees to your lender. You should also keep careful  
47 track of what you have paid and any amount you still owe.

48 MORTGAGOR'S DECLARATION OF COVID-19-RELATED HARDSHIP

49 I am the mortgagor of the property at (address of dwelling unit).  
50 Including my primary residence, I own, whether directly or indirectly,  
51 ten or fewer residential dwelling units. I am experiencing financial  
52 hardship, and I am unable to pay my mortgage in full because of one or  
53 more of the following:

54 1. Significant loss of household income during the COVID-19 pandemic.



1 2. Increase in necessary out-of-pocket expenses related to performing  
2 essential work or related to health impacts during the COVID-19 pandem-  
3 ic.

4 3. Childcare responsibilities or responsibilities to care for an  
5 elderly, disabled, or sick family member during the COVID-19 pandemic  
6 have negatively affected my ability or the ability of someone in my  
7 household to obtain meaningful employment or earn income or increased my  
8 necessary out-of-pocket expenses.

9 4. Moving expenses and difficulty I have securing alternative housing  
10 make it a hardship for me to relocate to another residence during the  
11 COVID-19 pandemic.

12 5. Other circumstances related to the COVID-19 pandemic have negative-  
13 ly affected my ability to obtain meaningful employment or earn income or  
14 have significantly reduced my household income or significantly  
15 increased my expenses.

16 6. One or more of my tenants has defaulted on a significant amount of  
17 their rent payments since March 1, 2020.

18 To the extent I have lost household income or had increased expenses,  
19 any public assistance, including unemployment insurance, pandemic unem-  
20 ployment assistance, disability insurance, or paid family leave, that I  
21 have received since the start of the COVID-19 pandemic does not fully  
22 make up for my loss of household income or increased expenses.

23 I understand that I must comply with all other lawful terms under my  
24 mortgage agreement. I further understand that lawful fees, penalties or  
25 interest for not having paid my mortgage in full as required by my mort-  
26 gage agreement may still be charged or collected and may result in a  
27 monetary judgment against me. I also understand that my mortgage lender  
28 or other foreclosing party may pursue a foreclosure action against me on  
29 or after [May 1] August 31, 2021, if I do not fully repay any missed or  
30 partial payments and lawful fees.

31 Signed:

32 Printed Name:

33 Date Signed:

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

37 § 7. Sections 5, 7, 8 and 12 of subpart A of part B of chapter 381 of  
38 the laws of 2020 establishing the "COVID-19 Emergency Eviction and Fore-  
39 closure Prevention Act of 2020", are amended to read as follows:

40 § 5. If a mortgagor provides a hardship declaration to the foreclosing  
41 party or an agent of the foreclosing party, there shall be no initiation  
42 of an action to foreclose a mortgage against the mortgagor until at  
43 least [May 1] August 31, 2021, and in such event any specific time limit  
44 for the commencement of an action to foreclose a mortgage shall be  
45 tolled until [May 1] August 31, 2021.

46 § 7. In any action to foreclose a mortgage in which a judgment of sale  
47 has not been issued, including actions filed on or before March 7, 2020,  
48 if the mortgagor provides a hardship declaration to the foreclosing  
49 party, the court, or an agent of the foreclosing party or the court, the  
50 proceeding shall be stayed until at least [May 1] August 31, 2021. If  
51 such hardship declaration is provided to the foreclosing party or agent  
52 of the foreclosing party, such foreclosing party or agent shall promptly  
53 file it with the court, advising the court in writing the index number  
54 of all relevant cases.

55 § 8. In any action to foreclose a mortgage in which a judgment of sale  
56 has been issued prior to the effective date of this act but has not yet

1 been executed as of the effective date of this act, including actions  
2 filed on or before March 7, 2020, the court shall stay the execution of  
3 the judgment at least until the court has held a status conference with  
4 the parties. In any action to foreclose a mortgage, if the mortgagor  
5 provides a hardship declaration to the foreclosing party, the court, or  
6 an agent of the foreclosing party or the court, prior to the execution  
7 of the judgment, the execution shall be stayed until at least [May 1]  
8 August 31, 2021. If such hardship declaration is provided to the fore-  
9 closing party or agent of the foreclosing party, such foreclosing party  
10 or agent shall promptly file it with the court, advising the court in  
11 writing the index number of all relevant cases.

