

June 1, 2020

CECRA Update: The Application Portal is Open!

The application portal for Canada Emergency Commercial Rent Assistance (CECRA) program is finally open. Property owners were asked to register for their CECRA accounts according to a specific schedule last week, but, as of last Friday, all property owners are free to register.

In this News ReLease we discuss the application process, what is needed to apply and more recent changes to CECRA.

Registration and Application

Applying for the CECRA forgivable loan is a 2-step process. First, property owners must register for an account, which can be done here: <https://cecra-apply.ca>. Upon registration, property owners may access the usable forms and documents. The application portal is available 24/7.

Property owners must complete applications separately for each of their properties with eligible tenants/sub-tenants. All of the required information and supporting documentation is to be uploaded at once. Property owners may only submit one application per property – this means property owners must apply for all eligible tenants/sub-tenants at the property at one time, with one submission of all of the required documents.

The following documents are required in respect of each eligible tenant/sub-tenant for whom assistance is sought: the Tenant's/Sub-tenant's Attestation form, the Property Owner's Attestation form, and the Rent Reduction Agreement. Property owners must also agree to the terms and conditions of the Forgivable Loan Agreement.

To maximize the likelihood of acceptance, property owners would do well to use the template forms available without modification. Using the standard forms should assist to ensure that the application process goes smoothly.

Property owners must also provide certain information, including: banking information (including a bank statement), contact information, co-ownership information and contact

details for co-owners, the property address, property type, a property tax statement, the latest rent roll for the property, and the number of commercial units in the property, as well as information for each eligible tenant/sub-tenant, including: contact information, registered business name, number of employees, consolidated revenues, size of the tenant's/sub-tenant's premises and tenant's/sub-tenant's monthly gross rent for the periods of April, May and June 2020 (CECRA Period).

Changes to the Forms

There have been a few minor changes to the CECRA forms since the template documents were originally released.

Two changes were made to the Rent Reduction Agreement (RRA): (1) the landlord must agree to forgive 75% of the aggregate "Adjusted Rent" (rather than gross rent) for the CECRA Period. Adjusted Rent is defined as the aggregate gross rent without considering any other rent deferral or reduction agreements, **minus** a *pro rata* portion of any insurance proceeds available to the tenant/sub-tenant in respect of business interruption coverage and any non-repayable proceeds of any other federal or provincial program targeted at commercial rent assistance; and (2) the moratorium on evictions and default notices now ends when the tenant/sub-tenant is no longer receiving any rent reduction or forgiveness, or rent credit under the RRA (and not 3 months later). Further, the moratorium on eviction no longer applies if the tenant/sub-tenant fails to pay the reduced rent.

The Tenant's/Sub-tenant's Attestation form was revised to *remove* the requirement that the tenant's/sub-tenant's gross annual revenue (which cannot exceed \$20 million) be calculated on a consolidated basis at the tenant's/sub-tenant's ultimate parent company level. However, at the time of writing, all other resources provided by CMHC and the federal government continue to state the opposite (that tenant's/sub-tenant's annual gross revenue will be calculated on a consolidated basis at the ultimate parent level).

The Property Owner's Attestation was revised so that the property owner is only required to attest, "to [its] knowledge,

acting reasonably and without investigation,” that the tenant/sub-tenant is eligible for CECRA.

Both Attestations were also amended so that the statement concerning not being controlled by a federal or provincial politician, or a person who promotes violence, incites hatred, or discriminates, does not apply to persons who own a non-controlling share of a publicly traded company.

What can the Property Owner use the Loan for?

One facet of the CECRA program that has been much discussed is the requirement that the property owner may only use the forgivable loan for certain purposes. The Forgivable Loan Agreement provides that the loan will “solely” be used:

(a) **FIRST**, to reimburse [eligible tenants/sub-tenants] in respect of any Rent paid by them during the [CECRA Period] above twenty-five per cent (25%) of the Rent due and payable during the [CECRA Period], as set out in the Rent Reduction Agreement(s), unless the [eligible tenant/sub-tenant] elects to apply the previously paid rent against rent next coming due; and

(b) **SECOND, towards any costs and expenses relating directly to the Property**, including any debt service (principal and interest) payments in connection with any financing held by the Property Owner, operation, maintenance and repair obligations (such as costs of common area maintenance, property taxes, insurance and utilities).

