

April 30, 2020 (updated from April 24, 2020)

## UPDATE: Rent Relief on its Way for Small Businesses and Commercial Landlords

Building upon its announcement that it was rolling out relief measures for small businesses and commercial property owners with mortgages, the federal government has provided further details on its plan to offer financial assistance to tenants and landlords that have been significantly affected by the COVID-19 shutdown.

The Canada Emergency Commercial Rent Assistance (“**CECRA**”) will provide forgivable loans to commercial property owners to cover 50% of the rent payments of eligible small business tenants. The loans will be forgiven if the property owner agrees to reduce small business tenants’ rent by at least 75% under a rent forgiveness agreement, which must include a term preventing the landlord from evicting the tenant for the duration of the rent forgiveness agreement. The small business tenant would then be responsible for the remaining 25% of its rent.

The CECRA was developed in partnership with the provincial and territorial governments and will be administered by the Canada Mortgage and Housing Corporation (“**CMHC**”), which will disburse the loans directly to the commercial property owner’s mortgage lender. The CECRA is expected to be operational by mid-May, will be available to cover rent for April, May and June, and can be applied for retroactively, with the CMHC accepting applications until August 31, 2020. Where property owners apply for the loans retroactively, they must refund tenants for their rent payments for the relevant months or provide a credit for future months, if agreed upon by the tenant.

In order to qualify, small businesses must generate no more than \$20 million in gross revenue (at the ultimate parent level), have

been paying less than \$50,000 per month in gross rent per location (as defined by a valid and enforceable lease agreement) and either suffered a 70% drop in revenues from pre-COVID-19 levels, or temporarily ceased operations (i.e. generating no revenues). The 70% drop in revenues can be calculated by comparing revenue for April, May and June of 2020 to revenues from the same months in 2019, or to their average revenue for January and February of 2020. The CECRA is also available to non-profits and charities, however the details of how such organizations would qualify have not been announced.

The CECRA is also, on its face, available only to commercial property owners who have a mortgage secured by their commercial property, though the details of this requirement have not yet been provided. At this time, the Ontario government has advised commercial property owners without a mortgage to contact CMHC directly, with potential options including applying the funds against other forms of debt facilities or fixed cost payment obligations such as utilities. CMHC has indicated that for those property owners who do not have a mortgage, an alternative mechanism will be implemented and further information will be outlined in the near future.

The Ontario government has also provided further details on how the program will be administered in that province, which mirror the guidance provided by the federal government and CMHC with a few exceptions. Significantly, Ontario has indicated that the government loans and rent paid by the tenant will be calculated based on the property owner's fixed costs for the premises, rather than the gross rent. This means that by applying for CECRA, property owners must agree to forego profit for the three-month period thereby allowing property owners to only recover, at most, 75% of their fixed costs as opposed to gross rent under the program. So far, however, there has been no guidance as to how a landlord is to determine these "fixed costs" nor what constitutes "profit".

Also, the Ontario government introduced a list of small businesses excluded from the Ontario-Canada Emergency Commercial Rent Assistance Program ("OCECRA") which notably included an entity "in the Lenders special accounts or Restructuring Group prior to March 1, 2020." There is no guidance offered as to the meaning of this exclusion nor how property owners are supposed to ascertain the eligibility of a small business under the OCECRA generally. Hopefully these questions will all be clarified in the coming days as the

provincial and federal governments continue to announce further details regarding the CECRA.

The federal government has also announced that relief measures for larger businesses are currently being developed, and that it hopes to provide the details of such measures in the near future.

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