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The CARES Act - Key Provisions Related to Real Estate

On March 27, 2020 the CARES Act was signed into law. The CARES Act provides a $2.2 trillion economic stimulus package along with economic, tax and regulatory relief for businesses and individuals who have been impacted by the current COVID-19 pandemic. Here is an overview of some of the key provisions that relate to the real estate industry.

April 6, 2020

SUPPORT FOR BUSINESSES PROVISIONS ON TAXES

Employee Retention Credit for Employers Subject to Closure Due to COVID-19

Provides a refundable payroll tax credit of 50% of wages paid to employees. This credit will be available to eligible employers (i) whose trade or business was fully or partially suspended as the result of a government shutdown order due to COVID-19, or (ii) whose gross receipts for a calendar quarter (beginning January 1, 2020) are less than 50% of the gross receipts for the same calendar quarter in the prior year, and ending when the gross receipts for a calendar quarter are greater than 80% of the gross receipts for the same calendar quarter in the prior year. The amount of qualified wages (which include qualified health plan expenses) with respect to any employee that may be taken into account by the eligible employer for all calendar quarters shall not exceed $10,000 between March 13, 2020 and December 31, 2020. For businesses with more than 100 full-time employees, the tax credit is only available to the extent wages are paid to employees who are not providing services as a result of a government shutdown order. For businesses with less than 100 full-time employees, the tax credit is available with respect to wages paid to all employees, even if the employee works from home during the business shutdown. However, this tax credit is not available to employers who participate in the Paycheck Protection Program.

Delay of payment of employer payroll taxes

The Social Security portion of the employer payroll taxes owed for the period between March 27, 2020 and December 31, 2020 is deferred, with 50% thereof to be paid by December 31, 2021 and the other 50% to be paid by December 31, 2022. This deferral of payroll taxes shall not apply if the taxpayer has had indebtedness forgiven under the Payroll Protection Program.

5-Year Net Operating Loss (NOL) carryback

Taxpayers (except for REIT's) may carry back Net Operating Losses accruing in the years 2018, 2019 or 2020 for the 5 years preceding the NOL (this may require an amendment of the prior year tax return). The NOL deduction limit of 80% of taxable income is suspended, and businesses may use NOL to offset 100% of their income accruing in 2020. The 80% limit will be reinstated for 2021. Special rules apply for REITs.

Accelerated Ability to Obtain Credit For Prior Year Minimum Tax Liability of Corporations

Corporations with unclaimed alternative minimum tax (AMT) credits may claim them immediately rather than spreading them over several years.

Temporary Increase in Business Interest Expense

The maximum amount of tax-deductible business interest expenses is increased from 30% to 50% of adjusted gross income; taxpayers may use their 2019 adjusted taxable income instead of 2020 adjusted taxable income in calculating their maximum business interest deduction for 2020. Special rules apply to partners and partnerships.

Qualified Improvement Property

This is a technical amendment correcting a drafting error in The Tax Cuts and Jobs Act of 2017 to change the depreciation period. Generally, a qualified improvement property is any improvement to an interior portion of a nonresidential building (except for internal structural framework of the building, any elevators or escalators, or an enlargement of the building) that is placed in service after the date the building is first placed in service. For a qualified improvement property placed in service in tax years after 2017, the property is now eligible for an immediate write-off as "bonus" depreciation (rather than 39-year depreciation). Taxpayers will need to file amended tax returns for the prior years.

SUPPORT FOR BUSINESSES, PROVISIONS ON LENDING

Expanded Loans for Small Businesses

Up until June 30, 2020 the Payroll Protection Program allows small business to secure a loan (often referred to as a "PPP loan") toward the payment of payroll costs, employment compensation, healthcare costs, rent, mortgage interest payments (but not principal), utilities and interest on any other pre-existing debt obligations (i.e., debt incurred before February 15, 2020). The maximum amount of the loan is 250% of the average total monthly payroll costs, but the loan may not exceed $10 Million.

The recipient of the covered loan will be eligible for forgiveness of the loan to the extent of the total amount of payroll, mortgage interest (but not principal), rent and utility payments made during the eight-week period following the loan origination.

A "small business" has 500 employees or less (on a full-time, part-time or other basis) or meets the SBA's industry-based "size standard" requirements for the applicable North American Industry Classification System (NAICS) code for the industry in which the entity operates, and business concerns with more than one location and not more than 500 employees per location who are assigned a NAICS code 72 "Accommodation and Food Services; and any business receiving financial assistance from a Small Business Investment Company ("SBIC"); it also includes sole proprietors, independent contractors and self-employed individuals.

The amount of the loan that is forgiven will not constitute cancellation of indebtedness income for federal tax purposes. The amount of the loan forgiveness may be reduced due to a reduction in the number of employees or a reduction of more than 25% in salary and wages of any employee (earning $100,000 or less on an annualized rate).

