

Property Owners Must Act to Reap Benefits of Two New Laws

President Trump recently signed into law two sweeping pieces of legislation that multifamily real estate owners, including condominium and cooperative boards, need to be aware of and need to act upon to protect their interests.

President Trump signed into law the Families First Coronavirus Response Act (the FFCRA) on March 18, followed by the Coronavirus Aid, Relief, And Economic Security (CARES) Act on March 27.

The Families First Coronavirus Response Act (the FFCRA)

The FFCRA provides paid leave for millions of Americans dealing with COVID-19 by (1) requiring employers to provide paid sick leave benefits to their employees and (2) significantly expands the Family Medical and Leave Act (the FMLA).

Under the paid sick leave portion of the FFCRA, employers with less than 500 employees must provide employees with two weeks of paid sick leave to be paid at the employee's regular rate of pay if the employee is unable to work for a specific list of reasons related to COVID-19 impacting the employee or those the employee must care for.

Under the expansion of the FMLA, employers with less than 500 employees must provide up to 12 weeks of paid family leave to employees who are unable to work because their child's school has been closed or the child care provider is unavailable due to COVID-19. Although the first 10 days of leave may be unpaid, the remainder of this leave must be paid at two-thirds the employee's regular rate of pay (with some caps).

Does this apply to multifamily real estate owners such as condominium and cooperative boards? The answer hinges on whether such owner or board would be eligible for an exemption from the Department of Labor. The Department of Labor is empowered by the FFCRA to exempt small businesses with less than 50 employees if the imposition of the FFCRA would "jeopardize the viability of the business." The DOL has further clarified that a small business (of 50 employees or fewer) may claim this exemption if an authorized officer of the business has determined that:

1. The provision of paid sick leave or expanded family and medical leave would result in the small business's expenses and financial obligations exceeding available business revenues and cause the small business to cease operating at a minimal capacity;
2. The absence of the employee or employees requesting paid sick leave or expanded family and medical leave would entail a substantial risk to the financial health or operational capabilities of the small business because of their specialized skills, knowledge of the business, or responsibilities; or
3. There are not sufficient workers who are able, willing, and qualified, and who will be available at the time and place needed, to perform the labor or services provided by the employee or employees requesting paid sick leave or expanded family and medical leave, and these labor or services are needed for the small business to operate at a minimal capacity.

Therefore, we recommend analyzing the annual budgets and costs related to providing the paid sick leave and expanded FMLA to determine whether an authorized officer, such as the treasurer of a condominium or cooperative board can legitimately make such a statement.

Coronavirus Aid, Relief, And Economic Security (CARES) Act

One important feature of the CARES Act is the Paycheck Protection Program (the PPP). PPP



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provides for federally guaranteed loans that are available in an amount 2.5 times the monthly average payroll cost for the one-year period prior to the loan, but not to exceed \$10 million. These Payroll Protection Loans may be used to pay qualified payroll and salary costs, rent, utilities, interest on mortgages, and other debt existing prior to February 15, 2020. These loans may be forgiven at an amount equal to eight weeks of payroll, mortgage interest, rent, and utilities that is then reduced based on the levels at which small businesses rehire and reemploy full time employees, as well as restore or retain salary levels.

Does this apply to multifamily real estate owners such as condominium and cooperative boards? While typical SBA loans are only for “operating companies” and are not approved for passive businesses or real estate holding companies, we believe that the PPP creates an exception. The PPP states that “any business concern” with not more than 500 employees will be eligible to receive such a loan.

How can a multifamily real estate owner or condominium or cooperative board participate in the PPP? Such loans are available from various lenders on a list promulgated by the SBA. Applicants must submit documentation in order to be verified as eligible, including payroll tax filings reported to the IRS and Forms 1099-MISC. We recommend that owners work with their property managers and accountants to apply.

We are available for questions regarding application to your business, complying with these laws and taking advantage of these opportunities.