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L A W O F F I C E S

## DEAR VALUED CLIENTS:

I write to you from RAS to share an important New York legislation update.

The New York State Senate and Assembly agreed to terms on S9114 and A11181, which Governor Cuomo will likely sign into law soon. In addition to Banking Law 9-x and covid conferences, the Covid-19 Eviction and Foreclosure Prevention Act seeks to provide additional relief to mortgagors, who by opting-in with a Hardship Declaration, can obtain a foreclosure or eviction stay until May 1, 2021, at which time the statute expires. In connection with this proposed bill, attached hereto please find:

- (1) Memorandum summarizing the proposed legislation, impact on foreclosure and evictions in New York State and recommended process implementation
- (2) The Proposed Bill Text
- (3) Foreclosure Hardship Declaration Notice
- (4) Eviction Hardship Declaration Notice

Once the Act is signed into law, we will be available to discuss the necessary process changes and answer any questions you may have.

Additionally, although not as impactful, Governor Cuomo executed A6370 today. Said bill expands the definition of “Tenant” in RPAPL 1305. In connection with this bill, for your review, attached please find a memorandum summarizing the legislation and its impact.

If you would like to discuss the foregoing matters, please feel free to reach out to me.

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**S09114 Summary:**

BILL NO S09114

SAME AS SAME AS

SPONSOR KAVANAGH

COSPNSR MYRIE, HOYLMAN, JACKSON, KRUEGER, MAY

MLTSPNSR

Establishes the COVID-19 Emergency Eviction and Foreclosure Prevention Act; relates to eviction proceedings (Part A); relates to foreclosure proceedings (Subpart A); relates to tax sales (Subpart B); establishes hardship declarations for owners of residential real property (Subpart C); authorizes every governing body of an assessing unit and local assessor to extend to the 2021 assessment roll, the renewal of the exemptions received on the 2020 assessment roll (Subpart D) (Part B).

**S09114 Actions:**

BILL NO S09114

12/24/2020 REFERRED TO HOUSING, CONSTRUCTION AND COMMUNITY DEVELOPMENT

S09114 Committee Votes:

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**S09114 Floor Votes:**

*There are no votes for this bill in this legislative session.*

S09114 Text:

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**STATE OF NEW YORK**

9114

**IN SENATE**

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December 24, 2020

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Introduced by Sens. KAVANAGH, MYRIE -- read twice and ordered printed,  
and when printed to be committed to the Committee on Housing,  
Construction and Community Development

AN ACT establishing the "COVID-19 Emergency Eviction and Foreclosure  
Prevention Act of 2020"; in relation to eviction proceedings; and to  
provide for the expiration of certain provisions upon the expiration  
thereof (Part A); in relation to foreclosure proceedings; and provid-  
ing for the expiration of certain provisions upon the expiration ther-  
eof (Subpart A); in relation to tax sales; and providing for the expi-  
ration of certain provisions upon the expiration thereof (Subpart B);  
to establish hardship declarations for owners of residential real  
property; and providing for the expiration of such provisions upon the  
expiration thereof (Subpart C); and to authorize every governing body  
of an assessing unit and local assessor to extend to the 2021 assess-  
ment roll, the renewal of the exemptions received on the 2020 assess-  
ment roll; and to provide for the expiration of such provisions upon  
the expiration thereof (Subpart D) (Part B)

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

- 1 Section 1. This act enacts into law components of legislation relating  
2 to eviction and foreclosure protections. Each component is wholly  
3 contained within a Part identified as Parts A through B. The effective  
4 date for each particular provision contained within such Part is set  
5 forth in the last section of such Part. Any provision in any section  
6 contained within a Part, including the effective date of the Part, which  
7 makes reference to a section "of this act", when used in connection with  
8 that particular component, shall be deemed to mean and refer to the  
9 corresponding section of the Part in which it is found. Section four of  
10 this act sets forth the general effective date of this act.  
11 § 2. Short title. This act shall be known and may be cited as the  
12 "COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020".  
13 § 3. Legislative intent. The Legislature finds and declares all of the  
14 following:

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

LBD17721-01-0

S. 9114

2

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

6 COVID-19 presents a historic threat to public health. Hundreds of  
7 thousands of residents are facing eviction or foreclosure due to neces-  
8 sary disease control measures that closed businesses and schools, and  
9 triggered mass-unemployment across the state. The pandemic has further  
10 interrupted court operations, the availability of counsel, the ability  
11 for parties to pay for counsel, and the ability to safely commute and  
12 enter a courtroom, settlement conference and the like.

13 Stabilizing the housing situation for tenants, landlords, and homeown-  
14 ers is to the mutual benefit of all New Yorkers and will help the state  
15 address the pandemic, protect public health, and set the stage for  
16 recovery. It is, therefore, the intent of this legislation to avoid as  
17 many evictions and foreclosures as possible for people experiencing a  
18 financial hardship during the COVID-19 pandemic or who cannot move due  
19 to an increased risk of severe illness or death from COVID-19.

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

25

## PART A

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

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

37 3. "Tenant" includes a residential tenant, lawful occupant of a dwell-  
38 ing unit, or any other person responsible for paying rent, use and occu-  
39 pancy, or any other financial obligation under a residential lease or  
40 tenancy agreement, but does not include a residential tenant or lawful  
41 occupant with a seasonal use lease where such tenant has a primary resi-  
42 dence to which to return to.