These loans do not require a personal guarantee or collateral. There will be no recourse against any individual shareholder, member, or partner of an eligible recipient of a covered loan for nonpayment of any covered loan, except to the extent that such shareholder, member, or partner uses the covered loan proceeds for a purpose not authorized. The SBA's usual requirement that a small business concern is unable to obtain credit elsewhere does not apply to a covered loan.

Any remaining balance of the loan after the reduction based on the loan forgiveness will have a maximum maturity of 10 years from the date on which the borrower applies for loan forgiveness, with an interest rate not to exceed 4%. The initial guidelines from the United States Treasury Department set the interest rate at 0.5%, but that interest rate has since been changed to 1.0% and the maturity date is set at 2 years, subject to change. There is a complete payment deferment relief (including payment of principal, interest, and fees) for impacted borrowers with covered loans for a period of at least 6 months and not more than 1 year. There is no prepayment penalty on the loan.

A business can apply through any existing SBA lender or through any federally insured depository institution, federally insured credit union, and Farm Credit System institution that is participating. Other regulated lenders will be available to make these loans once they are approved and enrolled in the program.

Loan Program and Credit Facility to Support Impacted Industries

Economic Injury Disaster Loans (EIDL) made to the borrower during the period from January 31, 2020 and the date on which the Paycheck Protection Program loan is made available may be refinanced as part of the Paycheck Protection Program loan for loan forgiveness purposes. However, a borrower may not obtain an EIDL and a Paycheck Protection Program loan for the same purposes. Eligible applicants may also obtain, within 3 days, an advance of up to $10,000 to pay for allowable purposes, but the grant will be subtracted from the amount forgiven under the Paycheck Protection Program. For the EIDL grant, the allowable purposes include providing paid sick leave to employees unable to work due to the direct effect of COVID-19; maintaining payroll to retain employees during business disruptions or substantial slowdowns, meeting increased costs to obtain materials unavailable from the applicant's original source due to interrupted supply chains; making rent or mortgage payments; and repaying obligations that cannot be net due to revenue losses. An applicant for the advance payment will not be required to repay any amount of the advance, even if subsequently denied an SBA loan.

SUPPORT FOR RESIDENTIAL OWNERS AND TENANTS

The CARES Act provide tenants and certain multifamily landlords with economic relief during the COVID-19 emergency, to the extent the underlying property involves a federally backed mortgage loan.

Forbearance of Residential Mortgage Loan Payments for Multi-Family Properties with Federally Backed Loans

During the covered period, borrowers with federally backed mortgage loans on multifamily residences (designed principally for 5 families or more), who are facing financial hardship due to the COVID-19 emergency, may request an initial forbearance of 30 days, and also may request two additional 30-day extensions for a total of up to 90 days of total forbearance. The authority provided under this section terminates on the earlier of the termination date of the national emergency concerning the coronavirus or December 31, 2020.

To be eligible for the forbearance, the multifamily borrower must have been current on its payments as of February 1, 2020.

The forbearance is subject to the multifamily borrower's compliance with the conditions set forth in the CARES Act, most notably, the borrower's agreement to halt any existing, and not pursue any new, eviction proceedings during the forbearance period.

Foreclosure Moratorium and Consumer Right to Request Forbearance

For at least a 60-day period beginning March 18, 2020, a servicer of a federally backed mortgage loan may not initiate any foreclosure process, execute any foreclosure-related eviction or foreclosure sale, or move for a foreclosure judgment or order of sale. Residential borrowers with federally backed mortgage loans who are experiencing financial hardship due, directly or indirectly, to the COVID-19 emergency may request forbearance for a period of up to 180 days and shall be extended for an additional period of up to 180 days. Borrowers may be eligible for this forbearance regardless of delinquency status. During a period of forbearance described in this section, no fees, penalties, or interest beyond the amounts scheduled or calculated as if the borrower made all contractual payments on time and in full under the terms of the mortgage contract, shall accrue on the borrower's account.

Temporary Moratorium on Eviction Filings

For a period of 120 days beginning on the enactment of the CARES Act, landlords may not charge fees, penalties, or other charges to a tenant related to the tenant's nonpayment of rent, or initiate legal action to recover possession of a rental unit where the landlord's mortgage on that property is insured, guaranteed, supplemented, protected or assisted in any way by HUD, Fannie Mae, Freddie Mac, the rural housing voucher program or the Violence Against Women Act of 1994.

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For more information or if you have any questions about how this new development may affect your business, please contact a member of our Real Estate team.

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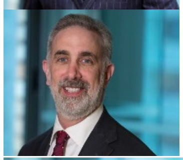

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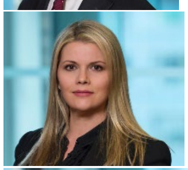

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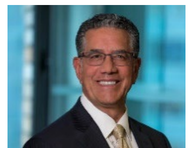

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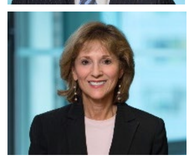

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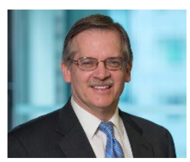

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