

AN UPDATE ON THE CANADA EMERGENCY COMMERCIAL RENT ASSISTANCE (CECRA) PROGRAM

MAY 21, 2020

Yesterday the Federal Government announced further details about CECRA. This program is designed to assist small business tenants experiencing financial hardship due to Covid-19 through rent relief and in turn assist commercial landlords. The program will be operated by Canada Mortgage and Housing Corporation (CMHC) through a forgivable loan of up to 50% of the value of small business tenants rent each month. The CECRA will permit tenants to pay 25% of their rent, while CMHC will provide a further 50% for the months of April, May and June 2020 through a forgivable loan. Provided all the terms and conditions of CECRA are met, CMHC will forgive their loan to commercial landlords on December 31, 2020.

ELIGIBILITY FOR CECRA

To qualify for CECRA, a commercial property owner must:

- Own commercial property which is occupied by one or more impacted small business tenants that was open as of March 1, 2020.
- Enter into a legally binding rent reduction agreement for the period April 1, to June 30, 2020 reducing an impacted business tenant's rent by at least 75%. Such an agreement will have to provide for an eviction moratorium during the agreement period and include a declaration of the rental revenue for the period.
- The property owner can never seek to recover any rent that is forgiven or reduced under CECRA after this program has ended

WHAT IS AN IMPACTED SMALL BUSINESS TENANT?

Businesses including non-profit and charitable organizations with these attributes will be eligible:

- They pay no more than \$ 50,000 in monthly gross rent per location as defined by a valid lease
- Their annual revenues are \$ 20 million or less on a consolidated basis
- They have experienced at least a 70% decline in pre-Covid-19 revenues (determined by comparing April, May and June of 2020 to the same periods in 2019 or to an average of their revenues earned in January and February of 2020)

THE APPLICATION PROCESS

It is important to understand that applications for this program are made by eligible commercial landlords and not their tenants.

Applications will be made on-line through a dedicated portal beginning on May 25, 2020. Like other relief programs the government is asking commercial landlords to register with CMHC on a staggered basis due to the expected heavy volumes of applications. Eligible commercial landlords in Quebec with up to 10 tenants can register for CECRA on Monday May 25th with Ontario commercial landlords with up to 10 tenants eligible to register on Tuesday May 26, 2020. The deadline for applications is August 31, 2020. The portal address has not yet been released. CMHC recommends that interested landlords register in advance by emailing them at CECRA@cmhc.ca and CMHC will notify you when the portal opens.

There is an extensive list of documents that landlords will have to provide. You will need to engage legal counsel and may also need our assistance in meeting the CECRA requirements. Here is a list of what you will need for an application:

- Property owners must have each of their commercial small business tenants sign an attestation stating that they are eligible for the program. HW can assist them in determining whether they have met the revenue reduction requirements
- Property owners themselves will have to submit an attestation confirming the information that they have submitted is accurate
- A legally binding rent reduction agreement with each impacted tenant must be prepared to confirm the rent reduction in accordance with the terms and conditions of CECRA
- Commercial landlords will have to agree to the terms and conditions of the forgivable loan agreement which will require that funds advanced by CMHC are used to reimburse tenants for any rent paid above 25% during the eligibility period (unless the tenant chooses to apply the previously paid rent against future rent) or costs and expenses relating directly to the property

WHAT CONSTITUTES RENT?

Monthly gross rent is the total gross rent amount payable by the small business tenant as set out under a valid and enforceable lease agreement. It will include base rent and operating costs and rent paid as a percentage of sales if provided for in the lease agreement. It will not include damages, indemnity payments or costs related to enforcement of lease terms.

YOUR NEXT STEPS

If your commercial tenants are unable to meet their lease obligations, you should make them aware of the CECRA program. The first step will be to determine if they meet the 70% reduction in revenue test. Hendry Warren LLP can provide the analysis to determine if this test has been met. If the revenue reduction test is not met, or a proper attestation concerning the reduction in revenue is not submitted the CECRA program will not be available

If they do meet the revenue reduction test you should contact your lawyer to have the rent reduction agreement prepared. You will also have to obtain the attestations from the tenant and provide your own as part of the application process. It will be important to obtain advice from your lawyer to ensure that any agreement or actions you take do not jeopardize your rights as a landlord.

We are on hand to assist with the application process and answer any questions you may have.

We're here to help!