

Seven Ways the CARES Act Impacts the Real Estate Industry

A Lexis Practice Advisor® Article by

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On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act, was signed into law, and on April 2, 2020, the Small Business Administration (SBA) released interim final guidance on the Paycheck Protection Program. The Coronavirus, also known as COVID-19, has impacted and will continue to impact the health of Americans and the strength of our economy for the foreseeable future. Although the real estate industry did not receive the same types of direct economic dollars as the airline and healthcare industries, the law will help tenants, landlords, and businesses meet their basic financial obligations. Business loans will help companies pay their employees, rents and mortgages. Forbearance and foreclosure moratoriums will provide relief to landlords and tenants alike. However, despite this aid, leases, loans and other arrangements will likely need to be renegotiated, requiring cooperation from all stakeholders.

Below, we have summarized key provisions of the CARES Act that directly benefit the real estate industry.

Relief for Businesses and Employees

Paycheck Protection Program (PPP)

The CARES Act allocates nearly \$350 billion for business loans to companies and non-profits with 500 or less

employees. The loans—which are also available to sole proprietorships, independent contractors and certain self-employed individuals, and businesses in the food services and accommodation sector with fewer than 500 employees per location—may be used to cover payroll costs, healthcare costs, rent, mortgage interest payments (but not principal), utilities, and interest on any other pre-existing debt obligations. The maximum loan amount is 2.5 times the average monthly payroll during the year prior to the loan, up to a maximum of \$10 million. The guidance clarifies that independent contractors do not count as employees for purposes of calculating payroll or forgiveness, as they have the ability to apply for their own loan. These loans are available to eligible borrowers through June 30, 2020. Pursuant to the SBA's guidance, the loans will bear interest at 100 basis points, or one percent, will have a two year term, and payments under the loans (but not accrual of interest) will be deferred for six months. In addition, the SBA's requirement to obtain funding from other sources without undue hardship is waived. Note, however, that certain businesses, including certain passive real estate businesses, are ineligible for a PPP loan.

The loans and any accrued interest can be forgiven up to the total amount of payroll, rent, mortgage interest (but not principal) and utility payments made during the eight-week period following loan origination, however according to the guidance, not more than 25 percent of the loan forgiveness may be attributable to non-payroll costs. The total amount forgiven is subject to decrease for reductions in full-time employment and certain salary reductions. A borrower must apply for forgiveness and provide proof that the loan was properly used. Amounts forgiven will not give rise to taxable cancellation of indebtedness income.

Relief for Residential Owners and Residents

Consumer Right to Request Forbearance

Borrowers of federally backed mortgage loans designed principally for the occupancy of from one to four families that are experiencing hardship due to the COVID-19 emergency may request forbearance on the loan for up to 360 days. Borrowers can submit a request for forbearance until the sooner of the end of the coronavirus national emergency or December 31, 2020. No fees, penalties or interest beyond what would accrue if paid on schedule will accrue during the forbearance. The borrower is only required to attest to financial hardship, and need not submit additional proof.

Foreclosure Moratorium

A servicer of a federally backed mortgage loan designed principally for the occupancy of from one to four families may not initiate foreclosure or execute a foreclosure-related eviction or sale for the 60-day period beginning on March 18, 2020. This moratorium does not apply to vacant or abandoned property.

Loan Forbearance for Multifamily Landlords

A multifamily borrower with a federally backed multifamily mortgage loan that was current on its payments as of February 1, 2020 and is experiencing financial hardship due to the COVID-19 emergency may request a forbearance on the loan for up to 90 days. Borrowers can submit a request for forbearance until the sooner of the end of the coronavirus national emergency or December 31, 2020. The borrower is only required to affirm to the servicer that the borrower is experiencing a financial hardship during the COVID-19 emergency, and not submit additional proof.

A borrower receiving a forbearance may not evict or initiate the eviction of a tenant solely for nonpayment of rent or other fees or charges, or charge any late fees, penalties or other charges to such tenants; or require a tenant to vacate a unit before 30 days after the date on which the borrower provides a notice to vacate, and may not provide a notice to vacate until after the expiration of the forbearance period.

120-day Moratorium on Evictions of Residential Renters

The CARES Act prohibits landlords from seeking to recover possession of a rental unit, or charging fees, penalties or other charges related to nonpayment of rent, for 120 days from the passage of the CARES Act, where the landlord's mortgage is insured, guaranteed, supplemented or assisted in any way, in connection with a HUD program, or by Fannie Mae, Freddie Mac, or where the property participates in a covered housing program under the Violence Against Women Act or the rural housing voucher program. In addition, a covered landlord may not issue a notice to vacate until after the 120-day period.

Other Aspects of The CARES Act

Credit Protection During COVID-19

The CARES Act modifies the Fair Credit Reporting Act to provide that if a furnisher to credit reporting agencies makes an accommodation to payments on a credit

obligation of a consumer affected by COVID-19, including waiving payment, furnisher is required to report credit obligation as current. Landlords and others reporting to a credit reporting agency should be aware of these changes when reporting delinquent tenants and when reviewing credit reports of new tenants.

Technical Amendments Regarding Qualified Improvement Property

The CARES Act also fixed a drafting error in The Tax Cuts and Jobs Act of 2017 to change the depreciation period from 39 to 15 years for improvements made to the interiors of commercial buildings. As a result of this fix, the cost of any such improvement is now eligible for an immediate write-off as “bonus” depreciation, if the improvement was, or will be, placed in service after September 27, 2017 and before January 1, 2023.

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Brian Blitz joined Duval & Stachenfeld in 2019 as a partner in the Corporate Real Estate Practice Group. His practice focuses on all aspects of corporate transactions, including corporate real estate transactions. He routinely handles matters involving mergers and acquisitions, complex joint ventures, divestitures, carve-out transactions, corporate governance and general corporate counseling.

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Craig L. Brown is a member of the Real Estate and Joint Venture practice group at Duval & Stachenfeld. Mr. Brown has over twenty-five years of experience in all principal areas of real estate law and has been at the firm for over 20 years. His practice focuses on the acquisition, development, financing, leasing, and disposition of all types of domestic and international real estate assets, as well as structuring complex real estate joint venture transactions. Mr. Brown has developed a reputation as a highly skilled and tenacious attorney who is singularly dedicated to his clients and the success of their businesses not only through truly excellent legal work, but also by helping them build their businesses through creating connections with the firm's network of capital providers and sources of off-market deal flow. Mr. Brown's practice has also focused on advising Family Offices investing in real estate on the debt and equity side. He has developed an extensive network of family offices throughout the U.S. as well as internationally and specializes in family office related real estate transactions.

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Stephen Land, who is one of the top international tax lawyers in the United States, is part of Duval & Stachenfeld's Tax Practice. Mr. Land is known for his creative problem-solving approach and his responsiveness to client needs. He has brought those skills to bear on some of the largest international M&A transactions and restructurings of distressed assets and companies. He regularly advises on tax and ERISA for real estate, private equity, and hedge funds and their investors, regarding both the structure of the funds and their investments. He also has extensive experience in the structuring of complex financial instruments and derivatives. Recognized as a thought leader in the field, Mr. Land speaks regularly on tax topics at conferences in the United States and elsewhere. He is a former Chair of the Tax Section of the New York State Bar Association, and has been published in *The Tax Lawyer* and *Tax Law Review*, among others. Mr. Land has been recognized as a leading tax practitioner by Chambers, Legal 500 and other legal directories.

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