43 4. "Hardship declaration" means the following statement, or a substan-  
44 tially equivalent statement in the tenant's primary language, in  
45 14-point type, published by the office of court administration, whether  
46 in physical or electronic written form:

47 "NOTICE TO TENANT: If you have lost income or had increased costs  
48 during the COVID-19 pandemic, or moving would pose a significant health  
49 risk for you or a member of your household due to an increased risk for  
50 severe illness or death from COVID-19 due to an underlying medical  
51 condition, and you sign and deliver this hardship declaration form to  
52 your landlord, you cannot be evicted until at least May 1, 2021 for  
53 nonpayment of rent or for holding over after the expiration of your  
54 lease. You may still be evicted for violating your lease by persistently

S. 9114

3

1 and unreasonably engaging in behavior that substantially infringes on  
 2 the use and enjoyment of other tenants or occupants or causes a substan-  
 3 tial safety hazard to others.

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

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

#### 18 TENANT'S DECLARATION OF HARDSHIP DURING THE COVID-19 PANDEMIC

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

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

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

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

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

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

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

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 B. ( ) Vacating the premises and moving into new permanent housing would  
 51 pose a significant health risk because I or one or more members of my  
 52 household have an increased risk for severe illness or death from

S. 9114

4

1 COVID-19 due to being over the age of sixty-five, having a disability or  
2 having an underlying medical condition, which may include but is not  
3 limited to being immunocompromised.

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

13 Signed:  
14 Printed name:  
15 Date signed:

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

19 § 2. Pending eviction proceedings. Any eviction proceeding pending on  
20 the effective date of this act, including eviction proceedings filed on  
21 or before March 7, 2020, or commenced within thirty days of the effec-  
22 tive date of this act shall be stayed for at least sixty days, or to  
23 such later date that the chief administrative judge shall determine is  
24 necessary to ensure that courts are prepared to conduct proceedings in  
25 compliance with this act and to give tenants an opportunity to submit  
26 the hardship declaration pursuant to this act. The court in each case  
27 shall promptly issue an order directing such stay and promptly mail the  
28 respondent a copy of the hardship declaration in English, and, to the  
29 extent practicable, the tenant's primary language, if other than  
30 English.

31 § 3. Pre-eviction notices. A landlord shall include a "Hardship Decla-  
32 ration" in 14-point type, with every written demand for rent made pursu-  
33 ant to subdivision 2 of section 711 of the real property actions and  
34 proceedings law, with any other written notice required by the lease or  
35 tenancy agreement, law or rule to be provided prior to the commencement  
36 of an eviction proceeding, and with every notice of petition served on a  
37 tenant. If the translation of the hardship declaration in the tenant's  
38 primary language is not available on the office of court adminis-  
39 tration's public website, as provided by section ten of this act, it  
40 shall be the landlord's responsibility to obtain a suitable translation  
41 of the hardship declaration in the tenant's primary language. Such  
42 notice shall also include:

43 1. a mailing address, telephone number and active email address the  
44 tenant can use to contact the landlord and return the hardship declara-  
45 tion; and

46 2. a list of all not-for-profit legal service providers actively  
47 handling housing matters in the county where the subject premises are  
48 located. Such lists shall be prepared and regularly updated, to the  
49 extent practicable, for such purpose and published on the website of the  
50 office of court administration.

51 § 4. Prohibition on initiation of eviction proceeding. If there is no  
52 pending eviction proceeding and a tenant provides a hardship declaration  
53 to the landlord or an agent of the landlord, there shall be no initi-



S. 9114

5

1 ation of an eviction proceeding against the tenant until at least May 1,  
2 2021, and in such event any specific time limit for the commencement of  
3 an eviction proceeding shall be tolled until May 1, 2021.

4 § 5. Required affidavit. 1. No court shall accept for filing any peti-  
5 tion or other filing to commence an eviction proceeding unless the peti-  
6 tioner or an agent of the petitioner files an affidavit of service,  
7 under penalty of perjury, demonstrating the manner in which the peti-  
8 tioner or the petitioner's agent served a copy of the hardship declara-  
9 tion in English and the tenant's primary language, if other than  
10 English, with any rent demand and with any other written notice required  
11 by the lease or tenancy agreement, law or rule to be provided prior to  
12 the commencement of an eviction proceeding, and an affidavit under  
13 penalty of perjury:

14 a. attesting that at the time of filing, neither the petitioner nor  
15 any agent of the petitioner has received a hardship declaration from the  
16 respondent or any other tenant or occupant of the dwelling unit that is  
17 the subject of the proceeding, or

18 b. attesting that the respondent or another tenant or occupant of the  
19 dwelling unit that is the subject of the proceeding has returned a hard-  
20 ship declaration, but the respondent is persistently and unreasonably  
21 engaging in behavior that substantially infringes on the use and enjoy-  
22 ment of other tenants or occupants or causes a substantial safety hazard  
23 to others, with a specific description of the behavior alleged.