The Property Owner must maintain proper and detailed records and statements of account, including receipts, invoices, and other documents related to such uses.

While at first glance this may seem to severely limit what landlords may use the loan towards, there are plenty of costs that fit in the second category. Aside from debt service payments (which includes principal and interest), the loan may be used towards “any costs and expenses” directly relating to the property. Presumably, these would include salaries, property management fees, insurance, maintenance and repair costs, and non-metered utilities, among other things. The program does not require landlords to match the loan amounts up with costs and expenses under a net lease – the loan must simply be used towards costs and expenses relating directly to the property.

Show me the Money

On May 27, 2020, the Parliamentary Budget Officer (PBO) released its report on the CECRA program. The report estimates that CECRA will cost the federal government \$520 million in 2020, stating that the federal share was calculated at 75% of the total cost of the program. The PBO is therefore estimating the total cost of the program to be \$650 million, and it has arrived at that estimate based on their assumption that CECRA will have 80% uptake. It is unclear how Ontario initially estimated the total program value to be \$900 million, when it first announced its \$241 million participation in April 2020.

At the time of writing, there were no firm numbers on how many property owners had applied for CECRA. It will certainly be interesting to see what the uptake for the program is, now that the application portal is open, and whether the PBO’s estimation of 80% is on the mark. Many pundits have questioned whether there is enough money in the till. Some applicants have reported difficulty in the online interface, suggesting the site may be flooded with applications.

This publication is a general discussion of certain legal and related developments and should not be relied upon as legal advice. If you require legal advice, we would be pleased to discuss the issues in this publication with you, in the context of your particular circumstances.



Our secret for closing files lies as much in what is taken out as in what is put in. By eliminating exorbitant expenses and excess time, by shortening the process through practical application of our knowledge, and by efficiently working to implement the best course of action, we keep our clients’ needs foremost in our minds. There is beauty in simplicity. We avoid clutter and invest in results.

Often a deal will change complexion in mid-stage. At this critical juncture, you will find us responsive, flexible and able to adjust to the changing situation very quickly and creatively. We turn a problem into an opportunity. That is because we are business minded lawyers who move deals forward. The energy our lawyers invest in the deal is palpable; it makes our clients’ experience of the law invigorating.

MARY ANN BADON
416-598-7056
mbadon@dv-law.com

FRANCINE BAKER-SIGAL
416-597-8755
francine@dv-law.com

CANDACE COOPER
416-597-8578
ccooper@dv-law.com

DENNIS DAoust
416-597-9339
dadaoust@dv-law.com

ALLISON FEHRMAN
416-304-9070
afehrman@dv-law.com

SAHISTA FITTER
416-597-5742
sfitter@dv-law.com

GASPER GALATI
416-598-7050
ggalati@dv-law.com

MEGHAN GREENFIELD
416-597-0830
mgreenfield@dv-law.com

S. RONALD HABER
416-597-6824
rhaber@dv-law.com

MICHAEL HOCHBERG
416-597-9306
mhochberg@dv-law.com

WOLFGANG KAUFMANN
416-597-3952
wolfgang@dv-law.com

LYNN LARMAN
416-598-7058
llarman@dv-law.com

MIMI LIN
416-597-8493
mimil@dv-law.com

MELISSA M. MCBAIN
416-598-7038
mmcbain@dv-law.com

PORTIA PANG
416-597-9384
ppang@dv-law.com

JAMIE PAQUIN
416-598-7059
jpaquin@dv-law.com

BRIAN PARKER
416-591-3036
bparker@dv-law.com

DINA PEAT
416-598-7055
dpeat@dv-law.com

CLAIRE RENNEY-DODDS
416-488-3568
crenney-dodds@dv-law.com

LUCIA TEDESCO
416-597-8668
ltesesco@dv-law.com

NATALIE VUKOVICH
416-597-8911
nvukovich@dv-law.com

DEBORAH A. WATKINS
416-598-7042
dawatkins@dv-law.com