

## ONTARIO

### 1. Mandatory Closures:

Does emergency/pandemic response legislation require commercial landlords or commercial tenants to close their buildings and/or prohibit entry as a result of COVID-19?

Effective March 24, 2020, the Government of Ontario ordered the closure of all non-essential businesses.

On May 4, 2020, the Government of Ontario allowed certain businesses and workplaces to reopen as long as they comply with public health measures. Details on the essential service sectors can be found [here](#). The Province has begun easing restrictions on workplaces. Effective May 19, 2020, all retail stores with a street entrance, seasonal businesses, as well as health and community service providers have been permitted to open or expand their services. Further details on the emergency status can be found [here](#).

The Government of Ontario has also extended the Declaration of Emergency until June 2, 2020 and all emergency orders have been extended until May 29, 2020.

### 2. Restrictions on Lender Enforcement:

Does emergency/pandemic response legislation restrict lenders from exercising enforcement remedies under their mortgage/financing/debt agreements?

Emergency/pandemic response legislation does not restrict lenders from exercising enforcement remedies under their mortgage/financing/debt agreements. However, lenders may experience difficulties obtaining a court order as the Ontario Superior Court has issued a notice that only a select list of matters will be heard by the court. The list of matters can be found [here](#). Unless the proceedings meet the court's requirements, the enforcement proceedings will likely be adjourned.

### 3. Restrictions on Landlord Enforcement:

Does emergency/pandemic response legislation restrict landlords from exercising remedies under leases?

Emergency/pandemic response legislation does not generally restrict commercial landlords from exercising remedies under commercial leases. However, commercial landlords may experience difficulty obtaining a court order for possession. The Ontario Superior Court has issued a notice that only a select list of matters will be heard by the court. The list of matters can be found [here](#). Unless the proceedings meet the court's requirements, the landlord enforcement proceedings will likely be adjourned. In addition, the sheriff's department has been instructed not to carry out writs of possession until further notice.

On April 24, 2020, the Government of Ontario announced it was partnering with the federal government to provide relief for small businesses and landlords through the Ontario-Canada Emergency Commercial Rent Assistance Program (OCECRA). Under this program, property owners would be provided with loans that are forgivable if the owner reduces the eligible small business tenants' rent by at least 75% from April to June 2020 pursuant to a rent forgiveness agreement. This program also requires a three-month moratorium on evictions.

Restrictions have been placed on the enforcement of residential tenancies. The Landlord and Tenant Board will not issue new eviction orders for residential tenancies and the sheriff's department will postpone all evictions.

#### 4. Mortgage/Financing Relief:

Does emergency/pandemic response legislation require that commercial landlords or commercial tenants be granted relief from payment obligations or other covenants under their mortgage/financing/debt obligations?

Emergency/pandemic response legislation does not require that commercial landlords or commercial tenants be granted relief from payment obligations or other covenants under their mortgage/financing/debt obligations.

The Government of Canada has indicated that Canadian banks are working with borrowers. Banks are providing mortgage payment deferrals to landlords on a case-by-case basis. Interest will continue to accrue during the deferral period. Landlords must contact their lender to determine their eligibility and the specific terms relating to the deferral.

Canada Mortgage and Housing Corporation also allows lenders to offer deferred payments for insured mortgages to landlords. Interest will continue to accrue during the deferral period. CMHC expects that all landlords will pass their savings on to tenants and refrain from evictions during the pandemic. Borrowers should contact their lender to determine their eligibility and terms. Borrowers with mortgages that are not CMHC-insured are advised to consult their lender.

Additional financial relief measures include a five-month interest free period for businesses to make payments for most provincially administered taxes, deferring for 90 days the payment of property taxes in parts of Northern Ontario located outside of municipal boundaries and deferring for 90 days the remittance of education property tax by municipalities. Municipal financial relief is also available. The City of Toronto instituted a 60-day grace period for property tax and utility bill payments for all residents and businesses, which ended on May 15.

#### 5. Lease Relief:

Does emergency/pandemic response legislation require that tenants be granted relief from rent payments or other covenants under their leases?

On April 24, 2020, the Government of Ontario announced it was partnering with the federal government to provide relief for small businesses and landlords through OCECRA. This program will lower rent by 75% for small businesses impacted by COVID-19. CMHC is responsible for administering and delivering OCECRA.

OCECRA is available for small business tenants who (a) are paying no more than \$50,000 in monthly gross rent per location, (b) generate no more than \$20 million in gross annual revenue, calculated on a consolidated basis (at the ultimate parent level), and (c) who have experienced at least a 70% decline in pre-COVID-19 revenues. OCECRA also applies to eligible small business tenants in sub-tenancy arrangements, not-for-profit organizations and charitable entities, and covers commercial properties with a residential component and multi-unit residential mixed-use properties.