12 § 12. This act shall take effect immediately and sections one, two,  
13 three, four, five, six, seven, eight, nine and eleven of this act shall  
14 expire [May 1] August 31, 2021.

15 § 8. Subdivision 3 of section 2 of subpart B of part B of chapter 381  
16 of the laws of 2020 establishing the "COVID-19 Emergency Eviction and  
17 Foreclosure Prevention Act of 2020", is amended to read as follows:

18 3. "Hardship Declaration" means the following statement, or a substan-  
19 tially equivalent statement in the owner's primary language, in 14-point  
20 type, whether in physical or electronic written form:

21 "OWNER DECLARATION OF COVID-19-RELATED HARDSHIP

22 I am the owner of the property at (address). Including my primary  
23 residence, I own, whether directly or indirectly, ten or fewer residen-  
24 tial dwelling units. I am experiencing financial hardship, and I am  
25 unable to pay my full tax bill because of one or more of the following:

26 1. Significant loss of household income during the COVID-19 pandemic.  
27 2. Increase in necessary out-of-pocket expenses related to performing  
28 essential work or related to health impacts during the COVID-19 pandem-  
29 ic.

30 3. Childcare responsibilities or responsibilities to care for an  
31 elderly, disabled, or sick family member during the COVID-19 pandemic  
32 have negatively affected my ability or the ability of someone in my  
33 household to obtain meaningful employment or earn income or increased my  
34 necessary out-of-pocket expenses.

35 4. Moving expenses and difficulty I have securing alternative housing  
36 make it a hardship for me to relocate to another residence during the  
37 COVID-19 pandemic.

38 5. Other circumstances related to the COVID-19 pandemic have negative-  
39 ly affected my ability to obtain meaningful employment or earn income or  
40 have significantly reduced my household income or significantly  
41 increased my expenses.

42 6. One or more of my tenants has defaulted on a significant amount of  
43 their rent payments since March 1, 2020.

44 To the extent that I have lost household income or had increased  
45 expenses, any public assistance, including unemployment insurance,  
46 pandemic unemployment assistance, disability insurance, or paid family  
47 leave, that I have received since the start of the COVID-19 pandemic  
48 does not fully make up for my loss of household income or increased  
49 expenses.

50 I understand that lawful fees, penalties or interest for not having  
51 paid my taxes in full may still be charged or collected and may result  
52 in a foreclosure action against me on or after [May 1] August 31, 2021,  
53 if I do not fully repay any missed or partial payments and fees.

54 Signed:

55 Printed Name:

56 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 § 9. Subdivision 3 of section 3 of subpart B of part B of chapter 381  
5 of the laws of 2020 establishing the "COVID-19 Emergency Eviction and  
6 Foreclosure Prevention Act of 2020", is amended to read as follows:

7 3. The submission of such a declaration, unless withdrawn by the  
8 owner, shall act as a temporary stay applicable to all entities and  
9 persons of all such tax lien sales and tax foreclosure actions and  
10 proceedings against such owner for such property that have been  
11 commenced or could have been commenced before [May 1] August 31, 2021.

12 § 10. Section 4 of subpart B of part B of chapter 381 of the laws of  
13 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure  
14 Prevention Act of 2020", is amended to read as follows:

15 § 4. This act shall take effect immediately and sections one and two  
16 and subdivisions one, two, three, four and five of section three shall  
17 expire [May 1] August 31, 2021.

18 § 11. Subdivision 2 of section 1 of subpart C of part B of chapter 381  
19 of the laws of 2020 establishing the "COVID-19 Emergency Eviction and  
20 Foreclosure Prevention Act of 2020", is amended to read as follows:

21 2. Hardship declaration. For purposes of this act, "hardship declara-  
22 tion" shall mean the following statement, or a substantially equivalent  
23 statement in the owner or mortgagor's primary language, in 14-point  
24 type, whether in physical or electronic written form, and the department  
25 of financial services shall publish a copy of the hardship declaration  
26 on its website:

27 "NOTICE TO OWNER/MORTGAGOR: If you have lost income or had increased  
28 costs due to the COVID-19 pandemic, and you sign and deliver this hard-  
29 ship declaration form to your lending institution, you cannot be  
30 discriminated against in the determination of whether credit should be  
31 extended or reported negatively to a credit reporting agency until at  
32 least [May 1] August 31, 2021.

