



## **MEMORANDUM IN OPPOSITION**

### **TITLE OF LEGISLATION:**

S. 8125 (Gianaris) relating to suspend residential and commercial rent payments.

### **SUMMARY OF PROVISIONS:**

This legislation will waive commercial and residential rent for 90 days for tenants that have lost employment or been forced to close their place of business as a result of government ordered restrictions in response to COVID-19, and waive certain mortgage payments for 90 days for mortgagors who experience financial hardship due to COVID-19.

### **REASONS FOR OPPOSITION:**

The Association For A Better Long Island and Long Island Builders Institute, whose members combine to form the region's largest property owner and taxpayer, strongly opposes this legislation. It is clear that the COVID-19 pandemic will leave the State of New York with a multibillion-dollar deficit. This legislation will only exacerbate the problem and further damage an economy already under assault. It applies broadly to a residential tenant or commercial tenant who is either unwilling or unable to pay rent. The cascading impact of this bill could easily result in thousands of commercial and multi-family residential properties being thrown into bankruptcy with resulting chaos in the market, a loss of property maintenance, and problematic real estate tax collections. Furthermore, this legislation was conceived before guidance is established on how federal stimulus, the CARES Act, will assist New Yorkers.

The following are our concerns:

1. The bill applies broadly to a residential tenant or commercial tenant that is unable to pay rent directly as a result from covid-19 – effectively the proposal permits anyone not to pay. As a result, there will be a permanent loss of 25% of a year's rent, which would be devastating and unsustainable to property owners.
2. An immediate and obvious flaw is that there is no criteria for what proof is necessary for the tenant to prove hardship. Nor does it account for those who will be eligible for bridge loans, grants, or unemployment to cover such rent payments out of the Federal stimulus bill. It thereby creates a permanent waiver of rent for 90 days based upon "hardship" with no definition, meaningful criteria or enforcement mechanism.

3. The bill only factors in mortgage as a factor in the rent formula. However owners must calculate rent based on a variety of costs: mortgages, taxes, utilities, insurance, and labor.
4. There is no rule making or application process outlined for how to determine eligibility. If it is a wholesale reduction in rent or complete zeroing out, for how long would such reductions be in place.
5. The bill includes an automatic lease renewal at current rental rate. The language is overly broad and indicates anyone is eligible for such a benefit. Also the language does not specify what length of time is included in the automatic lease renewal.
6. It would be reasonable to require a short-term lease extension at current rent, and should include a lease rider that allows for that to be broken once situation/crisis is resolved.
7. Regarding commercial tenants, the language applies to small business which is defined in Section 131 of EDA as: *For the purposes of this chapter, a small business shall be deemed to be one which is resident in this state, independently owned and operated, not dominant in its field and employs one hundred or less persons.* There no guidance on how to determine if a business is dominant in its field or how a devastated field due to the pandemic makes any prior dominance irrelevant.

**For all the reasons stated above, the Association For A Better Long Island and Long Island Builders Institue strongly opposes SB 8125.**

# STATE OF NEW YORK

8125

## IN SENATE

March 23, 2020

Introduced by Sens. GIANARIS, BIAGGI, CARLUCCI, FUNKE, HOYLMAN, JACKSON, LIU, MONTGOMERY, PARKER, PERSAUD, RAMOS, SALAZAR, STAVISKY -- read twice and ordered printed, and when printed to be committed to the Committee on Judiciary

AN ACT to suspend rent payments and certain mortgage payments for certain residential tenants and small business commercial tenants for ninety days in response to the outbreak of coronavirus

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

1 Section 1. (a) Notwithstanding any other provision of law, rule or  
2 regulation to the contrary, any residential tenant or small business  
3 commercial tenant in the state that has lost income or has been forced  
4 to close their place of business as a result of government ordered  
5 restrictions in response to the outbreak of coronavirus disease 2019  
6 (COVID-19), shall have all rent payments suspended for ninety days  
7 following the effective date of this act. Such residential tenant or  
8 small business commercial tenant shall not and shall never be required  
9 to pay any rent waived during such time period. Every residential or  
10 small business commercial tenant whose lease expires during this time  
11 period shall be subject to an automatic renewal lease at the current  
12 rent charged. Late fees shall not be collectable for rent accrued during  
13 this time period.

14 (b) (i) Any person who faces a financial hardship as a result of being  
15 deprived rent payments for a covered property pursuant to this section  
16 shall receive forgiveness on any mortgage payments for such covered  
17 property in an amount determined by the following fraction multiplied by  
18 such mortgage payment, up to the total dollar amount of lost rent:

19 (A) The numerator shall be the total amount of rent payments suspended  
20 for his or her tenants over the ninety day period laid out in this  
21 section; and

22 (B) The denominator shall be the total amount of rent payments typi-  
23 cally owed for such entire property over the ninety day period laid out  
24 in this section.

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

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1 (ii) Any person qualifying for mortgage payment forgiveness under this  
2 paragraph shall not and shall never be required to pay any mortgage  
3 waived during such time period.

4 § 2. For the purposes of this act, the following terms shall have the  
5 following meanings:

6 (a) "Residential tenant" shall have the same meaning as paragraph (a)  
7 of subdivision 1 of section 235-f of the real property law, or those who  
8 otherwise pay for the use and occupancy of a residential dwelling.

9 (b) "Commercial tenant" shall mean a person or entity lawfully occupy-  
10 ing a covered property pursuant to a lease or other rental agreement.

11 (c) "Covered property" shall mean any building or portion of a build-  
12 ing:

13 i. that is lawfully used for buying, selling or otherwise providing  
14 goods or services, or for other lawful business, commercial or profes-  
15 sional services, or manufacturing activities; and

16 ii. for which a certificate of occupancy authorizing residential use  
17 of such building or such portion of a building has not been issued.

18 (d) "Small business" shall have the same meaning as section 131 of the  
19 economic development law.

20 § 3. This act shall take effect immediately.