Property owners must meet the following requirements to qualify: (a) own or be the landlord of the commercial real property which is occupied by one or more impacted small business tenants, (b) enter into a rent reduction agreement for the period of April, May and June 2020, reducing an impacted small business tenant's rent by at least 75%, (c) the rent reduction agreement should include: (i) a moratorium on eviction for the period during which the property owner agrees to apply the OCECRA loan proceeds, and (ii) a declaration of rental revenue included in the attestation (the property owner must attest to having declared commercial rental revenue from the property on tax returns for tax year 2018 and/or 2019, or that the property has begun generating commercial rental revenue in 2020).

Under OCECRA, costs are shared between the landlord, the tenant, and the provincial and federal government. OCECRA provides forgivable loans to qualifying commercial property owners to cover 50% of the monthly rent payments during April, May and June. The loans will be forgiven if the property owner reduces the eligible small business tenants' rent by at least 75% for these three months pursuant to a rent forgiveness agreement, which will include a moratorium on eviction while the agreement is in place. The tenant is then responsible for the remainder (up to 25%) of the rent. The support would be retroactive to April 1, 2020 and the deadline to apply is August 31, 2020. The application process is opening on May 25, 2020.

Government and industry leaders are also asking landlords and tenants to work together to find practical solutions. For instance, some landlords are offering Rent Deferment Agreements to tenants. Under such arrangements, the rent is not forgiven, but instead payment is deferred to a later date.

## ALBERTA

### 1. Mandatory Closures:

Does emergency/pandemic response legislation require commercial landlords or commercial tenants to close their buildings and/or prohibit entry as a result of COVID-19?

On March 27, 2020, the Government of Alberta ordered the closure of non-essential businesses. Details on the list of essential services can be found [here](#).

Other businesses that are not identified as an essential service can still continue to operate if: (a) it is not specifically prohibited from offering services in a location accessible to the public; and (b) the business does not fall under specified business, workplace and facility closures.

The list of non-essential businesses that are prohibited from offering services in public can be found [here](#).

Beginning May 14, some businesses and sectors will be allowed to resume operations. Details on Alberta's relaunch strategy can be found [here](#).

### 2. Restrictions on Lender Enforcement:

Does emergency/pandemic response legislation restrict lenders from exercising enforcement remedies under their mortgage/financing/debt agreements?

Emergency/pandemic response legislation does not restrict lenders from exercising enforcement remedies under their mortgage/financing/debt agreements. However, lenders may experience difficulties obtaining a court order as the Provincial Court of Alberta and the Alberta Court of Queen's Bench will only hear urgent matters. Unless the proceedings meet the court's urgency requirements, the enforcement proceedings will likely be adjourned.

### 3. Restrictions on Landlord Enforcement:

Does emergency/pandemic response legislation restrict landlords from exercising remedies under leases?

Emergency/pandemic response legislation does not generally restrict commercial landlords from exercising remedies under commercial leases. However, commercial landlords may experience difficulty obtaining a court order for possession as the Provincial Court of Alberta and the Alberta Court of Queen's Bench will only hear urgent matters. Unless the proceedings meet the court's urgency requirements, the landlord enforcement proceedings will likely be adjourned.

On April 24, 2020, the Government of Canada announced that it has reached an agreement in principal with all provinces and territories to implement the Canada Emergency Commercial Rent Assistance (CECRA) for small businesses. Under this program, property owners would be provided with loans that are forgivable if the owner reduces the eligible small business tenants' rent by at least 75% from April to June 2020 pursuant to a rent forgiveness agreement. This program also requires a moratorium on evictions while this agreement is in effect.

Restrictions have been placed on the enforcement of residential tenancies. The Government of Alberta announced that tenants cannot be evicted for non-payment of rent before May 1<sup>st</sup>. Landlords and tenants are asked to work together to develop a payment plan while the public health state of emergency is in effect. Evictions are still permissible if the eviction is for a reason other than for non-payment. Late fees cannot be applied to rent payments until June 30 and cannot be collected retroactively for this period.

#### 4. Mortgage/Financing Relief:

Does emergency/pandemic response legislation require that commercial landlords or commercial tenants be granted relief from payment obligations or other covenants under their mortgage/financing/debt obligations?

Emergency/pandemic response legislation does not require that commercial landlords or commercial tenants be granted relief from payment obligations or other covenants under their mortgage/financing/debt obligations.

The Government of Canada has indicated that Canadian banks are working with borrowers. Banks are providing mortgage payment deferrals to landlords on a case-by-case basis. Interest will continue to accrue during the deferral period. Landlords must contact their lender to determine their eligibility and the specific terms relating to the deferral.