24 2. Upon accepting a petition pursuant to article 7 of the real proper-  
25 ty actions and proceedings law, the attorney, judge or clerk of the  
26 court, as the case may be, shall determine whether a copy of the hard-  
27 ship declaration in English and the tenant's primary language, if other  
28 than English, is annexed to the served notice of petition and, if not,  
29 shall ensure that the hardship declaration is attached to such notice.  
30 Service of the notice of petition with the attached hardship declaration  
31 shall be made by personal delivery to the respondent, unless such  
32 service cannot be made with due diligence, in which case service may be  
33 made under section 735 of the real property actions and proceedings law.  
34 At the earliest possible opportunity, the court shall seek confirmation  
35 on the record or in writing from the respondent that the respondent has  
36 received the hardship declaration and that the respondent has not  
37 submitted a hardship declaration to the petitioner, an agent of the  
38 petitioner, or the court. If the court determines a respondent has not  
39 received a hardship declaration, then the court shall stay the proceed-  
40 ing for a reasonable period of time, which shall be no less than ten  
41 business days or any longer period provided by law, and provide the  
42 respondent with a copy of the hardship declaration in English and the  
43 respondent's primary language, if other than English, to ensure the  
44 respondent received and fully considered whether to submit the hardship  
45 declaration.

46 § 6. Pending proceedings. In any eviction proceeding in which an  
47 eviction warrant has not been issued, including eviction proceedings  
48 filed on or before March 7, 2020, if the tenant provides a hardship  
49 declaration to the petitioner, the court, or an agent of the petitioner  
50 or the court, the eviction proceeding shall be stayed until at least May  
51 1, 2021. If such hardship declaration is provided to the petitioner or  
52 agent, such petitioner or agent shall promptly file it with the court,  
53 advising the court in writing the index number of all relevant cases.

54 § 7. Default judgments. No court shall issue a judgment in any  
55 proceeding authorizing a warrant of eviction against a respondent who  
56 has defaulted, or authorize the enforcement of an eviction pursuant to a

S. 9114

6

1 default judgment, prior to May 1, 2021, without first holding a hearing  
2 after the effective date of this act upon motion of the petitioner. The  
3 petitioner or an agent of the petitioner shall file an affidavit attest-  
4 ing that the petitioner or the petitioner's agent has served notice of  
5 the date, time, and place of such hearing on the respondent, including a  
6 copy of such notice. If a default judgment has been awarded prior to the  
7 effective date of this act, the default judgment shall be removed and  
8 the matter restored to the court calendar upon the respondent's written  
9 or oral request to the court either before or during such hearing and an  
10 order to show cause to vacate the default judgment shall not be  
11 required.

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

25 b. In any eviction proceeding in which a warrant has been issued,  
26 including eviction proceedings filed on or before March 7, 2020, any  
27 warrant issued shall not be effective as against the occupants, unless,  
28 in addition to the requirements under section 749 of the real property  
29 actions and proceedings law for warrants, such warrant states:

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

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

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

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

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

53 § 9. Sections two, four, six and paragraph (ii) of subdivision a of  
54 section eight of this act shall not apply if the tenant is persistently  
55 and unreasonably engaging in behavior that substantially infringes on



S. 9114

7

1 the use and enjoyment of other tenants or occupants or causes a substan-  
2 tial safety hazard to others, provided:

3 1. If an eviction proceeding is pending on the effective date of this  
4 act, but the petitioner has not previously alleged that the tenant  
5 persistently and unreasonably engaged in such behavior, the petitioner  
6 shall be required to submit a new petition with such allegations and  
7 comply with all notice and service requirements under article 7 of the  
8 real property actions and proceedings law and this act.

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

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

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

24 5. If the petitioner establishes that the tenant persistently and  
25 unreasonably engaged in such behavior or the tenant fails to provide a  
26 hardship declaration to the petitioner, petitioner's agent or the court,  
27 the proceeding may continue pursuant to article 7 of the real property  
28 actions and proceedings law and this act.

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

40 § 11. Rebuttable presumption. A hardship declaration in which the  
41 tenant has selected the option indicating a financial hardship shall  
42 create a rebuttable presumption that the tenant is experiencing finan-  
43 cial hardship, in any judicial or administrative proceeding that may be  
44 brought, for the purposes of establishing a defense under chapter 127 of  
45 the laws of 2020, an executive order of the governor or any other local  
46 or state law, order or regulation restricting the eviction of a tenant  
47 suffering from a financial hardship during or due to COVID-19 provided  
48 that the absence of a hardship declaration shall not create a presump-  
49 tion that a financial hardship is not present.

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

S. 9114

8

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

4 PART B

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

17 SUBPART A

18 Section 1. Application. This section shall apply to any action to  
19 foreclose a mortgage relating to residential real property, provided the  
20 owner or mortgagor of such property is a natural person, regardless of  
21 how title is held, and owns ten or fewer dwelling units whether directly  
22 or indirectly. The ten or fewer dwelling units may be in more than one  
23 property or building as long as the total aggregate number of ten units  
24 includes the primary residence of the natural person requesting such  
25 relief and the remaining units are currently occupied by a tenant or are  
26 available for rent.

27 (a) For purposes of this act, real property shall include shares  
28 assigned to a unit in a residential cooperative.

29 (b) For purposes of this act, real property shall not include property  
30 that is vacant and abandoned, as defined in subdivision 2 of section  
31 1309 of the real property actions and proceedings law, which was listed  
32 on the statewide vacant and abandoned property electronic registry, as  
33 defined in section 1310 of the real property actions and proceedings  
34 law, prior to March 7, 2020 and that remains on such registry.

