NAIOP
COMMERCIAL REAL ESTATE DEVELOPMENT ASSOCIATION
CALGARY CHAPTER

To: NAIOP Calgary Members
From: Guy Huntingford

Re: **BILL 23, COMMERCIAL TENANCIES PROTECTION ACT**

For the past number of weeks, the government affairs committee has been working with our colleagues at the Edmonton NAIOP chapter, BOMA and interested 3rd parties on Bill 23 - The Commercial Tenancies Protection Act.

For those that have not been following all the details related to Bill 23 and what it means for many members of NAIOP Calgary, what follows will provide you with a brief summary.

The GOA felt that the Federal CECRA program (Canada Emergency Commercial Rent Assistance) which NAIOP had endorsed did not go far enough to protect/help the tenant, specifically small businesses. The GOA, under Minister Fir, the Minister of Economic Development, Trade and Tourism, quickly crafted Bill 23 which is designed to enhance the CECRA program.

As Bill 23 was rushed through the legislature, we felt there was still an opportunity for needed changes through the regulations that support the Bill. NAIOP Calgary was able to work with the Minister and her staff to understand our concerns and recommendations for amendments. As with most negotiations there were some of our concerns that were not addressed, but for the most part we feel that we were heard and the resulting final product is one that our members can live with.

Please find below the final outcomes of our advocacy efforts (appendix 1). Please see attached our thank-you letter to the minister and a copy of the final act and regulations.

If you have any questions related to Bill 23, please contact Bob Homersham or myself.

Sincerely,

G Huntingford

Guy Huntingford
Director Strategic Initiatives
NAIOP Calgary

APPENDIX 1

Bill 23 is designed to address these issues:

- protect eligible commercial tenants from having their leases terminated if they can't pay rent as a result of the COVID-19 pandemic. The effective period for the bill is from March 17,2020 to August 31, 2020.
- prevent landlords from raising rent and charging late fees and penalties on missed rent
    - any late fees, penalties, or rent increases imposed on a commercial tenant by their landlord between March 17, 2020 and August 31, 2020 would need to be reimbursed

Who is it designed to protect?:

- commercial tenants with tenancy agreements eligible for the CECRA program, but whose landlords have chosen not to participate
- commercial lease agreements where tenants have had to close their business due to public health orders or have had their business revenue decline by 25% or more as a result of the COVID-19 pandemic, offering protections to tenants who do not meet the eligibility criteria of a 70% revenue decline required under the CECRA program
    - in order for a tenant to be eligible for protection under the act, monthly rents must also be less than $50,000 per location and the tenant's business must have less than $20 million in revenues (at the parent level)

What is the GOA's position with respect to collaboration between the Landlord and Tenant:

- Tenants and landlords need to work together to develop a rent payment plan for missed payments. If a tenant's actions violate any lease provisions other than those covered by the act, the tenant may be evicted or penalized in accordance with the terms of the lease.

The legislation does not apply to:

- commercial premises where the landlord has received a forgivable loan under the CECRA program for that commercial premises
- evictions or lease terminations that happened before the legislation was tabled on June 16, 2020.

NAIOP Calgary's advocacy efforts:

- With our colleagues at NAIOP Edmonton and BOMA, we urged the GOA to align the Bill with similar legislation from other provinces. That is, other provincial legislation is intended to compel recalcitrant landlords to apply for CECRA. We achieved some of that alignment but the GOA held firm with extending assistance to commercial tenants who have experienced a revenue dip (due to COVID) of merely 25% (this compares with the threshold for CECRA of 70% loss of revenue).