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

37 OWNER/MORTGAGOR DECLARATION OF COVID-19-RELATED HARDSHIP

38 I am the OWNER/MORTGAGOR of the property at (address of dwelling  
39 unit). Including my primary residence, I own, whether directly or indi-  
40 rectly, ten or fewer residential dwelling units. I am experiencing  
41 financial hardship, and I am unable to pay my mortgage in full because  
42 of one or more of the following:

43 1. Significant loss of household income during the COVID-19 pandemic.

44 2. Increase in necessary out-of-pocket expenses related to performing  
45 essential work or related to health impacts during the COVID-19 pandem-  
46 ic.

47 3. Childcare responsibilities or responsibilities to care for an  
48 elderly, disabled, or sick family member during the COVID-19 pandemic  
49 have negatively affected my ability or the ability of someone in my  
50 household to obtain meaningful employment or earn income or increased my  
51 necessary out-of-pocket expenses.

52 4. Moving expenses and difficulty I have securing alternative housing  
53 make it a hardship for me to relocate to another residence during the  
54 COVID-19 pandemic.

55 5. Other circumstances related to the COVID-19 pandemic have negative-  
56 ly affected my ability to obtain meaningful employment or earn income or



1 have significantly reduced my household income or significantly  
2 increased my expenses.

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

5 To the extent that I have lost household income or had increased  
6 expenses, any public assistance, including unemployment insurance,  
7 pandemic unemployment assistance, disability insurance, or paid family  
8 leave, that I have received since the start of the COVID-19 pandemic  
9 does not fully make up for my loss of household income or increased  
10 expenses.

11 Signed:

12 Printed Name:

13 Date Signed:

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

17 § 12. Section 2 of subpart C of part B of chapter 381 of the laws of  
18 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure  
19 Prevention Act of 2020", is amended to read as follows:

20 § 2. This act take effect immediately and shall expire [May 1] August  
21 31, 2021.

22 § 13. Section 2 of subpart D of part B of chapter 381 of the laws of  
23 2020 establishing the "COVID-19 Emergency Eviction and Foreclosure  
24 Prevention Act of 2020", is amended to read as follows:

25 § 2. This act shall take effect immediately and shall expire [May 1]  
26 August 31, 2021. This act shall be deemed to have been in full force and  
27 effect on and after March 7, 2020.

28 § 14. Subdivision 4 of section 1 of part A of chapter 73 of the laws  
29 of 2021 establishing the "COVID-19 Emergency Protect Our Small Busi-  
30 nesses Act of 2021", is amended to read as follows:

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

36 "NOTICE TO COMMERCIAL TENANT: If you have lost significant revenue or  
37 had significantly increased necessary costs during the COVID-19 pandem-  
38 ic, and you sign and deliver this hardship declaration form to your  
39 landlord, you cannot be evicted until at least [May 1] August 31, 2021  
40 for nonpayment of rent or for holding over after the expiration of your  
41 lease. You may still be evicted for violating your lease by persistently  
42 and unreasonably engaging in behavior that substantially infringes on  
43 the use and enjoyment of other tenants or occupants or causes a substan-  
44 tial safety hazard to others.

45 If your landlord has provided you with this form, your landlord must  
46 also provide you with a mailing address and e-mail address to which you  
47 can return this form. If your landlord has already started an eviction  
48 proceeding against you, you can return this form to either your land-  
49 lord, the court, or both at any time. You should keep a copy or picture  
50 of the signed form for your records. You will still owe any unpaid rent  
51 to your landlord. You should also keep careful track of what you have  
52 paid and any amount you still owe.