Canada Mortgage and Housing Corporation also allows lenders to offer deferred payments for insured mortgages to landlords. Interest will continue to accrue during the deferral period. CMHC expects that all landlords will pass their savings on to tenants and refrain from evictions during the pandemic. Borrowers should contact their lender to determine their eligibility and terms. Borrowers with mortgages that are not CMHC-insured are advised to consult their lender.

Additional financial relief measures include a six month province-wide deferral of education property taxes for businesses, and a utility payment deferral for residential, farm and small commercial customers until June 18, 2020. Municipal relief is also available. For instance, the City of Calgary allows the deferral of utility bills for three months from March 18 to June 19, 2020 for small business customers who used less than 2,500 m<sup>3</sup> of water in 2019 and the tax payment deadline for the 2020 property tax has been extended from June 30 to September 30, 2020.

#### 5. Lease Relief:

Does emergency/pandemic response legislation require that tenants be granted relief from rent payments or other covenants under their leases?

On April 24, 2020, the Government of Canada announced that it has reached an agreement in principal with all provinces and territories to implement CECRA for small businesses. This program will lower rent by 75% for small businesses impacted by COVID-19. CMHC will be responsible for administering it and delivering CECRA.

CECRA is available for small business tenants who (a) are paying no more than \$50,000 in monthly gross rent per location, (b) generate no more than \$20 million in gross annual revenue, calculated on a consolidated basis (at the ultimate parent level), and (c) who have experienced at least a 70% decline in pre-COVID-19 revenues. CECRA also applies to eligible small business tenants in sub-tenancy arrangements, not-for-profit organizations and charitable entities, and covers commercial properties with a residential component and multi-unit residential mixed-use properties.

Property owners must meet the following requirements to qualify: (a) own or be the landlord of the commercial real property which is occupied by one or more impacted small business tenants, (b) enter into a rent reduction agreement for the period of April, May and June 2020, reducing an impacted small business tenant's rent by at least 75%, (c) the rent reduction agreement should include: (i) a moratorium on eviction for the period during which the property owner agrees to apply the CECRA loan proceeds, and (ii) a declaration of rental revenue included in the attestation (the property owner must attest to having declared commercial rental revenue from the property on tax returns for tax year 2018 and/or 2019, or that the property has begun generating commercial rental revenue in 2020).

Under CECRA, costs are shared between the landlord, the tenant, and the provincial and federal government. CECRA provides forgivable loans to qualifying commercial property owners to cover 50% of the monthly rent payments during April, May and June. The loans will be forgiven if the property owner reduces the eligible small business tenants' rent by at least 75% for these three months pursuant to a rent forgiveness agreement, which will include a moratorium on eviction while the agreement is in place. The tenant is then responsible for the remainder (up to 25%) of the rent. The support would be retroactive to April 1, 2020 and the deadline to apply is August 31, 2020. The application process is opening on May 25, 2020.

Government and industry leaders are also asking landlords and tenants to work together to find practical solutions. For instance, some landlords are offering Rent Deferment Agreements to tenants. Under such arrangements, the rent is not forgiven, but instead payment is deferred to a later date.

## BRITISH COLUMBIA

### 1. Mandatory Closures:

Does emergency/pandemic response legislation require commercial landlords or commercial tenants to close their buildings and/or prohibit entry as a result of COVID-19?

On March 26, 2020, the Government of British Columbia ordered certain businesses to close and identified a list of essential businesses. A list of provincial orders can be found [here](#).

Non-essential businesses, other than those businesses specifically ordered to close, can stay open as long as they adapt their workplaces to the orders and recommendations of the provincial health officer.

Details on the list of essential services can be found [here](#).

### 2. Restrictions on Lender Enforcement:

Does emergency/pandemic response legislation restrict lenders from exercising enforcement remedies under their mortgage/financing/debt agreements

Emergency/pandemic response legislation does not restrict lenders from exercising enforcement remedies under their mortgage/financing/debt agreements. However, lenders may experience difficulties obtaining a court order as the British Columbia Supreme Court has suspended all regular court operations and will only hear essential and urgent matters.

### 3. Restrictions on Landlord Enforcement:

Does emergency/pandemic response legislation restrict commercial landlords from exercising remedies under commercial leases?

Emergency/pandemic response legislation does not generally restrict commercial landlords from exercising remedies under commercial leases. However, commercial landlords may experience difficulty obtaining a court order for possession. Effective March 19, 2020, the British Columbia Supreme Court suspended all regular court operations and will only hear essential and urgent matters.