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

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

46 "NOTICE TO MORTGAGOR: If you have lost income or had increased costs  
47 during the COVID-19 pandemic, and you sign and deliver this hardship  
48 declaration form to your mortgage lender or other foreclosing party, you  
49 cannot be foreclosed on until at least May 1, 2021.

50 If your mortgage lender or other foreclosing party provided you with  
51 this form, the mortgage lender or other foreclosing party must also  
52 provide you with a mailing address and e-mail address to which you can



S. 9114

9

1 return this form. If you are already in foreclosure proceedings, you may  
 2 return this form to the court. You should keep a copy or picture of the  
 3 signed form for your records. You will still owe any unpaid mortgage  
 4 payments and lawful fees to your lender. You should also keep careful  
 5 track of what you have paid and any amount you still owe.

#### 6 MORTGAGOR'S DECLARATION OF COVID-19-RELATED HARDSHIP

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

12 1. Significant loss of household income during the COVID-19 pandemic.  
 13 2. Increase in necessary out-of-pocket expenses related to performing  
 14 essential work or related to health impacts during the COVID-19 pandem-  
 15 ic.

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

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

24 5. Other circumstances related to the COVID-19 pandemic have negative-  
 25 ly affected my ability to obtain meaningful employment or earn income or  
 26 have significantly reduced my household income or significantly  
 27 increased my expenses.

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

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

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

43 Signed:

44 Printed Name:

45 Date Signed:

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

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

S. 9114

10

1 directing such stay and promptly mail the mortgagor a copy of the hard-  
2 ship declaration in English, and, to the extent practicable, the  
3 mortgagor's primary language, if other than English.

4 § 4. The foreclosing party shall include a "Hardship Declaration" in  
5 14-point type, with every notice provided to a mortgagor pursuant to  
6 sections 1303 and 1304 of the real property actions and proceedings law.  
7 If the translation of the hardship declaration in the mortgagor's prima-  
8 ry language is not available on the office of court administration's  
9 public website, as provided by section nine of this act, it shall be the  
10 foreclosing party's responsibility to obtain a suitable translation of  
11 the hardship declaration in the mortgagor's primary language. Such  
12 notice shall also include a mailing address, telephone number and active  
13 email address the mortgagor can use to contact the foreclosing party and  
14 return the hardship declaration.

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

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

24 (i) of service demonstrating the manner in which the foreclosing  
25 party's agent served a copy of the hardship declaration in English and  
26 the mortgagor's primary language, if other than English, with the  
27 notice, if any, provided to the mortgagor pursuant to sections 1303 and  
28 1304 of the real property actions and proceedings law, and

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

32 At the earliest possible opportunity, the court shall seek confirma-  
33 tion on the record or in writing that the mortgagor has received a copy  
34 of the hardship declaration and that the mortgagor has not returned the  
35 hardship declaration to the foreclosing party or an agent of the fore-  
36 closing party. If the court determines a mortgagor has not received a  
37 hardship declaration, then the court shall stay the proceeding for a  
38 reasonable period of time, which shall be no less than ten business days  
39 or any longer period provided by law, to ensure the mortgagor received  
40 and fully considered whether to submit the hardship declaration.

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

50 § 8. In any action to foreclose a mortgage in which a judgment of sale  
51 has been issued prior to the effective date of this act but has not yet  
52 been executed as of the effective date of this act, including actions  
53 filed on or before March 7, 2020, the court shall stay the execution of  
54 the judgment at least until the court has held a status conference with  
55 the parties. In any action to foreclose a mortgage, if the mortgagor  
56 provides a hardship declaration to the foreclosing party, the court, or



S. 9114

11

1 an agent of the foreclosing party or the court, prior to the execution  
 2 of the judgment, the execution shall be stayed until at least May 1,  
 3 2021. If such hardship declaration is provided to the foreclosing party  
 4 or agent of the foreclosing party, such foreclosing party or agent shall  
 5 promptly file it with the court, advising the court in writing the index  
 6 number of all relevant cases.

7 § 9. The office of court administration shall translate the hardship  
 8 declaration, as defined in section one of this act, into Spanish and the  
 9 six most common languages in the city of New York, after Spanish, and  
 10 shall post and maintain such translations and an English language copy  
 11 of the hardship declaration on the website of such office beginning  
 12 within fifteen days of the effective date of this act.

13 § 10. A hardship declaration shall create a rebuttable presumption  
 14 that the mortgagor is suffering financial hardship, in any judicial or  
 15 administrative proceeding that may be brought, for the purposes of  
 16 establishing a defense under an executive order of the governor or any  
 17 other local or state law, order or regulation restricting actions to  
 18 foreclose a mortgage against a mortgagor suffering from a financial  
 19 hardship during or due to the COVID-19 pandemic provided that the  
 20 absence of a hardship declaration shall not create a presumption that a  
 21 financial hardship is not present.