53 COMMERCIAL TENANT'S DECLARATION OF HARDSHIP DURING THE  
54 COVID-19 PANDEMIC



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

- 9 1. Significant loss of revenue during the COVID-19 pandemic.  
10 2. Significant increase in necessary expenses related to providing  
11 personal protective equipment to employees or purchasing and installing  
12 other protective equipment to prevent the transmission of COVID-19 with-  
13 in the business.  
14 3. Moving expenses and difficulty in securing an alternative commer-  
15 cial property make it a hardship for the business to relocate to another  
16 location during the COVID-19 pandemic.  
17 To the extent the business has lost revenue or had increased expenses,  
18 any public assistance the business has received since the start of the  
19 COVID-19 pandemic does not fully make up for the business's loss of  
20 revenue or increased expenses.

21 I understand that the business must comply with all other lawful terms  
22 under its commercial tenancy, lease agreement or similar contract. I  
23 further understand that lawful fees, penalties or interest for not  
24 having paid rent in full or met other financial obligations as required  
25 by the commercial tenancy, lease agreement or similar contract may still  
26 be charged or collected and may result in a monetary judgment. I  
27 further understand that the landlord may be able to seek eviction after  
28 [May 1] August 31, 2021, and that the law may provide certain  
29 protections at that time that are separate from those available through  
30 this declaration.

31 Signed:  
32 Printed name:  
33 Date signed:

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

37 § 15. Section 2 of part A of chapter 73 of the laws of 2021 estab-  
38 lishing the "COVID-19 Emergency Protect Our Small Businesses Act of  
39 2021", is amended to read as follows:

40 § 2. No commercial tenant shall be removed from the possession prior  
41 to [May 1] August 31, 2021, except by an eviction proceeding.

42 § 16. Section 5 of part A of chapter 73 of the laws of 2021 establish-  
43 ing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021",  
44 is amended to read as follows:

45 § 5. Prohibition on initiation of eviction proceeding. If there is no  
46 pending eviction proceeding and a tenant provides a hardship declaration  
47 to the landlord or an agent of the landlord, there shall be no initi-  
48 ation of an eviction proceeding against the tenant until at least [May  
49 1] August 31, 2021, and in such event any specific time limit for the  
50 commencement of an eviction proceeding shall be tolled until [May 1]  
51 August 31, 2021.



1 § 17. Section 7 of part A of chapter 73 of the laws of 2021 establish-  
2 ing the "COVID-19 Emergency Protect Our Small Businesses Act of 2021",  
3 is amended to read as follows:

4 § 7. Pending proceedings. In any eviction proceeding in which an  
5 eviction warrant or judgment of possession or ejectment has not been  
6 issued, including eviction proceedings filed on or before March 7, 2020,  
7 if the tenant provides a hardship declaration to the petitioner or  
8 plaintiff, the court, or an agent of the petitioner or plaintiff or the  
9 court, the eviction proceeding shall be stayed until at least [May 1]  
10 August 31, 2021. If such hardship declaration is provided to the peti-  
11 tioner or plaintiff or agent, such petitioner or plaintiff or agent  
12 shall promptly file it with the court, advising the court in writing the  
13 index number of all relevant cases.

14 § 18. Paragraph (ii) of subdivision a of section 8 of part A of chap-  
15 ter 73 of the laws of 2021 establishing the "COVID-19 Emergency Protect  
16 Our Small Businesses Act of 2021", is amended to read as follows:

17 (ii) In any eviction proceeding, if the tenant provides a hardship  
18 declaration to the petitioner or plaintiff, the court, or an agent of  
19 the petitioner or plaintiff or the court, prior to the execution of the  
20 warrant or judgment, the execution shall be stayed until at least [May  
21 1] August 31, 2021. If such hardship declaration is provided to the  
22 petitioner or plaintiff or agent of the petitioner or plaintiff, such  
23 petitioner or plaintiff or agent shall promptly file it with the court,  
24 advising the court in writing the index number of all relevant cases.

