

## **CANADA EMERGENCY COMMERCIAL RENT ASSISTANCE (CECRA)/ COVID-19**

The Canada Mortgage and Housing Corporation (“**CMHC**”) is the federal agency responsible for the implementation of the Canada Emergency Commercial Rent Assistance Program (CECRA). CMHC has recently released some of the conditions that will apply to this program.

CECRA applies to small businesses (“**Eligible Businesses**”), meaning those businesses that:

- pay no more than \$50,000 in monthly gross rent per location (as defined by a valid and enforceable lease agreement); which, we believe, includes the combination of base rent and additional rent, as applicable;
- generate no more than \$20 million in gross annual revenues, calculated on a consolidated basis (at the ultimate parent level); and
- who have temporarily ceased their activities and no longer generate income, or who have experienced at least a 70% decline in pre-COVID-19 revenues.

To measure revenue losses, Eligible Businesses can compare their revenues of April, May and June 2020 to the same period in 2019. They can also use an average of their revenues earned in January and February of 2020. CECRA also applies to non-profit organizations and charities.

Within the framework of the CECRA, all property owners must meet the following requirements:

- be a property owner who generates rental income from commercial rental property located in Canada;
- be the owner of a commercial real property which is occupied by one or more Eligible Businesses;
- hold a mortgage loan secured by a commercial rental property of which at least one of the tenants is an Eligible Business;
- have entered into or intend to enter into a rent reduction agreement for the period of April, May and June 2020, which will reduce the rent of an Eligible Business by at least 75% and which includes or will include a moratorium on eviction for the period of April, May and June 2020;
- have declared rental income in its tax return (personal or corporate) for the taxation years 2018 or 2019 or both

CMHC is currently working on defining the elements of a mechanism to include property owners who do not have mortgage loans and should disclose the conditions applicable to this situation shortly.

The program provides support for the months of April, May and June 2020 (the "**Covered Period**"). The property owners will be able to apply for CECRA after the Covered Period, subject to being able to demonstrate that they were eligible during this period. Property owners will have to reimburse Eligible Businesses the amounts paid by them during the Covered Period or grant a credit for a subsequent month if the property owner and the Eligible Business agree thereto. The deadline to apply to CECRA is August 31, 2020.

Please note that CMHC will provide forgivable loans to eligible commercial property owners that cover 50% of the monthly gross rent owed by Eligible Businesses during the three (3) month period of April, May and June 2020, the difference being assumed in equal parts by the property owners and the Eligible Businesses. Once the Assistance program is over, a property owner will not be able to recover the amount of rent reductions granted under the CECRA from an Eligible Business.

It is important to note that property owners are **not required** to participate in the Assistance program. However, we believe that as many of them as possible should do so, in order to alleviate the financial burden of their tenants who are Eligible Businesses. This would ultimately help ensure the sustainability of the activities of their tenants, while maintaining rental income for the owner. Moreover, in the context of the pandemic, an owner who refuses to participate in the Assistance program for the benefit of an Eligible Business might be challenged based on the fact that such owner did not act in accordance with its obligations of good faith. The obligation of good faith constitutes a fundamental obligation of the Civil Code of Quebec which is frequently invoked and applied successfully before the courts in support of claims of parties to an agreement in case of litigation between them.

CMHC says program details are near completion and will be released shortly. We will continue to keep watch and will communicate further information as soon as it becomes available.

### **Legal Opinion**

The content of this Newsletter does not constitute legal advice from our firm and Morency may not be held liable for the content thereof. We invite you to communicate with our lawyers to address any question you may have relating to the content of this newsletter in relation to any particular situation.

### **Additional Information**

Our firm is committed to the success of its clients and is sensitive to the negative impacts the current crisis has on them. Morency has a team of experienced lawyers and notaries to answer any questions you may have about the legal issues arising from this crisis, whether they be relating to business, employment, tax or litigation law. We are here to help you best manage the effects of this pandemic and to help you find solutions which will guide you through this crisis in the best possible manner, under the circumstances.

Please do not hesitate to communicate with any member of our team, including notably Me Antoine Tremblay (atremblay@morencyavocats.com) or Me Dominic St-Jean (dstjean@morencyavocats.com).