On April 24, 2020, the Government of Canada announced that it has reached an agreement in principal with all provinces and territories to implement the Canada Emergency Commercial Rent Assistance (CECRA) for small businesses. Under this program, property owners would be provided with loans that are forgivable if the owner reduces the eligible small business tenants' rent by at least 75% from April to June 2020 pursuant to a rent forgiveness agreement. This program also requires a moratorium on evictions while this agreement is in effect.

Restrictions have been placed on the enforcement of residential tenancies. A landlord may not issue a new notice to end a tenancy and any existing eviction orders are halted. Evictions may still be permitted in certain cases, such as where there are health and safety concerns, or if the eviction is needed to prevent undue damage to the property. In these situations, landlords may apply to the Residential Tenancy Branch.

#### 4. Mortgage/Financing Relief:

Does emergency/pandemic response legislation require that commercial landlords or commercial tenants be granted relief from payment obligations or other covenants under their mortgage/financing/debt obligations?

Emergency/pandemic response legislation does not require that commercial landlords or commercial tenants be granted relief from payment obligations or other covenants under their mortgage/financing/debt obligations.

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Additional financial relief measures include steps by BC Hydro to defer bill payments and the implementation of a 1% reduction in rates for all customers. The Government of British Columbia has also reduced the school property tax rate for commercial properties to achieve an average 25% reduction in the total property tax bills for most businesses, many provincial tax-filing deadlines are deferred to September 30, 2020, and the date that late payment penalties apply for commercial properties in classes 4,5,6,7 and 8 have been postponed to October 1, 2020. Municipal financial relief is also available. For instance, the City of Vancouver has extended the due date of property taxes from July to September 30, 2020.

#### 5. Lease Relief:

Does emergency/pandemic response legislation require that tenants be granted relief from rent payments or other covenants under their leases?

On April 24, 2020, the Government of Canada announced that it has reached an agreement in principal with all provinces and territories to implement CECRA for small businesses. This program will lower rent by 75% for small businesses impacted by COVID-19. CMHC will be responsible for administering and delivering CECRA.

CECRA is available for small business tenants who (a) are paying no more than \$50,000 in monthly gross rent per location, (b) generate no more than \$20 million in gross annual revenue, calculated on a consolidated basis (at the ultimate parent level), and (c) who have experienced at least a 70% decline in pre-COVID-19 revenues. CECRA also applies to eligible small business tenants in sub-tenancy arrangements, not-for-profit organizations and charitable entities, and covers commercial properties with a residential component and multi-unit residential mixed-use properties.

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Government and industry leaders are also asking landlords and tenants to work together to find practical solutions. For instance, some landlords are offering Rent Deferment Agreements to tenants. Under such arrangements, the rent is not forgiven, but instead payment is deferred to a later date.

## 6. Early Marketing Periods:

Does emergency/pandemic response legislation change the early marketing periods for new developments?

On April 20, 2020, the Office of the BC Superintendent of Real Estate (OSRE) issued Policy Statement 17 under the BC Real Estate Development Marketing Act (REDMA) to extend temporarily from nine months to twelve months the permitted early marketing period for new development units, before a developer has obtained (1) its first stage building permit (in accordance with Policy Statement 5) and (2) satisfactory financing commitment (in accordance with Policy Statement 6). For units that are initially marketed between June 17, 2019 and April 16, 2020, disclosure statement amendments must be filed to get the benefit of the extension. For development units that are newly marketed as of April 17 up to and including July 17, 2020, the new timing details must be included in the disclosure statements. This change allows developers more time to achieve pre-sale targets to satisfy financing conditions but does not provide relief to developers facing slower approval times for building permits.

## 7. Public Hearing:

Does emergency/pandemic response legislation change the requirements for public hearings?

On May 1, 2020, the Province of British Columbia issued Ministerial Order 139/2020 - Local Government Meetings and Bylaw Process (COVID-19) Order No. 2 to replace MO 83/2020 Local Government Meetings and Bylaw Process (COVID-19) Order and to clarify the interim rules to allow electronic meetings and virtual public hearings. The Ministerial Order applies to all BC municipalities (including the City of Vancouver), regional districts, improvement districts and regional land trusts. The order was issued pursuant to section 10 of the BC Emergency Program Act and is in force only for so long as BC's declared state of emergency continues. The order provides that local governments are not required to allow members of the public to attend an open meeting and, in doing so, any such meeting is not considered to be closed to the public. The provision overrides any applicable requirements in a local government's procedural bylaw. The order also specifically provides that a public hearing may be conducted by means of electronic or other communication facilities, provided that notice of the hearing includes instructions for how to participate (other than in person) and material relevant to the public hearing is made available online or through other means.