

GOVERNOR'S PROGRAM BILL
2021

MEMORANDUM

An act to to amend subpart A of part BB of chapter 56 of the laws of 2021, establishing a COVID-19 emergency rental assistance program, in relation to eligibility for the COVID-19 emergency rental assistance program (Part A); in relation to eviction proceedings; and providing for the repeal of certain provisions upon the expiration thereof (Subpart A); and in relation to foreclosure proceedings; and providing for the repeal of certain provisions upon the expiration thereof (Subpart B); in relation to tax sales; and providing for the repeal of certain provisions upon the expiration thereof (Subpart C); to establish hardship declarations for owners of commercial real property; and providing for the repeal of such provisions upon the expiration thereof (Subpart D) (Part B); in relation to eviction proceedings; and to provide for the expiration of certain provisions upon the expiration thereof (Subpart A); in relation to foreclosure proceedings; and providing for the expiration of certain provisions upon the expiration thereof (Subpart B); in relation to tax sales; and providing for the expiration of certain provisions upon the expiration thereof (Subpart C); and to establish hardship declarations for owners of residential real property; and providing for the expiration of such provisions upon the expiration thereof (Subpart D) (Part C); in

relation to extending the prohibition on the eviction of residential tenants who have suffered financial hardship during the COVID-19 covered period (Part D); and in relation to authorizing political subdivisions to permit any public body to hold meetings remotely and without in-person access during the COVID-19 state disaster emergency; and provides for the repeal of such provisions upon the expiration thereof (Part E)

Purpose:

This critical legislation will extend and modify protections necessary to allow New Yorkers to stay in their homes, and provide landlords with funding for unpaid rent for tenants that have experienced financial hardship due to the COVID-19 pandemic. Additionally, it protects commercial tenants and building owners from eviction and foreclosure. It also allows for public bodies to continue to hold meetings remotely, so that government business can safely and transparently continue as COVID-19 transmission rates have increased.

Summary of Provisions:

- Part A amends the COVID-19 Emergency Rental Assistance Program (“ERAP”), to (i) allow residents of municipalities that elected not to participate in the statewide emergency rental assistance program to apply to the State program for relief after the municipality has distributed or obligated all of the funds directly allocated to it by the United State Department of the Treasury (the “Treasury”), (ii) authorize OTDA to share application data with the office of court administration so that courts may determine whether litigants in eviction proceedings may be eligible for eviction protections, (iii) extend eviction protections, subject to certain limitations, to residents of municipalities that opted not to participate in the statewide emergency rental assistance program, and (iv) clarify that notwithstanding the eviction protections afforded by ERAP, tenants may be subject to eviction where the tenant intentionally causes significant damage to the property or is persistently and unreasonably engaging in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others.
- Part B establishes an eviction moratorium for commercial tenants that are independently owned and operated, not dominant in its field and have one hundred (100) or fewer employees until January 15, 2022. The legislation includes a definition of hardship, provides landlord due process to challenge a hardship claim and expands the grounds

under which a lawful eviction can proceed despite a finding of hardship. It also establishes a foreclosure moratorium for the owner or mortgagor of such property that owns ten or fewer commercial units whether directly or indirectly and is a business that is resident in New York State, independently owned and operated, not dominant in its field, and employs one hundred (100) or fewer persons until January 15, 2022. The legislation also prevents local governments from engaging in a tax lien sale or a tax foreclosure until at least January 15, 2022, and lending institutions are prohibited from discriminating or seeking a negative credit report because the property owner has been granted a stay of mortgage foreclosure proceedings, tax foreclosure proceedings, or tax lien sales. They are also prohibited from discriminating because the owner is in arrears and has filed a hardship declaration with the lender.