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

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

32

## SUBPART B

33 Section 1. Application. This act shall apply to any action to fore-  
 34 close on delinquent taxes or sell a tax lien relating to residential  
 35 real property, provided the owner or mortgagor of such property is a  
 36 natural person, regardless of how title is held, and owns ten or fewer  
 37 dwelling units whether directly or indirectly. The ten or fewer dwelling  
 38 units may be in more than one property or building as long as the total  
 39 aggregate number of ten units includes the primary residence of the  
 40 natural person requesting such relief and the remaining units are  
 41 currently occupied by a tenant or are available for rent.

42 (a) For purposes of this act, real property shall include shares in a  
 43 residential cooperative.

44 (b) For purposes of this act, real property shall not include property  
 45 that is vacant and abandoned, as defined in subdivision 2 of section  
 46 1309 of the real property actions and proceedings law, which was listed  
 47 on the statewide vacant and abandoned property electronic registry, as  
 48 defined in section 1310 of the real property actions and proceedings  
 49 law, prior to March 7, 2020 and that remains on such registry.

50 § 2. Definitions. For purposes of this act: 1. "Tax lien" means an  
 51 unpaid tax, special ad valorem levy, special assessment or other charge  
 52 imposed upon real property by or on behalf of a municipal corporation or  
 53 special district or other public or private entity which is an encum-

S. 9114

12

1 brance on real property, whether or not evidenced by a written instru-  
2 ment.

3 2. "Tax foreclosure and tax lien sale" shall mean any such tax lien  
4 sale or tax foreclosure pursuant to article 11 of the real property tax  
5 law, or any general, special or local law related to real property tax  
6 lien sales or real property tax foreclosures.

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

10 "OWNER DECLARATION OF COVID-19-RELATED HARDSHIP

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

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

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

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

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

27 5. Other circumstances related to the COVID-19 pandemic have negative-  
28 ly affected my ability to obtain meaningful employment or earn income or  
29 have significantly reduced my household income or significantly  
30 increased my expenses.

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

33 To the extent that I have lost household income or had increased  
34 expenses, any public assistance, including unemployment insurance,  
35 pandemic unemployment assistance, disability insurance, or paid family  
36 leave, that I have received since the start of the COVID-19 pandemic  
37 does not fully make up for my loss of household income or increased  
38 expenses.

39 I understand that lawful fees, penalties or interest for not having  
40 paid my taxes in full may still be charged or collected and may result  
41 in a foreclosure action against me on or after May 1, 2021, if I do not  
42 fully repay any missed or partial payments and fees.

43 Signed:

44 Printed Name:

45 Date Signed:

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

49 § 3. 1. A real property owner may submit a "Hardship Declaration" to  
50 any village, town, city, school district, county, or other entity or  
51 person which conducts tax foreclosures or tax lien sales.

52 2. At least thirty days prior to the date on which a sale of a tax  
53 lien is scheduled to occur, or upon the filing of a petition of foreclo-  
54 sure of a tax lien, the enforcing officer or other person or entity  
55 conducting such tax lien sale or tax foreclosure shall notify the owner  
56 of the affected property of such owner's rights under this act and shall

S. 9114

13

1 notify the owner that a copy of the hardship declaration can be accessed  
 2 on the New York State Department of Tax and Finance's website and also  
 3 provide a link to such declaration form. For the purposes of this act,  
 4 "enforcing officer" shall have the same meaning as defined in subdivi-  
 5 sion 3 of section 1102 of the real property tax law. The New York State  
 6 Department of Tax and Finance shall publish a copy of the hardship  
 7 declaration on its website.

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

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

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

20 6. A hardship declaration shall create a rebuttable presumption that  
 21 the owner is experiencing financial hardship, in any judicial or admin-  
 22 istrative proceeding that may be brought, for the purposes of establish-  
 23 ing a defense under an executive order of the governor or any other  
 24 local or state law, order or regulation restricting actions to sell a  
 25 tax lien or foreclose a tax lien against an owner suffering from a  
 26 financial hardship during or due to the COVID-19 pandemic, provided  
 27 that the absence of a hardship declaration shall not create a presump-  
 28 tion that a financial hardship is not present.

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

32

## SUBPART C

33 Section 1. Application. 1. This act shall apply to an owner of resi-  
 34 dential real property, provided the owner or mortgagor of such property  
 35 is a natural person, regardless of how title is held, and owns ten or  
 36 fewer dwelling units whether directly or indirectly. The ten or fewer  
 37 dwelling units may be in more than one property or building as long as  
 38 the total aggregate number of ten units includes the primary residence  
 39 of the natural person requesting such relief and the remaining units are  
 40 currently occupied by a tenant or are available for rent.

41 (a) For purposes of this act, real property shall include shares in a  
 42 residential cooperative.

43 (b) For purposes of this act, real property shall not include property  
 44 that is vacant and abandoned, as defined in subdivision 2 of section  
 45 1309 of the real property actions and proceedings law, which was listed  
 46 on the statewide vacant and abandoned property electronic registry, as  
 47 defined in section 1310 of the real property actions and proceedings  
 48 law, prior to March 7, 2020 and that remains on such registry.

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



S. 9114

14

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

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

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

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

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

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

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

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

29 5. Other circumstances related to the COVID-19 pandemic have negative-  
30 ly affected my ability to obtain meaningful employment or earn income or  
31 have significantly reduced my household income or significantly  
32 increased my expenses.