25 § 19. Subdivision 4 of section 9 of part A of chapter 73 of the laws  
26 of 2021 establishing the "COVID-19 Emergency Protect Our Small Busi-  
27 nesses Act of 2021", is amended to read as follows:

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

34 § 20. Section 13 of part A of chapter 73 of the laws of 2021 estab-  
35 lishing the "COVID-19 Emergency Protect Our Small Businesses Act of  
36 2021", is amended to read as follows:

37 § 13. This act shall take effect immediately and sections one, two,  
38 three, four, five, six, seven, eight, nine, ten and twelve of this act  
39 shall expire [May 1] August 31, 2021.

40 § 21. Section 2 of subpart A of part B of chapter 73 of the laws of  
41 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses  
42 Act of 2021", is amended to read as follows:

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

46 "NOTICE TO COMMERCIAL MORTGAGOR: If you have lost significant revenue  
47 or had significantly increased necessary costs during the COVID-19  
48 pandemic, and you sign and deliver this hardship declaration form to  
49 your mortgage lender or other foreclosing party, you cannot be fore-  
50 closed on until at least [May 1] August 31, 2021.

51 If your mortgage lender or other foreclosing party provided you with  
52 this form, the mortgage lender or other foreclosing party must also  
53 provide you with a mailing address and e-mail address to which you can  
54 return this form. If you are already in foreclosure proceedings, you may  
55 return this form to the court. You should keep a copy or picture of the  
56 signed form for your records. You will still owe any unpaid mortgage



1 payments and lawful fees to your lender. You should also keep careful  
2 track of what you have paid and any amount you still owe.

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

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

12 1. Significant loss of revenue during the COVID-19 pandemic.  
13 2. Significant increase in necessary expenses related to providing  
14 personal protective equipment to employees or purchasing and installing  
15 other protective equipment to prevent the transmission of COVID-19 with-  
16 in the business.

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

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

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

26 I understand that the business must comply with all other lawful terms  
27 under my commercial mortgage agreement. I further understand that lawful  
28 fees, penalties or interest for not having paid the mortgage in full as  
29 required by the commercial mortgage agreement may still be charged or  
30 collected and may result in a monetary judgment. I also understand that  
31 the mortgage lender or other foreclosing party may pursue a foreclosure  
32 action against the business on or after [May 1] August 31, 2021, if I do  
33 not fully repay any missed or partial payments and lawful fees.

34 Signed:

35 Printed Name:

36 Date Signed:

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

40 § 22. Section 5 of subpart A of part B of chapter 73 of the laws of  
41 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses  
42 Act of 2021", is amended to read as follows:

43 § 5. If a mortgagor provides a hardship declaration to the foreclosing  
44 party or an agent of the foreclosing party, there shall be no initiation  
45 of an action to foreclose a mortgage against the mortgagor until at  
46 least [May 1] August 31, 2021, and in such event any specific time limit  
47 for the commencement of an action to foreclose a mortgage shall be  
48 tolled until [May 1] August 31, 2021.

49 § 23. Sections 7 and 8 of subpart A of part B of chapter 73 of the  
50 laws of 2021 establishing the "COVID-19 Emergency Protect Our Small  
51 Businesses Act of 2021", are amended to read as follows:

52 § 7. In any action to foreclose a mortgage in which a judgment of sale  
53 has not been issued, including actions filed on or before March 7, 2020,  
54 if the mortgagor provides a hardship declaration to the foreclosing  
55 party, the court, or an agent of the foreclosing party or the court, the  
56 proceeding shall be stayed until at least [May 1] August 31, 2021. If



1 such hardship declaration is provided to the foreclosing party or agent  
2 of the foreclosing party, such foreclosing party or agent shall promptly  
3 file it with the court, advising the court in writing the index number  
4 of all relevant cases.

5 § 8. In any action to foreclose a mortgage in which a judgment of sale  
6 has been issued prior to the effective date of this act but has not yet  
7 been executed as of the effective date of this act, including actions  
8 filed on or before March 7, 2020, the court shall stay the execution of  
9 the judgment at least until the court has held a status conference with  
10 the parties. In any action to foreclose a mortgage, if the mortgagor  
11 provides a hardship declaration to the foreclosing party, the court, or  
12 an agent of the foreclosing party or the court, prior to the execution  
13 of the judgment, the execution shall be stayed until at least [May 1]  
14 August 31, 2021. If such hardship declaration is provided to the fore-  
15 closing party or agent of the foreclosing party, such foreclosing party  
16 or agent shall promptly file it with the court, advising the court in  
17 writing the index number of all relevant cases.

