

COVID-19 RENT RELIEF FOR COMMERCIAL LANDLORDS AND TENANTS

*By Adriel N. Clayton and Luis R. Chacin**

A. INTRODUCTION

To provide rent assistance for commercial landlords and tenants impacted by the COVID-19 pandemic, the federal government, in partnership with provincial and territorial governments, announced the creation of the Canada Emergency Commercial Rent Assistance (“CECRA”) for small businesses on April 24, 2020.¹ The application process for CECRA, which is administered by Canada Mortgage and Housing Corporation (“CMHC”), was opened to the public on May 25, 2020 and will be taking applications until August 31, 2020.²

Through CECRA, commercial rent payments may be lowered by 75% for small businesses that rent property from qualifying commercial landlords. The relief is provided by the federal and provincial governments by way of forgivable loans to qualifying commercial property owners in an amount equivalent to 50% of three monthly rent payments for the months of April, May and June, 2020.

B. ELIGIBILITY FOR CECRA

To qualify for CECRA, both commercial property owners and their tenants must meet certain conditions.

* Adriel N. Clayton, B.A. (Hons), J.D., is an associate at Carters practicing in the area of leasing and real estate. Luis R. Chacin, LL.B., M.B.A., LL.M., is an associate at Carters practicing in the area of business law.

¹ Prime Minister of Canada, News Release “Prime Minister announces partnerships with provinces and territories to deliver the Canada Emergency Commercial Rent Assistance for small businesses” (24 April 2020), online: <https://pm.gc.ca/en/news/news-releases/2020/04/24/prime-minister-announces-partnerships-provinces-and-territories>.

² See Canada Mortgage and Housing Corporation, “COVID-19: CECRA for small businesses” (last updated 5 June 2020), online: <https://www.cmhc-schl.gc.ca/en/finance-and-investing/covid19-cecra-small-business>.

Commercial property owners, in order to qualify, must:

- own and lease commercial real property to one or more impacted small business tenants;
- enter into a legally binding Rent Reduction Agreement with impacted small business tenants containing the following minimum terms:
 - the agreement is conditional upon final approval of the landlord's CECRA application to CMHC;
 - for April, May and June 2020, the landlord reduces the tenant's rent by at least 75%, with the tenant remaining responsible for covering 25% of the rent. The landlord would cover 25% of the rent and the federal government and provinces would cover the remaining 50%;
 - include a moratorium on eviction for the rent reduction period; and
 - a declaration of rental revenue in the Attestation that must be submitted with the application.
- enter into a Forgivable Loan Agreement agreeing to the terms of CECRA as part of the application.

Although the initial government announcement was unclear in this regard, the CMHC has now clarified that CECRA is available to property owners regardless of whether their property is subject to a mortgage.

With regard to tenant eligibility, tenants must be small businesses impacted by COVID-19, and must:

- be paying less than \$50,000 per month in gross rent per location (as identified by a valid and enforceable lease agreement);
- generate no more than \$20 million in gross annual revenues, calculated on a consolidated basis at the ultimate parent level; and

- have experienced a drop in pre-COVID-19 revenues of at least a 70% (determined by either comparing revenues in April, May and June 2020 to the same months in 2019 or, alternatively, compared to average revenues for January and February 2020).

Small business tenants who are in sub-tenancy arrangements may also be eligible for CECRA, provided that they meet the above-noted requirements.

C. APPLYING FOR AND RECEIVING CECRA FUNDING

Applications for CECRA are made through the CMHC's online portal.³ Commercial property owners must have all eligible tenants and/or subtenants sign an Attestation as to the tenants' eligibility with the program requirements. Similarly, commercial property owners must also sign an Attestation regarding the property and their eligibility for CECRA.

CECRA is delivered through MCAP and First Canadian Title ("FCT"), and either MCAP or FCT may contact applicants during the validation and funding processes. Application decisions are made within 2 weeks of the application.

Where parties qualify for the program, funding is provided to property owners as a forgivable government loan. Property owners are expected to use funds, in order of priority, (1) to reimburse impacted tenants for rent paid above 25% during the eligible period (except where the tenant otherwise chooses to apply that previously paid rent against future rent); and (2) towards costs related directly to the property such as financing, maintenance of common areas, property taxes, insurance and utilities.

The forgivable government loan is an interest-free loan, exempt from sales taxes (in Ontario, HST), and will be automatically forgiven on December 31, 2020, provided the landlord complies with the terms of the Rent Reduction Agreement, Forgivable Loan Agreement, and submitted an accurate and truthful attestation and application.

³ *Ibid.*

D. CONCLUSION

With the sharp economic downturn triggered by the COVID-19 pandemic, commercial landlords and tenants are facing extremely difficult decisions regarding the future of their businesses over the next few weeks and months. CECRA, like other federal and provincial government relief programs introduced in recent months, is a temporary measure subject to public policy changes. As such, this Bulletin is only intended to provide a general overview of the program. Additional information, including answers to frequently asked questions, may be found on the CMHC website. For more complex situations, legal advice should be sought.



Carters Professional Corporation / Société professionnelle Carters

Barristers · Solicitors · Trademark Agents / Avocats et agents de marques de commerce

www.carters.ca www.charitylaw.ca www.antiterrorismlaw.ca

Toronto · Ottawa · Orangeville

Toll Free: 1-877-942-0001

DISCLAIMER: This is a summary of current legal issues provided as an information service by Carters Professional Corporation. It is current only as of the date of the summary and does not reflect subsequent changes in the law. The summary is distributed with the understanding that it does not constitute legal advice or establish a solicitor/client relationship by way of any information contained herein. The contents are intended for general information purposes only and under no circumstances can be relied upon for legal decision-making. Readers are advised to consult with a qualified lawyer and obtain a written opinion concerning the specifics of their particular situation.

00476332.DOCX

© 2020 Carters Professional Corporation