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

35 To the extent that I have lost household income or had increased  
36 expenses, any public assistance, including unemployment insurance,  
37 pandemic unemployment assistance, disability insurance, or paid family  
38 leave, that I have received since the start of the COVID-19 pandemic  
39 does not fully make up for my loss of household income or increased  
40 expenses.

41 Signed:

42 Printed Name:

43 Date Signed:

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

47 3. Discrimination in credit decisions. Notwithstanding any law to the  
48 contrary, lending institutions shall not discriminate in the determi-  
49 nation of whether credit should be extended to any owner of residential  
50 real property as defined in subdivision one of this section because, as  
51 provided for in this act, such owner has been granted a stay of mortgage  
52 foreclosure proceedings, tax foreclosure proceedings or of tax lien  
53 sales, or that an owner of residential real property as defined in  
54 subdivision one of this section is currently in arrears and has filed a  
55 hardship declaration with such lender.

S. 9114

15

1 4. Prohibition on negative credit reporting. Notwithstanding any law  
2 to the contrary, as provided for in this act, the granting of a stay of  
3 mortgage foreclosure proceedings, tax foreclosure proceedings or tax  
4 lien sales, or that an owner of residential real property as defined in  
5 subdivision one of this section is currently in arrears and has filed a  
6 hardship declaration with their lender shall not be negatively reported  
7 to any credit reporting agency.

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

9

## SUBPART D

10 Section 1. Notwithstanding any other provision of law, in the interest  
11 of the health and safety of the public due to the novel coronavirus,  
12 COVID-19 pandemic, every governing body of an assessing unit and local  
13 assessor shall extend to the 2021 assessment roll, the renewal of the  
14 exemptions received on the 2020 assessment roll pursuant to sections 467  
15 and 459-c of the real property tax law, relating to persons age sixty-  
16 five and older and for certain persons with disabilities and limited  
17 income, and no renewal application shall be required of any eligible  
18 recipient who received either exemption on the 2020 assessment roll in  
19 order for such eligible recipient to continue receiving such exemption  
20 at the same amount received on the 2020 assessment roll, except as here-  
21 in provided. Provided however, that the local assessor shall make avail-  
22 able renewal applications through postal mail or electronic means in  
23 order for eligible recipients to file renewal applications in the event  
24 that such eligible recipient determines his or her income has changed in  
25 a manner that would grant him or her a greater exemption than what was  
26 present on the 2020 assessment roll; and provided further that such  
27 governing body may adopt a local law or resolution which includes proce-  
28 dures by which the assessor may require a renewal application to be  
29 filed when he or she has reason to believe that an owner who qualified  
30 for the exemption on the 2020 assessment roll may have since changed his  
31 or her primary residence, added another owner to the deed, transferred  
32 the property to a new owner, or died; and provided further that no  
33 governing body of an assessing unit or local assessor may require eligi-  
34 ble recipients to appear in person to file a renewal application for any  
35 reason.

36 § 2. This act shall take effect immediately and shall expire May 1,  
37 2021. This act shall be deemed to have been in full force and effect on  
38 and after March 7, 2020.

39 § 2. Severability clause. If any clause, sentence, paragraph, subdivi-  
40 sion, section, item, subpart or part of this act shall be adjudged by  
41 any court of competent jurisdiction to be invalid, such judgment shall  
42 not affect, impair, or invalidate the remainder thereof, but shall be  
43 confined in its operation to the clause, sentence, paragraph, subdivi-  
44 sion, section, item, subpart or part thereof directly involved in the  
45 controversy in which such judgment shall have been rendered. It is here-  
46 by declared to be the intent of the legislature that this act would have  
47 been enacted even if such invalid provisions had not been included here-  
48 in.

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

52 § 4. Severability clause. If any clause, sentence, paragraph, subdivi-  
53 sion, section or part of this act shall be adjudged by any court of  
54 competent jurisdiction to be invalid, such judgment shall not affect,

S. 9114

16

1 impair, or invalidate the remainder thereof, but shall be confined in  
2 its operation to the clause, sentence, paragraph, subdivision, section  
3 or part thereof directly involved in the controversy in which such judg-  
4 ment shall have been rendered. It is hereby declared to be the intent of  
5 the legislature that this act would have been enacted even if such  
6 invalid provisions had not been included herein.

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





ROBERTSON, ANSCHUTZ, SCHNEID,  
CRANE & PARTNERS, PLLC  
LAW OFFICES

MEMORANDUM

**TO:** RAS CLIENTS  
**FROM:** Joseph F. Battista, Esq., General Counsel – New York  
**RE:** S09114 & A11181 and A6370  
**DATE:** December 28, 2020

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We are writing to advise you that the New York State Legislature has called a special session and is expected to pass new legislation, Bill S09114 & A11181, entitled “The COVID-19 Emergency Eviction and Foreclosure Prevention Act of 2020” (“The Act”). The Governor has publically announced that an agreement has been reached and that it is his intention to sign the bill once it has been passed by the legislature. The Act will become effective immediately upon being signed by the Governor and is set to expire on May 1, 2021.

**NEW COVID-19 FORECLOSURE REQUIREMENTS**

The Act applies to real property and co-ops meeting the following requirements:

- i) The mortgagor, or the current owner, is a natural person; and
- ii) The mortgagor, or the current owner, does not own more than 10 residential units; and
- iii) The property is occupied (in order to qualify as a vacant property, the property must have been deemed to be vacant & abandoned pursuant to RPAPL 1309 and the property added to the NYS vacant and abandoned property registry.)