- Part C establishes an eviction moratorium for residential tenants experiencing COVID-related financial hardship until January 15, 2022. The legislation includes a definition of hardship, provides landlord due process to challenge a claim of hardship and expands the grounds under which a lawful eviction can proceed despite a finding of hardship. It also establishes a foreclosure moratorium for a mortgage relating to residential real property, provided the owner or mortgagor of such property is a natural person, regardless of how title is held, and owns ten or fewer dwelling units whether directly or indirectly until January 15, 2022. The ten or fewer dwelling units may be in more than one property or building as long as the total aggregate number of ten units includes the primary residence of the natural person requesting such relief and the remaining units are currently occupied by a tenant or are available for rent. The legislation also prevents local governments from engaging in a tax lien sale or a tax foreclosure until at least January 15, 2022, and lending institutions are prohibited from discriminating or seeking a negative credit report because the tenant or property owner has been granted a stay of eviction, stay of mortgage foreclosure proceedings, tax foreclosure proceedings, or tax lien sales. They are also prohibited from discriminating because the owner is in arrears and has filed a hardship declaration with the lender.
- Part D extends the Tenant Safe Harbor protections until January 15, 2022.
- Part E allows state and local government entities to meet remotely by conference call or similar service, so long as the public has the ability to view or listen to such proceeding and provided such meetings are recorded and later transcribed.

Existing Law:

ERAP authorized the Commissioner of OTDA to administer emergency rental assistance funding issued by the federal government. ERAP authorizes certain households obligated to pay rent who accrued rental arrears as a result of financial hardships caused by the COVID-19 pandemic to apply for, and if eligible to receive, emergency rental assistance and utility assistance. Households applying for emergency rental assistance also are entitled to protections against eviction: after applying for emergency rental assistance, a household cannot be evicted on the grounds of a holdover tenancy, an expired lease, or for non-payment of rent or utilities eligible

for coverage under the program until such time as the household is determined to be ineligible to receive emergency rental assistance. The federal government made direct allocations of funding to both the State and to municipalities with populations of over 200,000, and while most localities receiving direct allocations from the federal government opted to transfer their funds to the State and allow OTDA to administer the emergency rental assistance program on their behalf, seven localities that received funding directly from the Treasury opted to administer their own emergency rental assistance programs.

New York previously authorized an eviction moratorium for residential and commercial tenants until August 31, 2021, as well as protection from foreclosure for residents and businesses. The Supreme Court of the United States on August 12, 2021 enjoined certain provisions of the residential eviction moratorium statute. The Tenant Safe Harbor Act, enacted in June of 2020, provides protection from eviction for tenants who have experienced financial hardship during the covered period, which expired in June of 2021.

Currently, the Open Meetings Law requires that every meeting of a public body be open and accessible to the general public. If videoconferencing is used to conduct business, the public body shall provide an opportunity for the public to attend, listen and observe at any site at which a member of the public body participates, even if such site is not public. The Open Meetings Law does not currently allow business to be conducted via telephone.

Justification:

This critical legislation is necessary to issue a new moratorium on COVID-related residential and commercial evictions in effect in New York State, until January 15, 2022. Additionally, all protections of the Tenant Safe Harbor Act for residential tenants who are suffering financial hardship as a result of the pandemic will remain in place, along with protections on commercial evictions and foreclosures that apply to commercial tenants and mortgagors.

This legislation will expand ERAP to more applicants, in that it will allow residents of a municipal corporation that opted out of the program to apply for assistance after the municipal corporation expends or obligates its own federal emergency rental assistance funding. This legislation also extends eviction protections, subject to certain limitations, to those residents.

It will also ensure that applicants for assistance are protected by permitting OTDA to share data with the court system to help courts determine whether litigants applied and are entitled to eviction protections.

To avoid confusion of landlords as to their ability to evict tenants on grounds other than expired lease, holdover tenancy, or non-payment of rent, this legislation clarifies that landlords may pursue eviction proceedings against tenants who intentionally cause damage to the property or persistently and unreasonably engage in behavior that substantially infringes on the use and enjoyment of other tenants or occupants or causes a substantial safety hazard to others. Additionally, a procedure is established for a landlord to challenge a tenant's claim of hardship,

provide a hearing, and if a hardship claim is found to be invalid, to continue the eviction proceedings to a determination on the merits.

Additionally, during the COVID-19 pandemic, portions of the Open Meetings Law were modified to allow public business to continue while protecting public health by eliminating the need for congregation. This legislation will allow for remote public meetings to continue to be held through January 15, 2022 in the same manner as was allowed during the state disaster emergency.

Legislative History:

This legislation extends and modifies provisions of law enacted during the COVID-19 state disaster emergency.

Budget Implications:

A \$250M appropriation for supplemental costs associated with Part A.

Effective Date:

Immediately.