18 § 24. Section 12 of subpart A of part B of chapter 73 of the laws of  
19 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses  
20 Act of 2021", is amended to read as follows:

21 § 12. This act shall take effect immediately and sections one, two,  
22 three, four, five, six, seven, eight, nine and eleven of this act shall  
23 expire [May 1] August 31, 2021.

24 § 25. Subdivision 3 of section 2 of subpart B of part B of chapter  
25 73 of the laws of 2021 establishing the "COVID-19 Emergency Protect Our  
26 Small Businesses Act of 2021", is amended to read as follows:

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

29 "COMMERCIAL OWNER DECLARATION OF COVID-19-RELATED HARDSHIP

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

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

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

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

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

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

52 I understand that lawful fees, penalties or interest for not having  
53 paid the business's taxes in full may still be charged or collected and  
54 may result in a foreclosure action against the business on or after [May  
55 1] August 31, 2021, if the business does not fully repay any missed or  
56 partial payments and fees.



1 Signed:

2 Printed Name:

3 Date Signed:

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

7 § 26. Subdivision 3 of section 3 of subpart B of part B of chapter  
8 73 of the laws of 2021 establishing the "COVID-19 Emergency Protect Our  
9 Small Businesses Act of 2021", is amended to read as follows:

10 3. The submission of such a declaration, unless withdrawn by the  
11 owner, shall act as a temporary stay applicable to all entities and  
12 persons of all such tax lien sales and tax foreclosure actions and  
13 proceedings against such owner for such property that have been  
14 commenced or could have been commenced before [May 1] August 31, 2021.

15 § 27. Section 4 of subpart B of part B of chapter 73 of the laws of  
16 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses  
17 Act of 2021", is amended to read as follows:

18 § 4. This act shall take effect immediately and sections one and two  
19 and subdivisions one, two, three, four and five of section three shall  
20 expire [May 1] August 31, 2021.

21 § 28. Subdivision 2 of section 1 of subpart C of part B of chapter 73  
22 of the laws of 2021 establishing the "COVID-19 Emergency Protect Our  
23 Small Businesses Act of 2021", is amended to read as follows:

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

29 "NOTICE TO COMMERCIAL OWNER/MORTGAGOR: If you have lost significant  
30 revenue or had significantly increased necessary costs due to the  
31 COVID-19 pandemic, and you sign and deliver this hardship declaration  
32 form to your lending institution, you cannot be discriminated against in  
33 the determination of whether credit should be extended or reported nega-  
34 tively to a credit reporting agency until at least [May 1] August 31,  
35 2021.

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

40 COMMERCIAL OWNER/MORTGAGOR 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/MORTGAGOR of the property  
43 at (address of commercial unit). My business owns, whether directly or  
44 indirectly, ten or fewer commercial units. My business is resident in  
45 New York State, independently owned and operated, not dominant in its  
46 field, and employs fifty or fewer persons. My business is experiencing  
47 financial hardship, and is unable to pay the mortgage in full because of  
48 one or more of the following:

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

50 2. Significant increase in necessary out-of-pocket expenses related to  
51 providing personal protective equipment to employees or purchasing and  
52 installing other protective equipment to prevent the transmission of  
53 COVID-19 within the business.

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



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

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

7 Signed:

8 Printed Name:

9 Date Signed:

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

13 § 29. Section 2 of subpart C of part B of chapter 73 of the laws of  
14 2021 establishing the "COVID-19 Emergency Protect Our Small Businesses  
15 Act of 2021", is amended to read as follows:

16 § 2. This act take effect immediately and shall expire [May 1] August  
17 31, 2021.

