

CLIENT ALERT

April 27, 2020

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NEW DETAILS ABOUT THE CANADA EMERGENCY COMMERCIAL RENT ASSISTANCE PROGRAM AND THE ONTARIO-CANADA EMERGENCY COMMERCIAL RENT ASSISTANCE PROGRAM

by Andrew J. Skinner and Jacky Cheung

On April 24, 2020, the Federal Government provided some details about the Canada Emergency Commercial Rent Assistance program (**CECRA**) for small businesses and commercial landlords which had been announced on April 16, 2020. The CECRA is intended to provide relief for small business tenants and in some respects, landlords. The CECRA will be delivered jointly by the Federal Government with each of the Provinces and Territories. In Ontario, the CECRA will be delivered through the Ontario-Canada Emergency Commercial Rent Assistance Program (**OCECRA**). Under the OCECRA, the Ontario and Federal Government will offer forgivable loans to the landlord equal to 50% of the before-profit rent for landlords who reduce the tenant's monthly rent to 25% of rent comprising "fixed costs" for the months of April, May, and June, 2020. The landlord will be responsible for the remaining 25%.

In order to formalize the rent reduction, landlords must enter into a "rent forgiveness agreement" with their tenant. The agreement is to provide a moratorium on evictions for three months.

Landlords should note that by applying for this program, they are required to forego their "profits" derived from the rental income. The government will reimburse landlords for only their "before-profit" rent.

The forgivable loans will be administered by Canada Mortgage and Housing Corporation (**CMHC**) and the funds will be disbursed to the mortgage lender of the commercial property owner. CMHC has indicated it will consider alternative loan forgiveness arrangements for landlords who have no mortgages, such as applying the forgivable loans to other forms of "debt facilities" or fixed cost payment obligations, such as utilities.

ELIGIBILITY FOR SMALL BUSINESS TENANTS

For a tenant to be eligible under the OCECRA, the tenant must:

1. Pay monthly rent which does not exceed \$50,000 in "gross rent" payments; and
2. Be a nonessential small business that has temporarily closed, or that is experiencing a 70% drop in pre-COVID-19 revenues (determined by comparing revenues in April, May, or June to the same month in 2019 or alternatively compared to average revenues for January and February 2020).

The following would not be considered a qualifying small business under the OCECRA:

1. Entities owned by individuals holding political office;
2. Entities that promote violence, incite hatred or discriminate on the basis of race, national or ethnic origin, colour, religion, sex, age or mental or physical disability; and
3. An entity in the "Lenders" special accounts or Restructuring Group prior to March 1, 2020.

Not-for-profit organizations and charitable entities also qualify for the program.

ELIGIBILITY FOR LANDLORDS

Eligibility for the OCECRA will extend to commercial properties with a residential component, and residential mixed-use properties with a 30% commercial component but only with respect to the commercial tenants.

In addition to the rent reduction requirement, property owners must be the registered owner of their property and the landlord of the particular tenant.

HOW TO APPLY

No details have been announced on how or when landlords can apply for the OCECRA, however, eligible landlords who qualify under the program have until September 30, 2020 to apply.

REMAINING QUESTIONS

There are many unanswered questions with respect to the OCECRA. It is not clear for example, whether the program will require a prescribed form of the "rent forgiveness agreement." Guidelines will be required to indicate how landlords calculate "pre-profit rent" and "fixed rent."

It will be interesting to see how this program will impact rent due on May 1st and the strategic approaches of both commercial tenants and landlords going forward.

Dickinson Wright's team in Canada is available to assist with navigating this program.

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