The Act exempts mortgages made, insured, purchased or securitized by a state corporate governmental agency. The Act does not discuss federally backed mortgages, but presumably they will be deemed exempt from the new requirements.

**Currently Pending Foreclosure Actions:**

- i) Currently pending cases will be stayed for at least 60 days while the court implements processes to comply with the new requirements.
- ii) The court will issue an order directing the stay, and mail to the mortgagor(s) a “Hardship Declaration” in 14 point font in both English and the mortgagor(s) primary language if other than English. The text of the “Hardship Declaration” is provided by the statute and a copy is enclosed for your reference.
- iii) If the case is pre-judgment and the mortgagor(s) provides an executed “Hardship Declaration” the action shall be stayed until at least May 1, 2021.
- iv) If the case is post-judgment/pre-sale, no sale may take place until a status conference has been held, and if the mortgagor(s) provides an executed “Hardship Declaration” no sale may be held prior to May 1, 2021.

New foreclosure actions:

- i) A copy of the “Hardship Declaration” in 14 point font in both English, and the mortgagor(s) primary language if other than English, must be included with the 90 day notices pursuant to RPAPL 1304. **Notably, this requirement conflicts with RPAPL 1304 which requires the 90 day notices to be sent separately from any other notice.**
- ii) An affidavit attesting to (1) the method and manner of service of the “Hardship Declaration” together with the 90 day notices pursuant to RPAPL 1304, and (2) that the mortgagor(s) has not returned an executed “Hardship Declaration” must be filed with the summons and complaint.
- iii) A copy of the “Hardship Declaration” must be served together with the RPAPL 1303 notice, which is served by the process server together with the summons and complaint.
- iv) If a mortgagor provides an executed “Hardship Declaration” prior to the filing of the complaint, the foreclosure complaint may not be filed prior to May 1, 2021, and the statute of limitations shall be tolled until May 1, 2021.

Impact on Foreclosure Process

- Pre-First Legal: On pre-first legal loans, the following processes need to be established:
  - Mailing of the “Hardship Declaration” together with the 90 day notice and proof of same;
    - Mailing must be both first class and certified or registered mail to the mortgaged property and last known mailing address.
  - Affidavit execution attesting to service of the declaration & 90 day notice, and that no executed declaration was received. Our office is able to provide a proposed affidavit template which will be compliant with the statutory requirements. Notably, this requirement is in addition to the Statement of Review, Banking Law 9-x and Certificate of Merit statutory requirements.
  - A process for tracking receipt of executed mortgagor declarations must be established. Notably, the statute does not provide a time frame following the mailing of the “Hardship Declaration” by which the mortgagor must return the completed and executed declaration. We suggest a reasonable time frame of up to 30 calendar days following the mailing.
- Pre-First Legal and Post-First Legal: Since there is a post-first legal compliance requirement related to the “Hardship Notification,” please provide our office with a mailing address, telephone number and email address for the “Hardship Declarations” which is required by law. This information is required for post-first legal “Hardship Declarations” that must be served with the foreclosure complaint or later as required by the Courts.
- RAS Can Help:
  - New 90 day notices & Hardship Declarations: Our office is able to serve the 90 day notices and “Hardship Declarations” on your behalf and execute an affidavit of service, however, we will require an affidavit from the servicer attesting that an executed declaration was not received. A power of attorney authorizing our office to send the 90 day notices and declarations is recommended.
  - Pre-First Legal Files Already Referred: We can send such notices on pre-first legal files already referred and provide an affidavit of service. However, our clients will have to execute the pre-first legal affidavit attesting to lack of hardship declaration receipt from the mortgagor.

- Affidavit Template: As previously mentioned, our office is able to assist in providing a proposed affidavit template for compliance with pre-first legal filing requirements.

### **FORECLOSURE ACTIVITIES NOT SUBJECT TO THE NEW STAY PROVISIONS**

We anticipate that the Office of Court Administration will issue further guidance outlining the new procedures to be followed in foreclosure and eviction cases shortly after The Act has been signed by the Governor. At this time, the following activities appear to be permitted by The Act and should proceed:

- i) Covid conferences, settlement conferences or status conferences, subject to court guidance Service of filed complaints can continue together with a Hardship Declaration
- ii) Surrogate proceedings
- iii) Although we are temporarily stayed from filing our motion practice or responsive pleadings, litigation may continue
- iv) Appellate proceedings will proceed absent guidance from the appellate courts to the contrary
- v) Sales may proceed once the required conference has been held, assuming no “Hardship Declaration” is received
- vi) First legal may be filed, provided that our clients were able to comply with the new Hardship Declaration requirement. In addition to the mailing requirement, our clients must attest to (1) the method and manner of service of the “Hardship Declaration,” and (2) that an executed “Hardship Declaration” has not been received
- vii) Post-sale matters, including third party closings, title curative and code violations may proceed
- viii) The preparation and execution of affidavits, assignments and other documents is permitted
- ix) Proceeding with conversion of non-e-file cases to e-file cases may proceed

### **NEW COVID-19 EVICTION REQUIREMENTS**

The Act includes in its definition of eviction proceedings any judicial or administrative proceeding to recover possession of a residential dwelling. As such, the prior exemptions to COVID requirements for post-foreclosure holdover proceedings do not appear to apply to the new requirements.

