# The CARES Act – Implications for Property Owners, Landlords, Tenants, and Small Businesses

03.31.2020

**Professionals**

Banu Naraghi

Albert C. Valencia

**Practice Areas**

Real Estate

On March 27, 2020 Congress passed the Coronavirus Aid, and Economic Security Act (the "CARES Act"), which provides monetary relief in the form of emergency cash infusions, financing availability, loan forgiveness/ forbearance, tax benefits and supplemental awards which are designed to help owners, landlords, operators, borrowers, and tenants. The most significant real estate-specific measures in the legislation include the following:

**1. Loans for Small Businesses**

There are several provisions of the CARES Act designed to provide financial relief that would make loans available to small businesses (typically, employers employing 500 or fewer employees) for payroll support, mortgage, rent, and utility payments. The maximum amount of each loan is $10 million and the exact amount depends on the product of average monthly payroll costs of the borrower for the one-year period prior to the making of the loan multiplied by 2.5. Certain payroll costs are excluded from this calculation, such as payments of salaries in excess of $100,000.

An important benefit of these payroll protection loans is that borrowers will be eligible for loan forgiveness for the sum of the payroll expenses (including taxes and benefits), rent or mortgage interest, and utility payments for an 8-week period starting on the date the loan is made. All borrowers will be required to provide documentation to lenders which evidence their payroll amounts in order to determine the amount of potential forgiveness.

The period to apply for a payroll protection loan ends June 30, 2020. The various conditions for obtaining a payroll protection loan include the borrower's inability to obtain credit from another source and the borrower's covenant to the lender that the borrower will use the funds solely to maintain payroll, make rent or mortgage payments, or pay other designated expenses.

**2. Write-Off of Qualified Improvement Property**

The CARES Act corrects a drafting error in the Tax Cuts and Jobs Act and allows businesses to write-off costs associated with improving buildings instead of depreciating such improvements over the 39-year life of the building. This provision allows for an increase in a company's access to cash flow by allowing the company to amend a prior year return and further incentivizes the company to continue to invest in improvements as the state recovers from the COVID-19 crisis.

**3. Forbearance of Residential Loan Payments for Multifamily Properties and New Rules Regarding Evictions**

Section 4023 of the CARES Act allows a multifamily borrower with a federally backed multifamily mortgage loan to request forbearance of up to 30 days with two additional 30-day extensions. In order to take advantage of such forbearance, the borrower must be current on payments as of February 1, 2020.

A multifamily borrower that receives a forbearance under the CARES Act cannot evict tenants for nonpayment of rent and cannot charge late fees due to late payment of rent.

Separately, under Section 4024 of the CARES Act, even if forbearance is not sought, landlords with federally backed mortgage loans are prohibited from initiating eviction proceedings or charging late fees for 120 days after the enactment of the CARES Act.

**4. Modifications of Tax Rules Regarding Net Operating Losses**

Corporate taxpayers may carryback Net Operating Losses (NOLs) arising in 2018-2020 for up to five years. The Tax Cuts and Jobs Act previously prohibited such carrybacks.

Additionally, for taxable years beginning before 2021, the CARES act removes the limitation on NOLs that was imposed by the Tax Cuts and Jobs Act, which prevents taxpayers from offsetting in excess of 80% of the taxpayer's current taxable income. Under the CARES Act, corporations and pass-through entities may fully offset 100% of their income using NOLs.

**5. Modification of the Business Interest Expense Limitation**

The CARES Act temporarily increases the amount of interest expense a business can deduct on their tax returns. Specifically, it increases the adjusted taxable income limitation from 30% to 50% for 2019 and 2020. The CARES Act also allows a taxpayer to choose between its 2019 and 2020 taxable income for purposes of the 2020 interest expense limitation calculation. This provision will afford businesses increased liquidity with a reduced cost of capital so that they are able to continue operations and keep employees on their payroll.

***Ervin Cohen & Jessup LLP** is a full-service firm that provides a broad range of business-related legal services including corporate law; litigation; intellectual property & technology law; real estate transactions and finance; land use; construction & environmental law; tax planning and controversies; employment law; health care law;*

*bankruptcy, receivership and reorganization; and estate planning. For more information, visit* www.ecjlaw.com.