



For landlords: First the enactment of the HTSPA, now the COVID-19 crisis - by Anthony Cummings

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Landlords took a big hit with the enactment of the HTSPA in June 2019 and the New York State Legislature is seemingly poised to deliver another with a proposed Act (S. 8125, the “Act”) that will “suspend” rent payments for certain residential tenants and small business commercial tenants for 90 days in response to the outbreak of coronavirus (COVID19).

Not only does the proposed Act suspend the payments, the draft language also provides that such “residential tenant or small business commercial tenant shall not and shall never be required to pay any rent waived during such time period.” It is clear the proposed Act was hastily drafted since it, as do most reactionary laws, creates many obvious questions that will have serious implications.

The Act provides for automatic lease renewals, for example, but it does not specify the duration of

the renewal.

How will this impact landlords that planned to commence holdover summary proceeding on the expiration of the lease?

Will the new notice requirements now apply?

Similarly, the Act purports to provide mortgage relief but limits it to those that face a “financial hardship” because of being deprived rent payments for a covered property. The Act defines some terms (commercial tenant, covered property) and defines others (residential tenant, small business) by reference to existing laws but financial hardship is not defined (along with several other key terms).

So what will a borrower or lender use to draw the conclusion that a borrower is entitled to relief?

How will disagreements be resolved, administratively, arbitration or mediation?

Many other terms present the same opportunity for debate, disagreement, confusion and exploitation. Some of the shortcomings in the proposed Act will certainly lead to litigation whether it be in landlord-tenant courts or the courts of general jurisdiction. Stay tuned, more is sure to follow.

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