#### **Currently Pending Eviction Actions:**

- i) Currently pending cases will be stayed for at least 60 days while the court implements processes to comply with the new requirements.
- ii) The court will issue an order directing the stay and mail to the mortgagor(s) a “Hardship Declaration” in 14 point font in both English and the mortgagor(s) primary language if other than English. The text of the “Hardship Declaration” is provided by the statute and a copy is enclosed for your reference.
- iii) No default judgment may be taken prior to May 1, 2021, nor an existing default judgment enforced prior to May 1, 2021, unless the petitioner files a motion on notice seeking a hearing. At the hearing any default judgment shall be vacated upon the tenant’s oral request.



- iv)** If the case is pre-warrant and the mortgagor(s) provides an executed “Hardship Declaration” the action shall be stayed until at least May 1, 2021.
- v)** If the case is post warrant, no eviction may take place until a status conference has been held, and if the mortgagor(s) provides an executed “Hardship Declaration” no eviction may be held prior to May 1, 2021.
- vi)** Any warrants issued prior to the effective date of The Act will need to be reissued with additional language indicating that either the tenants failed to submit a “Hardship Declaration” or that the court has found the tenant has persistently engaged in unreasonable behavior or caused a substantial safety hazard.

New eviction actions:

- i)** A copy of the “Hardship Declaration” in 14 point font in both English, and the mortgagor(s) primary language if other than English, must be served with the notice to quit and any other notices served to the tenants.
- ii)** An affidavit attesting to (1) the method and manner of service of the “Hardship Declaration”, and (2) that the tenant(s) has not returned an executed “Hardship Declaration” must be filed with the eviction petition.
- (iii)** If a mortgagor provides an executed “Hardship Declaration” prior to the filing of the petition, the eviction petition may not be filed prior to May 1, 2021, and the statute of limitations shall be tolled until May 1, 2021.

If you would like to schedule a call to discuss the new statutory requirements and the impact on the foreclosure process, please feel free to contact me at [jbattista@raslg.com](mailto:jbattista@raslg.com) or 516-280-7675 ext. 1059.

**NOTICE TO TENANT:** If you have lost income or had increased costs during the COVID-19 pandemic, or moving would pose a significant health risk for you or a member of your household due to an increased risk for severe illness or death from COVID-19 due to an underlying medical condition, and you sign and deliver this hardship declaration form to your landlord, you cannot be evicted until at least May 1, 2021 for nonpayment of rent or for holding over after the expiration of your lease. You may still be evicted for violating your lease by persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.

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

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

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

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

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

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

1. Significant loss of household income during the COVID-19 pandemic.
2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.
3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.
4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.
5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses.

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

B. ( ) Vacating the premises and moving into new permanent housing would pose a significant health risk because I or one or more members of my household have an increased risk for severe illness or death from COVID-19 due to being over the age of sixty-five, having a disability or having an underlying medical condition, which may include but is not limited to being immunocompromised.



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

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

Printed name: \_\_\_\_\_

Date signed: \_\_\_\_\_

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

\*\*\*THIS NOTICE MUST ALSO PROVIDE THE SERVICER'S NAME, MAILING ADDRESS AND EMAIL ADDRESS TO WHICH THE COMPLETED FORM MAY BE RETURNED.

\*\*\*\*THIS NOTICE MUST ALSO INCLUDE A LIST OF ALL NOT-FOR-PROFIT LEGAL SERVICES PROVIDERS ACTIVELY HANDLING HOUSING MATTERS IN THE COUNTY WHERE THE PREMISES IS LOCATED. THE LIST IS TO BE PUBLISHED ON THE OFFICE OF COURT ADMINISTRATION WEBSITE.

**NOTICE TO MORTGAGOR:** If you have lost income or had increased 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.

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

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

1. Significant loss of household income during the COVID-19 pandemic.
2. Increase in necessary out-of-pocket expenses related to performing essential work or related to health impacts during the COVID-19 pandemic.
3. Childcare responsibilities or responsibilities to care for an elderly, disabled, or sick family member during the COVID-19 pandemic have negatively affected my ability or the ability of someone in my household to obtain meaningful employment or earn income or increased my necessary out-of-pocket expenses.
4. Moving expenses and difficulty I have securing alternative housing make it a hardship for me to relocate to another residence during the COVID-19 pandemic.
5. Other circumstances related to the COVID-19 pandemic have negatively affected my ability to obtain meaningful employment or earn income or have significantly reduced my household income or significantly increased my expenses.
6. One or more of my tenants has defaulted on a significant amount of their rent payments since March 1, 2020.

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

I understand that I must comply with all other lawful terms under my mortgage agreement. I further understand that lawful fees, penalties or interest for not having paid my mortgage in full as required by my mortgage agreement may still be charged or collected and may result in a monetary judgment against me. I

also understand that my mortgage lender or other foreclosing party may pursue a foreclosure action against me 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.

**\*\*\*THIS NOTICE MUST ALSO PROVIDE THE SERVICER'S NAME,  
MAILING ADDRESS AND EMAIL ADDRESS TO WHICH THE  
COMPLETED FORM MAY BE RETURNED.**