18 § 30. This act shall take effect immediately and shall be deemed to  
19 have been in full force and effect on May 1, 2021; provided, however,  
20 that the amendments to parts A and B of chapter 381 of the laws of 2020  
21 made by this act shall not affect the expiration of such parts and shall  
22 be repealed therewith; and provided further, that the amendments to  
23 parts A and B of chapter 73 of the laws of 2021 made by this act shall  
24 not affect the expiration of such parts and shall be deemed to expire  
25 therewith.



## **EXHIBIT B**



NEW YORK STATE  
Unified Court System

OFFICE OF COURT ADMINISTRATION

LAWRENCE K. MARKS  
CHIEF ADMINISTRATIVE JUDGE

MEMORANDUM

December 31, 2020

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

From: Lawrence K. Marks LM

Subject: Residential Foreclosure Proceedings Under the COVID-19 Emergency  
Eviction and Foreclosure Prevention Act of 2020 (L. 2020, c. 381)

=====

As you may know, earlier this week Governor Cuomo signed into law chapter 381 of the Laws of 2020 (the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 ["Act" (effective December 28, 2020); Exh. A]), which, inter alia, provides substantial COVID-related protections through May 1, 2021 for defendants in residential foreclosure matters. **In brief: the Act immediately stays pending residential foreclosure actions for sixty days, and provides that, where a mortgagor/owner submits to the foreclosing party or the court a declaration attesting to hardship arising from or during the COVID-19 pandemic, proceedings will be further stayed (or commencement tolled) until May 1, 2021.** Additional highlights of the Act are as follows:

1. Stay of Pending Foreclosure Matters: The Act immediately stays pending residential foreclosure matters for sixty days (i.e., through February 27, 2021), including actions in which a judgment of sale has been issued but not yet executed (see paragraph 6 below). Residential foreclosure matters commenced between December 28, 2020 and January 27, 2021 shall also be stayed for sixty days from commencement (Act, Part B, Subpart A, §§1, 3). An administrative order effectuating this stay (AO/341/20) is attached as Exh. B.

2. Covered matters: The Act applies to any action to foreclose a mortgage relating to real property if the owner or mortgagor of the property is a natural person (regardless of how title is held) and owns ten or fewer dwelling units. Those units may be in more than one building, must include the primary residence of the owner/mortgagor seeking COVID relief, and must otherwise be occupied by a tenant or available for rent. Shares assigned to a unit of a residential condominium are included (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 cover vacant and abandoned property that was first listed on the statewide vacant and abandoned property electronic registry before March 7, 2020



and remains on that registry (Act, Part B, Subpart A, §1(b)). Nor does the Act 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).

3. Notice to Owner or Mortgagor and Hardship Declaration – Publication and Translation: The Act contains a Notice to Mortgagor and a mortgagor Hardship Declaration (collectively, “Hardship Declaration”; Exh. C), to be provided in blank format to defendants in foreclosure proceedings, setting forth various grounds by which an owner/mortgagor might be adversely affected by the COVID-19 pandemic (Act, Part B, Subpart A, §4). As the Act requires, the Hardship Declaration will be posted on the Court System’s website in English, Spanish and the six other most common (non-English) languages in New York City in the near future; other translations will be made available thereafter as practicable (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 (in English and, to the extent practicable, the mortgagor/owner’s primary language) to all defendants in pending covered residential foreclosure matters (Act, Part B, Subpart A, §3). Our Division of Technology is currently exploring an economical method of performing this task. Courts are encouraged to work with their local plaintiffs’ and defense bars, civil legal service providers, and housing counselors to ensure that homeowners receive these notices.

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, the Act requires that an action be stayed until at least May 1, 2021, or that its commencement be tolled until May 1, 2021 (Act, Part B, Subpart A, §§5,7). Where no Hardship Declaration is submitted, 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 action where a judgment of sale was issued on or before December 28, 2020 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 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). A prior COVID-19 Assessment Conference does not satisfy this new conference requirement for post-judgment cases under the Act.

7. Court Practice Upon Commencement of a New Proceeding: The court cannot accept a new residential foreclosure proceeding filing unless it is accompanied by both (1) an affidavit of service of the Hardship Declaration,<sup>1</sup> and (2) an affidavit from the foreclosing party or agent of the foreclosing party stating that no Hardship Declaration has been received from the owner/mortgagor (Act, Part B, Subpart A, §6).

