

May 21, 2020

## CECRA UPDATE

On both May 19 and May 20, CMHC released further updates to the CECRA program. A link to the information page is here: <https://www.cmhc-schl.gc.ca/en/finance-and-investing/covid19-cecra-small-business>.

### Clarification on Property Owners and who can Apply

CMHC has walked back its statement that the property owner can either “own or be the landlord of the commercial property”. The sample Property Owner’s Attestation released by CMHC, provides that the property owner must be the “registered owner, ground lessee, emphyteuta, superficiary or usufructuary of the Property and generates rental revenue from the Property relating to commercial leases”.

With this change, it is unclear whether both landlords and sub-landlords may apply for the program. While property owners, sub-landlords/tenants and sub-tenants can/must provide attestations and rent reduction agreements with respect to each lease and sub-lease, it could be that all documents are to be submitted solely by the “ultimate” property owner.

Property owners must not be subject to pending insolvency proceedings or have filed for bankruptcy protection. The property may not be owned by a member of Parliament or a Senator, or by a person who promotes or incites hatred, violence or discrimination. The property must not be used for any type of criminal activity.

CMHC also clarified that properties owned by the federal, provincial, or municipal governments are not eligible for the CECRA, with exceptions where the property owner is: (1) a First Nation or an Indigenous organization and/or government which is the tenant of the property pursuant to a ground lease or similar long term lease from the government; (2) the tenant under a ground lease or similar long term lease from the government to operate the property (such as an airport); (3) a crown corporation designated as eligible by CMHC; or (4) a post-secondary institution, hospital or pension fund.

### Forgivable Loan Terms

More information on the forgivable loan was given. The sample Forgivable Loan Agreement, to be completed by the property

owner, outlines that the loan amount will be equal to 50% of the gross rent owed to the property owner by the impacted tenants during April, May and June 2020 (CECRA Period) **minus** a *pro rata* portion of any insurance proceeds available to the property owner or any non-repayable proceeds received from any other government rent assistance programs (other than the CECRA) received by the property owner and/or the tenant during the CECRA Period.

Additionally, the property owner must agree that the loan will only be used towards any costs and expenses relating directly to the property, including debt service payments, operation, maintenance and repair obligations **and** to reimburse the impacted tenants for rent paid above the 25% threshold during the CECRA Period. The property owner is required to maintain proper and detailed records of these expenses. If the property owner fails to meet the requirements of the program, any loan granted must be repaid by December 31, 2020. The loan will be without interest unless the property owner defaults under the loan agreement.

CMHC has engaged MCAP Mortgages and First Canadian Title to deliver the CECRA forgivable loans to the property owners’ financial institutions.

### Eligibility Requirements for Impacted Tenants

The majority of the eligibility requirements for impacted tenants remain the same, with a few key requirements, including that the impacted tenant must: (1) be a party to a lease or sublease with a term that is set to expire after August 31, 2020; (2) not be subject to a pending insolvency proceeding or have filed for bankruptcy protection; (3) not be owned by a member of Parliament or a Senator or by a person who promotes or incites hatred, violence or discrimination; (4) not use the leased property for any type of criminal activity; and (5) have opened for business before March 1, 2020.

### Template Agreements

Significantly, samples of documents required to apply for the CECRA program were provided. These documents are stamped “SAMPLE” – the actual documents will apparently be available when the application portal opens. The sample documents consist of the **Tenant’s or Sub-Tenant’s Attestation**, the

## Property Owner's Attestation, the Rent Reduction Agreement, and the Forgivable Loan Agreement.

To verify that the applicants are eligible for the CECRA program, each impacted tenant or sub-tenant must complete the **Tenant's or Sub-Tenant's Attestation** and property owners must complete the **Property Owner's Attestation**.

All of the attestations include an **Integrity Declaration**, under which the declarant states that: they have not been convicted of an offence in relation to any financial matters; they have not been declared ineligible to do business with any level of government in Canada; there are no facts known or unknown that would give rise to CMHC having a concern with either entering into a business relationship with the party, or with the party's integrity; and they have fully disclosed all relevant information.

The **Rent Reduction Agreement** sample has several interesting aspects. First, the agreement can be used by landlords and tenants, sub-landlords and sub-tenants, and landlords and tenants where the tenant is not an impacted tenant but has a sub-tenant that is an impacted tenant. Second, it provides that the tenant is only required to pay the reduced rent for the CECRA Period within 30 days of the date on which the application receives final approval (effectively granting the tenant both a rent deferral and a rent reduction). Third, the sample agreement provides that during the period from the commencement of the CECRA Period until the **later** of (1) 3 months after the date the application is made (which may be as late as August 31, 2020), and (2) the date on which the tenant is no longer receiving any rent reduction or credits under the agreement, the landlord is

prohibited from pursuing an eviction of the tenant for any default arising from COVID-19 (effectively protecting the tenant for an extended period beyond June 30).

The property owner must also complete the **Property Owner Forgivable Loan Agreement**, which sets out the terms and conditions of the loan.

### Updates to the Application Process

CMHC has announced that the application portal will open on May 25, 2020. Expecting a large volume of applications, CMHC is requesting that property owners register for the program according to the following schedule:

Monday, May 25: those with up to 10 eligible tenants in Atlantic Canada, BC, Alberta and Quebec;

Tuesday, May 26: those with up to 10 eligible tenants in Manitoba, Saskatchewan, Ontario and the Territories;

Wednesday, May 27: all others in Manitoba, Saskatchewan, Ontario and the Territories;

Thursday, May 28: all others in Atlantic Canada, BC, Alberta and Quebec; and

Friday, May 29: all remaining property owners.

Property owners must provide the following: the address, property type, property tax statement, latest rent roll and number of commercial units. Property owners must provide: banking information (including bank statement), contact information, and co-ownership information. Tenants must provide: contact information, registered business name, lease area and the monthly gross rent for the CECRA Period.

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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  
ddaoust@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  
dwatkins@dv-law.com