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## **EMERGENCY RENT FREEZE AND TENANT PAYMENT PLANS FOR CERTAIN D.C. COMMERCIAL PROPERTY**

### **Rent Freeze**

Under the Coronavirus Support Congressional Review Emergency Amendment Act of 2020 [Effective from June 9, 2020]<sup>1</sup> and the Coronavirus Support Clarification Emergency Amendment Act of 2020 [Effective From June 9, 2020],<sup>2</sup> the D.C. Council enacted emergency measures for the health, safety, and welfare of District residents and businesses (the Act). Under the Act, among many other measures, commercial rent for certain leased premises is not to increase. This freeze is in effect for the duration, and 30 days thereafter, of the Declaration of Public Health Emergency: Coronavirus (COVID-19), which D.C. Mayor Bowser issued on March 11, 2020.<sup>3</sup>

- **Application to Commercial Property**

The Act creates a rent freeze for commercial retail property or commercial property that is less than 6,500 square feet in size. As laws and guidance can be updated daily, it is prudent to check with a professional to determine whether the Act applies to your commercial leased space.

- **Logistics**

An increase in rent for commercial retail properties and commercial leased premises for spaces less than 6,500 square feet are not to occur, irrespective of the language in the commercial lease. Accordingly, an invoice for the rental period from March 11, 2020, through 30 days after the expiration of the public health emergency for an increase in rent for these certain commercial leased premises, should be examined to determine whether the Act applies. If paid, possibly a credit is owed.

### **Payment Plan**

The Act also sets forth a payment plan, not a rent reduction, for eligible tenants, which includes those leasing commercial space less than 6,500 square feet as part of a commercial building. More specifically, a Provider shall offer a rent-payment-plan program ("Program"), for eligible tenants, which shall be offered during a period of time for which the D.C. Mayor Bowser has declared a public health emergency and for one year thereafter ("Program Period").

Under the Program, a Provider shall, generally, make a payment plan available to an eligible tenant with a minimum term length of one year unless a shorter payment plan term length is requested by the eligible tenant. The Program shall waive any fee, interest, or penalty that arises out of a payment plan. A report shall not be made to a credit reporting agency as delinquent the rent subject to the payment plan. Moreover, an eligible tenant does not lose any rights due to entering into the payment plan. Importantly, a Provider shall notify all tenants of the availability, terms, and application process for its Program.

- **Approval Process**

Generally, the approval process requires Providers to approve each application submitted during a covered time period in which an eligible tenant demonstrates to the Provider evidence of a financial hardship resulting directly or indirectly from the public health emergency and agrees in writing to make payments in accordance with the payment plan.

- **Definitions**

Under the Act, a "Provider" means a housing provider or a non-housing provider, as defined below:

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"Housing provider" means a person or entity who is a residential landlord, residential owner, residential lessor, residential sublessor, residential assignee, or the agent of any of the foregoing or any other person receiving or entitled to receive the rents or benefits for the use or occupancy of any residential rental unit within a housing accommodation within the District.

"Non-housing provider" means a person or entity who is a non-residential landlord, non-residential owner, non-residential lessor, non-residential sublessor, non-residential assignee, a non-residential agent of a landlord, owner, lessor, sublessor, or assignee, or any other person receiving or entitled to receive rents or benefits for the use or occupancy of a commercial unit.

Moreover, an "Eligible tenant" means a tenant renting from a Provider that:

- 1) Has notified a provider of an inability to pay all or a portion of the rent due as a result of the public health emergency; and
- 2) Is not a franchisee unless the franchise is owned by a District resident; and
- 3) Has leased from a provider:
  - a. A residential property;
  - b. Commercial retail space; or
  - c. Commercial space that is less than 6,500 square feet in size and that comprises all or part of a commercial building.

- **Complaints**

A commercial tenant can request that the Provider make the application for a payment plan available to the Department of Consumer and Regulatory Affairs. Written complaints can be filed with the Department of Consumer and Regulatory Affairs.

### **Summary**

As this information is new and subject to very prompt changes, it can be helpful to seek legal advice to review your lease, determine the application of the Act and discuss any additional steps that may be required.

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<sup>1</sup> D.C. Act 23-328, available at <https://code.dccouncil.us/dc/council/acts/23-328.html>.

<sup>2</sup> D.C. Act 23-332, available at <https://code.dccouncil.us/dc/council/acts/23-332.html>.

<sup>3</sup> Mayor's Order 2020-046 dated March 11, 2020, available at [https://mayor.dc.gov/sites/default/files/dc/sites/mayormb/release\\_content/attachments/MO.DeclarationofPublicHealthEmergency03.11.20.pdf](https://mayor.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/MO.DeclarationofPublicHealthEmergency03.11.20.pdf). Mayor's Order 2020-079 dated July 22, 2020, extends Mayor's Order 2020-046, through October 9, 2020, available at [https://coronavirus.dc.gov/sites/default/files/dc/sites/mayormb/release\\_content/attachments/Mayor%27s%20Order%202020-079%20Extension%20of%20the%20Public%20Emergency%20.pdf](https://coronavirus.dc.gov/sites/default/files/dc/sites/mayormb/release_content/attachments/Mayor%27s%20Order%202020-079%20Extension%20of%20the%20Public%20Emergency%20.pdf).

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