“At the earliest possible opportunity” following a new filing, the court must seek confirmation by the owner/mortgagor, on the record or in writing, that the owner/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 an owner/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 defendant has received and fully considered whether to submit a Declaration (Act, Part B, Subpart A, §6). **Where these procedures have been followed and an owner/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.**

8. Tax Lien Foreclosure Matters: The Act also applies to any action to foreclose on delinquent taxes or sell a tax lien relating to residential real property. 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) 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.

=====

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 of Policy and Planning ([shelfont@nycourts.gov](mailto:shelfont@nycourts.gov)).

c: Hon. Edwina Mendelson  
Steven Helfont

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<sup>1</sup> Foreclosing parties or agents are required to serve a blank copy of the Hardship Declaration, a translation of the Declaration in the mortgagor’s primary language, and contact information with all future notices provided to the owner/mortgagor (Act, Part B, Subpart A, §4).

# **EXHIBIT C**



Lawrence K. Marks  
Chief Administrative Judge

25 Beaver Street  
New York, N.Y. 10004  
(212) 428-2100

## 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)

=====

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 D

ADMINISTRATIVE ORDER OF THE  
CHIEF ADMINISTRATIVE JUDGE OF THE COURTS

Pursuant to the authority vested in me, and as required by L. 2020, c. 381 (the COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020 [“Residential Act”]) and L. 2021, c. 73 (the COVID-19 Emergency Protect Our Small Businesses Act of 2021 [“Commercial Act”]) as amended by L. 2021, c. 104 (“Amendment”; Exh. 1), I hereby direct that, effective immediately, the following procedures and restrictions shall apply to the conduct of foreclosure matters before the New York State courts:

1. Filings

- a. No court shall accept for filing commencement papers to foreclose a mortgage related to residential real property as defined by the Residential Act unless those papers include affidavits as required by Part B, Subpart A, §6 of the Residential Act.
- b. No court shall accept for filing commencement papers to foreclose a mortgage relating to commercial real property as defined by the Commercial Act unless those papers include affidavits as required by Part B, Subpart A, §6 of the Commercial Act.
- c. Filing and service of process in all foreclosure proceedings shall continue as set forth in Administrative Order 267/20.

2. Stay of Actions in Which the Mortgagor Provides a Hardship Declaration: In any covered action in which a judgment of sale has not been issued and a mortgagor or owner in a tax lien foreclosure as defined in either the Residential Act or Commercial Act (“Mortgagor” or “Owner”) has already submitted or hereafter submits a hardship declaration as defined in either Act (“Hardship Declaration”) to the foreclosing party, the court, or an agent of the foreclosing party or the court, the action shall be stayed (or commencement tolled) until at least August 31, 2021.

3. 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 covered action on or before May 1, 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 has submitted or hereafter submits a Hardship Declaration to the court, a foreclosing party, or an agent of the foreclosing party prior to the execution of the judgment, the action shall be stayed until at least August 31, 2021.

4. Other Provisions – All covered actions shall be conducted as otherwise required by the further provisions of the Residential Act or Commercial Act.

5. Resumption of other Residential, Commercial, and Tax Lien Foreclosure Matters: Any residential or commercial (including tax lien) foreclosure matter not covered by either the Residential Act or Commercial Act may resume in the normal course,

subject to federal or state emergency relief provisions governing the commencement and prosecution of such matters.

6. Auctions

- a. Notwithstanding the provisions of any judgment of foreclosure, all auctions shall be conducted in accordance with the auction plans developed by each judicial district. Such plans shall be revised as necessary and posted to the UCS website.
- b. All foreclosure auctions shall comply with the UCS' COVID-19 related protocols addressing social distancing, wearing of masks, and screening of attendees. If such compliance is not possible, the auction shall be relocated, and if necessary, postponed.

7. Paragraphs 1, 2, and 3 of this order shall expire on August 31, 2021.

This order supersedes the provisions of any other Administrative Order inconsistent with its terms.

Dated: May 24, 2021



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Chief Administrative Judge of the Courts

AO/159/21